

2001 DRAFTING REQUEST

Bill

Received: **01/28/2002**

Received By: **malaigm**

Wanted: **Soon**

Identical to LRB:

For: **MaryAnn Lippert (608) 266-8366**

By/Representing: **Herself**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Addl. Drafters:

Subject: **Health - tobacco**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Selling cigarettes to minors; compliance checks; training; local authority

Instructions:

See Attached--assembly companion to SSA (LRBs0302) to SB 360

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>
/?	malaigm 01/28/2002	csicilia 01/30/2002					
/1			jfrantze 01/30/2002		lrb_docadmin 01/30/2002		S&L
/2	malaigm 01/31/2002	gilfokm 02/01/2002	pgreensl 02/01/2002		lrb_docadmin 02/01/2002	lrb_docadmin	S&L 02/05/2002

FE Sent For: **01/31/2002.**

"1/2" Attached.

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/?	malaigm 01/28/2002	csicilia 01/30/2002		<u>2/1</u>			
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FE Sent For:	"/1" 1/31/02 <i>[Signature]</i>	12-2/1-02 <i>[Signature]</i>	<i>[Signature]</i> pg	<i>[Signature]</i> RS			<END>

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1/?	malaigm	1 cjs 1/30 02	J 1/30	J 1/30			

FE Sent For:

<END>

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GMM

2001 SENATE BILL 360

requiring retailers to provide training to their employees on compliance with those prohibitions, authorizing counties and municipalities to enact ordinances prohibiting minors from purchasing or possessing cigarettes and tobacco products.

~~December 27, 2001 - Introduced by Senators ROYSON, ROESSLER, RISSER and PLACHE, cosponsored by Representatives LIPPERT, URBAN, BOCK, LA FAVE, J. LEHMAN, TURNER, OTT, MILLER, MORRIS-TATUM, STASZENAS and BERCEAU. Referred to Committee on Human Services and Aging.~~

Regenerate

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) (b), 254.916 (1) (c),
 3 254.916 (3) (c), 254.916 (3) (f) (intro.), 254.916 (5) and 254.916 (8); *to repeal*
 4 *and recreate* 254.916 (title) and 254.916 (1) (a); and *to create* 134.65 (1m) of
 5 the statutes; **relating to:** investigations to determine compliance with certain
 6 prohibitions against selling or giving cigarettes and tobacco products to minors
 7 ~~and~~ requiring certain information to be included on an application for a license
 8 to sell, expose for sale, possess with intent to sell, exchange, barter, dispose of,
 9 or give cigarettes or tobacco products to a person

and providing an exemption from rule-making procedures

for town

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 a ~~town~~ city, ~~or~~ village, clerk.

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,

SENATE BILL 360

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

Current law prohibits a retailer, manufacturer, distributor, jobber, subjobber, or independent contractor, or the agent or employee of any of these persons, from selling or giving cigarettes or tobacco products to a minor unless the minor purchased or possessed the cigarettes or tobacco products in the course of the minor's employment. In addition, these persons are 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. Current law authorizes a county, town, city, or village to adopt an ordinance regulating the sale or gift of cigarettes or tobacco products to a minor as long as the ordinance strictly conforms to these statutory prohibitions.

prevention and treatment
Kurt
A-1

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.

Funds

Current law authorizes ~~the department of health and family services (DHFS)~~ to contract with governmental regulatory authorities, as agents of DHFS, to conduct unannounced investigations of retail outlets where cigarettes or tobacco products are sold to survey overall levels of compliance with the prohibitions against selling cigarettes or tobacco products to minors. ~~A governmental regulatory authority is defined as a local health department, a state agency, or a state or local law enforcement agency.~~ Current law authorizes governmental regulatory authorities to use, as part of the governmental regulatory authority's unannounced investigations, a minor who is at least 15 years of age to buy, attempt to buy, or possess cigarettes or tobacco products if the minor has the permission of his or her parent or guardian, is directly supervised by an adult employee 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.

Current law also requires that an unannounced investigation comply with standards established by DHFS and 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.
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

The bill also requires a person who contracts to conduct 2001 - 2002 Legislature investigations to agree to LRB-1118/1
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SENATE BILL 360 Train all individuals conducting investigations under the contract in accordance with those standards and to suspend from conducting any further investigations for not less than six months 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 governmental regulatory authority 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 after the investigation.

6. Within ten days after 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 current law~~ 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.

This bill permits DHFS or another governmental regulatory authority, without first contracting with DHFS, to 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 strictly conforms to the statutory prohibitions. The bill requires that any investigation that is conducted comply with the current statutory requirements for investigations 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~~ reveals that the retailer violated the prohibition against selling or giving cigarettes or tobacco products to minors.

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. 134.65 (1m) of the statutes is created to read:
2 134.65 (1m) A city, village, or town clerk may not issue a license under sub. (1)
3 unless the applicant specifies in the license application whether the applicant will
4 sell, exchange, barter, dispose of, or give away the cigarette or tobacco products over
5 the counter or in a vending machine, or both.

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

with respect to investigations of retail outlets, current law prohibits

from subjecting

the most recent investigation

Insert A-2

individual who fails to meet those requirements and standards

Insert 3-5 5

SENATE BILL 360

Insert 5-5

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

6 SECTION 7. 254.916 (1) (b) of the statutes is amended to read:

Subjected to an
unannounced investigation

7 254.916 (1) (b) The department, in consultation with ~~retailers and other~~
8 governmental regulatory authorities and with retailers, shall establish standards
9 for procedures and training for conducting investigations under this section.

10 SECTION 8. 254.916 (1) (c) of the statutes is amended to read:

the most recent

11 254.916 (1) (c) No retailer may be ~~subject to unannounced investigations~~ more
12 than twice annually unless the retailer is found to have violated s. 134.66 (2) (a) or
13 (am), or a local ordinance adopted under s. 134.66 (5), during each ~~an~~ investigation.

14 SECTION 9. 254.916 (3) (e) of the statutes is amended to read:

15 254.916 (3) (e) A governmental regulatory authority shall make a good faith
16 effort to make known to the retailer or the retailer's employee or agent, within 72
17 hours after the occurrence of the violation, the results of an investigation, including
18 the issuance of any citation by a governmental regulatory authority for a violation
19 that occurs during the conduct of the investigation. This paragraph does not apply
20 to investigations conducted under a grant received under ~~42 USC 300x-021~~ 42 USC
21 300x-21.

22 SECTION 10. 254.916 (3) (f) (intro.) of the statutes is amended to read:

23 254.916 (3) (f) (intro.) Except with respect to investigations conducted under
24 ~~42 USC 300x-021 or 21 CFR part 897~~ a grant received under 42 USC 300x-21, all

SENATE BILL 360

1 of the following information shall be reported to the retailer within 10 days after the
2 conduct of an investigation under this section:

3 SECTION 11. 254.916 (4) of the statutes is repealed.

4 SECTION 12. 254.916 (5) of the statutes is amended to read:

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

9 SECTION 13. 254.916 (8) of the statutes is amended to read:

10 254.916 (8) A governmental regulatory agency that conducts an investigation
11 under this section shall meet the requirements of sub. (3) and the standards
12 established by the department of health and family services. The department shall
13 annually evaluate the investigation program of each governmental regulatory
14 authority. If, at any time, a governmental regulatory authority fails to meet the
15 standards, the department of health and family services may terminate the contract
16 under sub. (1). ~~(1)~~ no strike

(a) to (f)

(END)

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2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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(INSERT 3-5)

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

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

History: 1987 a. 336; 1989 a. 31; 1991 a. 95; 1993 a. 210, 312; 1995 a. 352; 1997 a. 214; 1999 a. 9.

SECTION 2. 134.66 (2m) of the statutes is created to read:

134.66 (2m) TRAINING. (a) Except as provided in par. (b), at the time a retailer hires or contracts with an agent, employee, or independent contractor whose duties will include the sale of cigarettes or tobacco products, the retailer shall provide the agent, employee, or independent contractor with training on compliance with sub. (2) (a) and (am), including training on the penalties under sub. (4) (a) 2. for a violation of sub. (2) (a) or (am). The department of health and family services shall make available to any retailer on request a training program developed or approved by that department that provides the training required under this paragraph. A retailer may comply with this paragraph by providing the training program developed or approved by the department of health and family services or by providing a comparable training program approved by that department. At the completion of the training, the retailer and the agent, employee, or independent contractor shall sign a form provided by the department of health and family services verifying that the agent, employee, or independent contractor has received the training, which the retailer shall retain in the personnel file of the agent, employee, or independent contractor.

(b) Paragraph (a) does not apply to an agent, employee, or independent contractor who has received the training described in par. (a) as part of a responsible beverage server training course or a comparable training course, as described in s. 125.04 (5) (a) 5., successfully completed by the agent, employee, or independent contractor. The department of health and family services shall make the training program developed or approved by that department under par. (a) available to the technical college system board, and that board shall include that training program or a comparable training program approved by that department in the curriculum guidelines specified by that board under s. 125.04 (5) (a) 5. The department of health and family services shall also make the training program developed or approved by that department under par. (a) available to any provider of a comparable training course, as described in s. 125.04 (5) (a) 5., on request, and the department of revenue or the educational approval board may approve a comparable training course under s. 125.04 (5) (a) 5. only if that training course includes the training program developed or approved by the department of health and family services under par. (a) or a comparable training program approved by that department.

(c) If an agent, employee, or independent contractor who has not received the training described in par. (a) commits a violation of sub. (2) (a) or (am), a governmental regulatory authority, as defined in s. 254.911 (2), may issue a citation based on that violation only to the retailer that hired or contracted with the agent, employee, or independent contractor and not to the agent, employee, or independent contractor who has not received that training. If an agent, employee, or independent contractor who has received the training described in par. (a) commits a violation of sub. (2) (a) or (am) for which a governmental regulatory authority issues a citation to the retailer that hired or contracted with the agent, employee, or independent

contractor, the governmental regulatory authority shall also issue a citation based on that violation to the agent, employee, or independent contractor who has received that training. ✓

SECTION 3. 134.66 (2) (d) of the statutes is repealed. ✓

SECTION 4. 134.66 (3) (intro.) of the statutes is amended to read:

134.66 (3) DEFENSE OF RETAILER, MANUFACTURER AND DISTRIBUTOR, SALE TO MINOR.

(intro.) Proof of all of the following facts by a retailer, manufacturer or distributor, jobber, or subjobber, an agent, employee, or independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber, or an agent or employee ^{of} an independent contractor who sells cigarettes or tobacco products to a person under the age of 18 is a defense to any prosecution for a violation of sub. (2) (a):

History: 1987 a. 336; 1989 a. 31; 1991 a. 95; 1993 a. 210, 312; 1995 a. 352; 1997 a. 214; 1999 a. 9.

SECTION 5. 134.66 (4) (a) 1. of the statutes is amended to read:

134.66 (4) (a) 1. In this paragraph, "violation" means a violation of sub. (2) (a), (am), (cm), (d) or (e) or a local ordinance which strictly conforms to sub. (2) (a), (am), (cm), (d) or (e).

History: 1987 a. 336; 1989 a. 31; 1991 a. 95; 1993 a. 210, 312; 1995 a. 352; 1997 a. 214; 1999 a. 9.

(END OF INSERT)

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no 9

The department may contract with a local health department, a state agency, or a state or local law enforcement agency to conduct investigations authorized under this section, and a local health department, state agency, or state or local law enforcement agency may contract with any other person to conduct those investigations. A person who contracts to conduct investigations authorized under this section shall agree in the contract to train all individuals conducting investigations under the contract in accordance with the standards established

under par. (b) and to suspend from conducting any further investigations for not less than 6 months any individual who fails to meet the requirements of sub. (3) (a) to (f) and the standards established by the department.

(END OF INSERT)

(INSERT 6-16)

SECTION 6. 254.92 (4) of the statutes is created to read:

254.92 (4) A county, town, village, or city may enact an ordinance regulating the conduct regulated by this section only if the ordinance strictly conforms to this section. A county ordinance enacted under this subsection does not apply within a town, village, or city that has enacted or enacts an ordinance under this subsection.

SECTION 7. 778.25 (1) (a) 4. of the statutes is created to read:

778.25 (1) (a) 4. Under s. 254.92 or under a local ordinance strictly conforming to s. 254.92 brought against an adult in circuit court or against a minor in the court assigned to exercise jurisdiction under chs. 48 and 938.

SECTION 8. Nonstatutory provisions.

(1) COMPLIANCE TRAINING PROGRAM DEVELOPMENT. By the first day of the 3rd month beginning after the effective date of this subsection, the department of health and family services shall develop or approve the training program, and shall develop the form, required under section 134.66 (2m) (a) of the statutes, as created by this act. Notwithstanding section 227.10 (1) of the statutes, the department of health and family services is not required to promulgate that training program or form as rules.

(2) TRAINING OF CURRENT EMPLOYEES. Notwithstanding section 134.66 (2m) (a) of the statutes, as created by this act, by no later than the first day of the 2nd month beginning after the effective date of this subsection, a retailer, as defined in section

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134.66 (1) (g) of the statutes, shall provide the training described in section 134.66 (2m) (a) of the statutes, as created by this act, to all individuals who were agents, employees, or independent contractors of the retailer on the day before the effective date of this subsection.

SECTION 9. Initial applicability.

(1) COMPLIANCE INVESTIGATION CONTRACTS. The treatment of section 254.916 (1) (a) of the statutes (with respect to compliance investigation contracts) first applies to a compliance investigation contract that is entered into or extended, modified, or renewed on the effective date of this subsection.

SECTION 10. Effective date.

(1) COMPLIANCE TRAINING REQUIREMENT. The treatment of section 134.66 (2m) of the statutes and SECTION 9 of this act take effect on the first day of the 3rd month beginning after publication.

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This bill requires a retailer, at the time the retailer hires a new employee whose duties will include the sale of cigarettes or tobacco products, to provide the employee with training in compliance with these prohibitions against the unlawful selling or giving of cigarettes or tobacco products to a minor and the unlawful giving of cigarettes or tobacco products to any person, including the penalties for noncompliance with these prohibitions. That training requirement, however, does not apply to an employee who has received that training as part of a responsible beverage server training course, which is a course offered by a technical college district that a person must successfully complete as a prerequisite for the issuance of any license relating to alcohol beverages. The bill also requires the technical college system board to include the training required under the bill in the curriculum guidelines specified by that board for the responsible beverage server training course.

Under the bill, if an employee who has not received the training required under the bill unlawfully sells or gives cigarettes or tobacco products to a minor or unlawfully gives cigarettes or tobacco products to any person, the department of health and family services (DHFS), a local health department, or a law enforcement

agency (governmental regulatory authority) may issue a citation based on that violation only to the retailer that hired the employee and not to the employee. Conversely, if an employee who has received that training unlawfully sells or gives cigarettes or tobacco products to a minor or unlawfully gives cigarettes or tobacco products to any person and a governmental regulatory authority issues a citation to the retailer that hired the employee, the governmental regulatory authority must also issue a citation based on that violation to the employee.

(END OF INSERT)

(INSERT A-2)

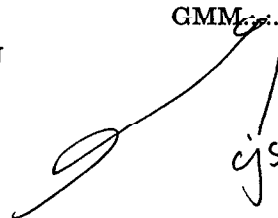
Finally, under current law, a minor may not purchase, attempt to purchase, or possess cigarettes or tobacco products except in the course of the minor's employment or in the course of an investigation that is conducted in accordance with the statutory requirements and standards established by DHFS for those investigations. This bill permits a county, city, village, or town to enact an ordinance prohibiting a minor from purchasing, attempting to purchase, or possessing cigarettes or tobacco products as long as the ordinance strictly conforms to those statutory prohibitions.

(END OF INSERT)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4805/1dn

CMM.....



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.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4805/1dn
GMM:cjs:jf

January 30, 2002

Representative Lippert:

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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.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

Malaise, Gordon

From: Kiesow, John
Sent: Thursday, January 31, 2002 9:04 AM
To: Sappenfield, Anne; Roessler, Carol; Austin, David; Malaise, Gordon; Robson, Judy; Rep.Lippert
Subject: LRB 0302/1

I've reviewed LRBs0302/1 regarding tobacco sales compliance investigations.

It appears to cover all the issues we discussed at the meeting last Thursday.

However, there is one additional point that the Dept. raised at the public hearing on Wednesday that is not addressed in this draft.

There needs to be a revision to the current s. 254.916 (11). Subsection 11

deals with hearings for appeals. It is currently written to reflect the obligation of DHFS to conduct appeal hearings. This subsection should be

changed to reflect an appeal process including hearings under Chapter 68,

(Municipal Administrative Procedure). The Department should not be responsible for local activities that are conducted independent of a contractual relationship with DHFS. Since local governments will be able to

independently conduct compliance activities, appeals should be heard at the local level.

Please let me know if you have any questions.

Thanks!

John Kiesow, DHFS

Fiscal Estimate - 2001 Session

Original Updated Corrected Supplemental

LRB Number 01-4805/1	Introduction Number
Subject Selling cigarettes to minors; compliance checks; training; local authority	
Fiscal Effect	
State:	
<input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	
<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
Local:	
<input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate	
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
Fund Sources Affected	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	
Affected Ch. 20 Appropriations	
Agency/Prepared By DHFS/ Mark Resheske (608) 267-0356	Authorized Signature Fred Ellen Bove (608) 266-2907
Date 2/19/02	

Sent to Rep. Lippert (02-19-2002)
↳ FE is for old "11" version
↳ draft is now a "12"
↳ Intro. AS AB-805

Fiscal Estimate Narratives
DHFS 2/19/02

LRB Number 01-4805/1	Introduction Number	Estimate Type Original
Subject Selling cigarettes to minors; compliance checks; training; local authority		

Assumptions Used in Arriving at Fiscal Estimate

Current law authorizes the Department of Health and Family Services (DHFS) to conduct unannounced investigations of retail outlets to survey compliance with the prohibitions against selling cigarettes or tobacco products to minors. These investigations, in which teenagers under adult supervision attempt to buy tobacco products, must be conducted according to procedures established in statute. Current law authorizes certain other governmental regulatory authorities (local health departments, a state agency, or a state or local law enforcement agency) to conduct such investigations, but only if they are under contract with DHFS. This bill permits governmental authorities to conduct the compliance investigations without having to contract with DHFS and relieves the Department of conducting an annual evaluation of the investigation programs for each governmental regulatory authority. The governmental regulatory agency that conducts an investigation must comply with the current statutory requirements for investigations and any standards established by DHFS. This provision would have no fiscal effect on state government. Local governments would incur costs to the extent that they conduct compliance investigations. However, the bill would permit, but not require, local agencies to conduct the investigations.

The bill also requires the person who contracts to conduct investigations to agree to train all of the individuals conducting the investigations in accordance with DHFS standards and to suspend anyone who fails to meet those standards and requirements from conducting investigations for six months. Retailers are also required to provide new employees with training in compliance with the prohibitions against unlawfully selling cigarettes or tobacco products and the penalties for non-compliance. At the completion of the training, the retailer and the agent/employee, or independent contractor must sign a form provided by DHFS verifying that they received the training and retain that form in their personnel file. The Department is responsible for making available to or providing any retailer on request a training program developed or approved by the Department that fulfills the requirement. The requirement that the Department provide a training program to retailers may create costs for the Department. The cost of this provision will depend on whether DHFS can use an existing training program or will have to develop its own program. The fiscal effect is unknown until such a determination is made.

Current law allows local authorities to issue citations to the retailer if the retailer or an employee illegally sells tobacco products to a minor. Often, the authority will issue the citation through the mail based on information on the retailer's license. This bill would require authorities, in cases where they issue a citation to the retailer, to also issue a citation to the employee who sold the tobacco, if the employee had received the required training discussed above. The authorities will incur costs to identify whether the employee has been trained and to issue the second citation. Authorities will also receive additional revenue by issuing additional citations, which may be issued up to \$500 for the first violation in the last 12 months. However, because the number of additional citations that are issued is unknown, it is not possible to estimate the ongoing effect of this bill on costs and revenues to local human services, social services, or health departments.

It is important to note that under current federal law (referred to as the Synar regulation), as a condition of receiving the federal Substance Abuse Prevention and Treatment (SAPT) Block Grant, Wisconsin must: 1) prohibit manufacturers, retailers, or distributors of tobacco products from selling or distributing tobacco to minors, 2) must conduct random unannounced investigations of retail outlets where tobacco products are sold to measure compliance with such prohibitions, and 3) must report annually to the federal Department of Health and Human Services on these activities. The results of the compliance investigations are used to calculate the percentage of retailers that sell tobacco to minors in the state. If the percentage exceeds a target negotiated with the federal government, the federal government can reduce Wisconsin's SAPT block grant award by 40% or roughly \$10 million. The 2001 target non-compliance rate was 22%, but Wisconsin's Synar non-compliance rate for 2001 was 33.7% or 11% over the target. A principle reason why the non-compliance rate is above the target is that municipalities no longer conduct their own compliance investigations for enforcement purposes. They have ceased such investigations since enactment of the current law provision allowing them to conduct the investigations only under contract with DHFS. To the extent that this bill results in more local enforcement

efforts, it will enable Wisconsin to maintain current funding under the federal SAPT Block Grant.

Long-Range Fiscal Implications



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-4805/1-2
GMM:rs&...if RNR
King's CJS
nep

This week 21
Friday

2001 BILL

DM of E

Agreements

1 AN ACT *to repeal* 134.66 (2) (d) and 254.916 (4); *to amend* 134.66 (2) (b) 2., 134.66
2 (3) (intro.), 134.66 (4) (a) 1., 134.66 (5), subchapter IX (title) of chapter 254
3 [precedes 254.911], 254.911 (2), 254.916 (1) (b), 254.916 (1) (c), 254.916 (3) (e),
4 254.916 (3) (f) (intro.), 254.916 (5) and 254.916 (8); *to repeal and recreate*
5 254.916 (title) and 254.916 (1) (a); and *to create* 134.65 (1m), 134.66 (2m),
6 254.92 (4) and 778.25 (1) (a) 4. of the statutes; **relating to:** investigations to
7 determine compliance with certain prohibitions against selling or giving
8 cigarettes and tobacco products to minors, requiring retailers to provide
9 training to their employees on compliance with those prohibitions, authorizing
10 counties and municipalities to enact ordinances prohibiting minors from
11 purchasing or possessing cigarettes and tobacco products, requiring certain
12 information to be included on an application for a license to sell, expose for sale,
13 possess with intent to sell, exchange, barter, dispose of, or give cigarettes or

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1 tobacco products to a person, and providing an exemption from rule-making
2 procedures.

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 a city, village, or town clerk.

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.

Current law prohibits a retailer, manufacturer, distributor, jobber, subjobber, or independent contractor, or the agent or employee of any of these persons, from selling or giving cigarettes or tobacco products to a minor unless the minor purchased or possessed the cigarettes or tobacco products in the course of the minor's employment. In addition, these persons are 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. Current law authorizes a county, town, city, or village to adopt an ordinance regulating the sale or gift of cigarettes or tobacco products to a minor as long as the ordinance strictly conforms to these statutory prohibitions.

This bill requires a retailer, at the time the retailer hires a new employee whose duties will include the sale of cigarettes or tobacco products, to provide the employee with training in compliance with these prohibitions against the unlawful selling or giving of cigarettes or tobacco products to a minor and the unlawful giving of cigarettes or tobacco products to any person, including the penalties for noncompliance with these prohibitions. That training requirement, however, does not apply to an employee who has received that training as part of a responsible beverage server training course, which is a course offered by a technical college district that a person must successfully complete as a prerequisite for the issuance of any license relating to alcohol beverages. The bill also requires the technical college system board to include the training required under the bill in the curriculum guidelines specified by that board for the responsible beverage server training course.

Under the bill, if an employee who has not received the training required under the bill unlawfully sells or gives cigarettes or tobacco products to a minor or unlawfully gives cigarettes or tobacco products to any person, the department of health and family services (DHFS), a local health department, or a law enforcement agency (governmental regulatory authority) may issue a citation based on that violation only to the retailer that hired the employee and not to the employee. Conversely, if an employee who has received that training unlawfully sells or gives

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cigarettes or tobacco products to a minor or unlawfully gives cigarettes or tobacco products to any person and a governmental regulatory authority issues a citation to the retailer that hired the employee, the governmental regulatory authority must also issue a citation based on that violation to the employee.

Under current federal law, as a condition of receiving certain substance abuse prevention and treatment block grant funds, 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.

Current law authorizes DHFS to contract with governmental regulatory authorities, as agents of DHFS, to conduct unannounced investigations of retail outlets where cigarettes or tobacco products are sold to survey overall levels of compliance with the prohibitions against selling cigarettes or tobacco products to minors. Current law authorizes governmental regulatory authorities to use, as part of the governmental regulatory authority's unannounced investigations, a minor who is at least 15 years of age to buy, attempt to buy, or possess cigarettes or tobacco products if the minor has the permission of his or her parent or guardian, is directly supervised by an adult employee 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.

Current law also requires that an unannounced investigation comply with standards established by DIIFS and 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.
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 governmental regulatory authority 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 after the investigation.
6. Within ten days after 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

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investigation, the age of a minor used in the investigation, the date and time of the investigation, and the results of the investigation.

Finally, with respect to investigations of retail outlets, current law prohibits a governmental regulatory authority from subjecting 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 permits DHFS or another governmental regulatory authority, without first contracting with DHFS, to 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 strictly conforms to the statutory prohibitions. The bill requires that any investigation that is conducted comply with the current statutory requirements for investigations and any standards established by DHFS. The bill also requires a person who contracts to conduct investigations to agree to train all individuals conducting investigations under the contract in accordance with those standards and to suspend from conducting any further investigations for not less than six months an individual who fails to meet those requirements and standards.

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

Finally, under current law, a minor may not purchase, attempt to purchase, or possess cigarettes or tobacco products except in the course of the minor's employment or in the course of an investigation that is conducted in accordance with the statutory requirements and standards established by DHFS for those investigations. This bill permits a county, city, village, or town to enact an ordinance prohibiting a minor from purchasing, attempting to purchase, or possessing cigarettes or tobacco products as long as the ordinance strictly conforms to those statutory prohibitions.

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.** 134.65 (1m) of the statutes is created to read:
- 2 134.65 (1m) A city, village, or town clerk may not issue a license under sub. (1)
- 3 unless the applicant specifies in the license application whether the applicant will
- 4 sell, exchange, barter, dispose of, or give away the cigarette or tobacco products over
- 5 the counter or in a vending machine, or both.

BILL

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

2 134.66 (2) (b) 2. A vending machine operator shall attach a notice in a
3 conspicuous place on the front of his or her vending machines stating that the
4 purchase of any cigarette or tobacco product by a person under the age of 18 is
5 unlawful under s. 254.92 and that the purchaser is subject to a forfeiture of ~~net to~~
6 ~~exceed \$25~~ \$50.

7 **SECTION 3.** 134.66 (2) (d) of the statutes is repealed.

8 **SECTION 4.** 134.66 (2m) of the statutes is created to read:

9 134.66 (2m) TRAINING. (a) Except as provided in par. (b), at the time a retailer
10 hires or contracts with an agent, employee, or independent contractor whose duties
11 will include the sale of cigarettes or tobacco products, the retailer shall provide the
12 agent, employee, or independent contractor with training on compliance with sub.
13 (2) (a) and (am), including training on the penalties under sub. (4) (a) 2. for a violation
14 of sub. (2) (a) or (am). The department of health and family services shall make
15 available to any retailer on request a training program developed or approved by that
16 department that provides the training required under this paragraph. A retailer
17 may comply with this paragraph by providing the training program developed or
18 approved by the department of health and family services or by providing a
19 comparable training program approved by that department. At the completion of the
20 training, the retailer and the agent, employee, or independent contractor shall sign
21 a form provided by the department of health and family services verifying that the
22 agent, employee, or independent contractor has received the training, which the
23 retailer shall retain in the personnel file of the agent, employee, or independent
24 contractor.

BILL**SECTION 4**

1 (b) Paragraph (a) does not apply to an agent, employee, or independent
2 contractor who has received the training described in par. (a) as part of a responsible
3 beverage server training course or a comparable training course, as described in s.
4 125.04 (5) (a) 5., successfully completed by the agent, employee, or independent
5 contractor. The department of health and family services shall make the training
6 program developed or approved by that department under par. (a) available to the
7 technical college system board, and that board shall include that training program
8 or a comparable training program approved by that department in the curriculum
9 guidelines specified by that board under s. 125.04 (5) (a) 5. The department of health
10 and family services shall also make the training program developed or approved by
11 that department under par. (a) available to any provider of a comparable training
12 course, as described in s. 125.04 (5) (a) 5., on request, and the department of revenue
13 or the educational approval board may approve a comparable training course under
14 s. 125.04 (5) (a) 5. only if that training course includes the training program
15 developed or approved by the department of health and family services under par.
16 (a) or a comparable training program approved by that department.

17 (c) If an agent, employee, or independent contractor who has not received the
18 training described in par. (a) commits a violation of sub. (2) (a) or (am), a
19 governmental regulatory authority, as defined in s. 254.911 (2), may issue a citation
20 based on that violation only to the retailer that hired or contracted with the agent,
21 employee, or independent contractor and not to the agent, employee, or independent
22 contractor who has not received that training. If an agent, employee, or independent
23 contractor who has received the training described in par. (a) commits a violation of
24 sub. (2) (a) or (am) for which a governmental regulatory authority issues a citation
25 to the retailer that hired or contracted with the agent, employee, or independent

BILL

1 contractor, the governmental regulatory authority shall also issue a citation based
2 on that violation to the agent, employee, or independent contractor who has received
3 that training.

4 **SECTION 5.** 134.66 (3) (intro.) of the statutes is amended to read:

5 ~~134.66 (3) DEFENSE OF RETAILER, MANUFACTURER AND DISTRIBUTOR; SALE TO MINOR.~~
6 (intro.) Proof of all of the following facts by a retailer, manufacturer or distributor,
7 jobber, or subjobber, an agent, employee, or independent contractor of a retailer,
8 manufacturer, distributor, jobber, or subjobber, or an agent or employee of an
9 independent contractor who sells cigarettes or tobacco products to a person under the
10 age of 18 is a defense to any prosecution for a violation of sub. (2) (a):

11 **SECTION 6.** 134.66 (4) (a) 1. of the statutes is amended to read:

12 134.66 (4) (a) 1. In this paragraph, "violation" means a violation of sub. (2) (a),
13 (am), (cm), (d) or (e) or a local ordinance which strictly conforms to sub. (2) (a), (am),
14 (cm), (d) or (e).

15 **SECTION 7.** 134.66 (5) of the statutes is amended to read:

16 134.66 (5) A county, town, village, or city may adopt an ordinance regulating
17 the conduct regulated by this section only if it strictly conforms to this section. A
18 county ordinance adopted under this subsection does not apply within any town,
19 village, or city that has adopted or adopts an ordinance under this subsection. If a
20 county, town, village, or city conducts unannounced investigations of retail outlets,
21 as defined in s. 254.911 (5), to determine compliance with an ordinance adopted
22 under this subsection, as authorized under s. 254.916 (1), the investigations shall
23 meet the requirements of s. 254.916 (3) (a) to (f) and any standards established by
24 the department of health and family services under s. 254.916 (1) (b).

BILL

1 **SECTION 8.** Subchapter IX (title) of chapter 254 [precedes 254.911] of the
2 statutes is amended to read:

CHAPTER 254**SUBCHAPTER IX****INVESTIGATIONS OF THE SALE OR****GIFT OF CIGARETTES OR****TOBACCO PRODUCTS TO MINORS**

3
4
5
6
7
8 **SECTION 9.** 254.911 (2) of the statutes is amended to read:

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

14 **SECTION 10.** 254.916 (title) of the statutes is repealed and recreated to read:

15 **254.916 (title) Investigations.**

16 **SECTION 11.** 254.916 (1) (a) of the statutes 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 local health
21 department, a state agency, or a state or local law enforcement agency to conduct
22 investigations authorized under this section, and a local health department, state
23 agency, or state or local law enforcement agency may contract with any other person
24 to conduct those investigations. A person who contracts to conduct investigations
25 authorized under this section shall agree in the contract to train all individuals

BILL

1 conducting investigations under the contract in accordance with the standards
2 established under par. (b) and to suspend from conducting any further investigations
3 for not less than 6 months any individual who fails to meet the requirements of sub.
4 (3) (a) to (f) and the standards established by the department.

5 **SECTION 12.** 254.916 (1) (b) of the statutes is amended to read:

6 254.916 (1) (b) The department, in consultation with ~~retailers and other~~
7 governmental regulatory authorities and with retailers, shall establish standards
8 for procedures and training for conducting investigations under this section.

9 **SECTION 13.** 254.916 (1) (c) of the statutes is amended to read:

10 254.916 (1) (c) No retailer may be subject to ~~unannounced investigations~~
11 subjected to an unannounced investigation more than twice annually unless the
12 retailer is found to have violated s. 134.66 (2) (a) or (am), or a local ordinance adopted
13 under s. 134.66 (5), during each the most recent investigation.

14 **SECTION 14.** 254.916 (3) (e) of the statutes is amended to read:

15 254.916 (3) (e) A governmental regulatory authority shall make a good faith
16 effort to make known to the retailer or the retailer's employee or agent, within 72
17 hours after the occurrence of the violation, the results of an investigation, including
18 the issuance of any citation by a governmental regulatory authority for a violation
19 that occurs during the conduct of the investigation. This paragraph does not apply
20 to investigations conducted under a grant received under ~~42 USC 300x-021~~ 42 USC
21 300x-21.

22 **SECTION 15.** 254.916 (3) (f) (intro.) of the statutes is amended to read:

23 254.916 (3) (f) (intro.) Except with respect to investigations conducted under
24 ~~42 USC 300x-021 or 21 CFR part 897~~ a grant received under 42 USC 300x-21, all

BILL**SECTION 15**

1 of the following information shall be reported to the retailer within 10 days after the
2 conduct of an investigation under this section:

3 **SECTION 16.** 254.916 (4) of the statutes is repealed.

4 **SECTION 17.** 254.916 (5) of the statutes is amended to read:

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

9 **SECTION 18.** 254.916 (8) of the statutes is amended to read:

10 254.916 (8) A governmental regulatory agency that conducts an investigation
11 under this section shall meet the requirements of sub. (3) (a) to (f) and the standards
12 established by the department of health and family services. ~~The department shall~~
13 ~~annually evaluate the investigation program of each governmental regulatory~~
14 ~~authority. If, at any time, a governmental regulatory authority fails to meet the~~
15 ~~standards, the department of health and family services may terminate the contract~~
16 ~~under sub. (1).~~

17 **SECTION 19.** 254.92 (4) of the statutes is created to read:

18 254.92 (4) A county, town, village, or city may enact an ordinance regulating
19 the conduct regulated by this section only if the ordinance strictly conforms to this
20 section. A county ordinance enacted under this subsection does not apply within a
21 town, village, or city that has enacted or enacts an ordinance under this subsection.

22 **SECTION 20.** 778.25 (1) (a) 4. of the statutes is created to read:

23 778.25 (1) (a) 4. Under s. 254.92 or under a local ordinance strictly conforming
24 to s. 254.92 brought against an adult in circuit court or against a minor in the court
25 assigned to exercise jurisdiction under chs. 48 and 938.

Inset 10-16

Section #. 254.916 (11) of the statutes is amended to read:

Under this section may not have

A

conducting

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

a

a

or a

History: 1999 a. 9, 84, 185.

conduct that investigation. A person who is investigated under this section may request the ~~management of the~~ local health department or local law enforcement agency that ~~is~~ ^{conducted} contracted for the investigation to conduct a review under ch. 68 to determine whether ~~the investigation~~ ^{person conducting the} ~~was conducted~~ is in compliance with this subsection or, if applicable, may request the state agency ^{or} state law enforcement agency that contracted for the investigation to conduct a ~~case~~ ^{contested} hearing under ch. ~~227~~ to make that determination. The results of any investigation that is ~~not~~ ^{not} conducted by a person who is not in compliance with this subsection may not be used to prosecute a violation of s. 134.66 (2)(a) ^{or} (am) ^{or} a local ordinance adopted under s. 134.66 (5).

LRB-4885/2

D-N-T-E

GMM vs KMG
1/10

Date

Representative Lippert:

This redraft amends s. 254.916 (11) to require

the local health department or local law enforcement

agency that ^{contracts} ~~contracts~~ for an ^{investigation} ~~investigation~~ to ^{conduct} ~~conduct~~ an

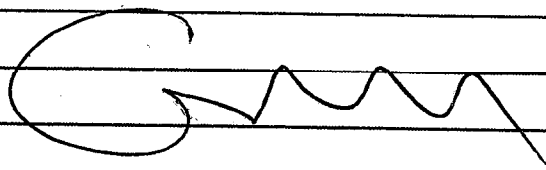
administrative review of an alleged ^{conflict} ~~conflict~~ of interest by the

^{investigator} ~~investigator~~. This ~~is~~ change was requested by John Kiesow

of DHFS so that DHFS will not be responsible for

conducting reviews of investigations ^{not contracted for} ~~not contracted for~~ by DHFS that are

DHFS.



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

LRB-4805/2dn
GMM.rs&kmg.pg

February 1, 2002

Representative Lippert:

This redraft amends s. 254.916 (11) to require the local health department or local law enforcement agency that contracts for an investigation to conduct an administrative review of an alleged conflict of interest by the investigator. This change was requested by John Kiesow of DHFS so that DHFS will not be responsible for conducting reviews of investigations that are not contracted for by DHFS.

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Emery, Lynn

From: Emery, Lynn
Sent: Monday, February 04, 2002 10:11 AM
To: Rep.Lippert
Subject: LRB-4805/2 (attached as requested)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)
(E-Mail: lynn.emery@legis.state.wi.us) (FAX: 608-264-6948)

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February 1, 2002

MEMORANDUM

To: Representative Lippert

From: Gordon M. Malaisc, Senior Legislative Attorney

Rc: LRB-4805/2 Selling cigarettes to minors; compliance checks; training; local authority

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9738 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.