

**2001 DRAFTING REQUEST**

**Assembly Amendment (AA-AB805)**

Received: 02/22/2002

Received By: malaigm

Wanted: 02/25/2002

Identical to LRB:

For: Mark Miller (608) 266-5342

By/Representing: Himself

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Addl. Drafters:

Subject: Health - tobacco

Extra Copies:

Submit via email: YES

Requester's email: Rep.Miller@legis.state.wi.us

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Possession of cigarettes by minor; permit local ordinances stricter than state statute

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**Instructions:**

See Attached--permit local governments to enact ordinances regulating the possession of cigarettes by minors that are stricter than state statute.

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**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 02/22/2002	gilfokm 02/22/2002		_____			
/1			jfrantze 02/25/2002	_____	lrb_docadmin 02/25/2002	lrb_docadmin 02/25/2002	

02/25/2002 09:14:36 AM

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FE Sent For:

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/?	malaigm	1-2/22 kmg	2/25	2/25 Pg			

FE Sent For:

<END>

## Malaise, Gordon

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**From:** Miller, Mark  
**Sent:** Thursday, February 21, 2002 6:14 PM  
**To:** Malaise, Gordon  
**Cc:** 'jhausbeck@ci.madison.wi.us'; Sen.Robson; Rep.Lippert  
**Subject:** AB 805 amendments

Please draft the following as independent amendments to AB805/2

1. Delete 134.66 (2m) (c) on page 6, line 17 through page 7, line 3. The intent of this amendment is to remove the penalty for an employee, agent, etc, who sells tobacco products to a minor. Include any other changes needed to accomplish this result.
2. Page 9, line 11, replace "twice" with "four times"
3. Delete sentence that begins on page 10, line 24 and ends on page 11, line 5, to wit: "A person who is investigated...hearing under ch.227 to make that determination."
4. Page 11 line 11, assuming that "strictly" means that a local ordinance can not be any more strict or less strict than state law, change language to require the local ordinance must be at least as strict as state law. The purpose is assure that all local ordinances, if enacted and enforced, will not only accomplish enforcement of state law, but also allow local jurisdictions to adopt stricter ordinances.

### ***Mark Miller***

*48th Assembly District  
P.O. Box 8953  
Madison, WI 53708  
Phone 608.266.5342, FAX 608.282.3648  
rep.miller@legis.state.wi.us*

2001

Date (time) needed Mon AM

LRBa 1328 / 1

AMENDMENT (Floor Times)

CMM: Krug

See form AMENDMENTS — COMPONENTS & ITEMS.

§ (A) [AMENDMENT]

~~TO S A AMENDMENT \_\_\_\_\_ (LRBa \_\_\_\_\_),~~  
~~TO S A SUBSTITUTE AMENDMENT \_\_\_\_\_ (LRBs \_\_\_\_\_)~~  
 TO 2001 ~~SB SJR SR~~ (AB) AJR AR 805 (LRB \_\_\_\_\_)

At the locations indicated, amend the bill as follows:  
(fill ONLY if "engrossed ..." or "as shown by .....")

#. Page 4., line 1...: delete that line and substitute;

#. Page ....., line .....

#. Page ....., line .....

#. Page ....., line .....

#. Page ....., line .....



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRBs0335/1  
GMM/kmg:pg

ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2001 ASSEMBLY BILL 805

SECTION 1g. CR; 134.65 (1m) .  
~~Page 4, line 6: after that line insert,~~  
AH. Page 5, line 1: delete lines 1 to 6 and substitute:

1 ~~AN ACT to repeat 134.66 (2) (d); to amend 111.35 (2) (d), 134.66 (2) (a), 134.66~~  
2 ~~(2) (b) 1., 134.66 (2) (b) 2., 134.66 (4) (a) 1., 134.66 (5), 254.916 (1) (a), 254.916~~  
3 ~~(1) (c), 254.916 (5) and 938.343 (2); and to create 254.92 (4) and 778.25 (1) (a)~~  
4 ~~4. of the statutes; relating to: the authority of counties, town, villages, and~~  
5 ~~cities to enact ordinances regulating the purchase, possession, receipt, sale, or~~  
6 ~~provision for nominal or no consideration of cigarettes and tobacco products~~  
7 ~~that are at least as strict as the state statutes regulating those actions.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows: (1d)

8 "SECTION 1. 111.35 (2) (d) of the statutes is amended to read:  
9 111.35 (2) (d) Constitutes a violation of s. 254.92 (2) or of a local ordinance that  
10 is at least as strict as s. 254.92. (1m)

11 "SECTION 2. 134.66 (2) (a) of the statutes is amended to read:

1           134.66 (2) (a) No retailer, manufacturer, distributor, jobber, or subjobber, no  
 2 agent, employee, or independent contractor of a retailer, manufacturer, distributor,  
 3 jobber, or subjobber, and no agent or employee of an independent contractor may sell  
 4 or provide for nominal or no consideration cigarettes or tobacco products to any  
 5 person under the age of 18, except as provided in s. 254.92 (2) (a) or a local ordinance  
 6 that is at least as strict as s. 254.92. A vending machine operator is not liable under  
 7 this paragraph for the purchase of cigarettes or tobacco products from his or her  
 8 vending machine by a person under the age of 18 if the vending machine operator was  
 9 unaware of the purchase. (lp) (lr)

10           SECTION 3. 134.66 (2) (b) 1. of the statutes is amended to read:

11           134.66 (2) (b) 1. A retailer shall post a sign in areas within his or her premises  
 12 where cigarettes or tobacco products are sold to consumers stating that the sale of  
 13 any cigarette or tobacco product to a person under the age of 18 is unlawful under  
 14 this section and s. 254.92. (2) (c)

15           SECTION 4. 134.66 (2) (b) 2. of the statutes is amended to read:

16           134.66 (2) (b) 2. A vending machine operator shall attach a notice in a  
 17 conspicuous place on the front of his or her vending machines stating that the  
 18 purchase of any cigarette or tobacco product by a person under the age of 18 is  
 19 unlawful under s. 254.92 or under a local ordinance that is at least as strict as s.  
 20 254.92 and that the purchaser is subject to a forfeiture of not to exceed \$25 <sup>✓</sup>\$50 or  
 21 the amount specified in the ordinance. " (6) (c)

22           ~~SECTION 5. 134.66 (2) (d) of the statutes is repealed.~~

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

✓ # Page 7, line 11: delete lines 11 to 14 ✓ and substitute:

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

4 ~~SECTION 7. 134.66 (5) of the statutes is amended to read:~~

5 134.66 (5) LOCAL ORDINANCE. A county, town, village, or city may ~~adopt enact~~  
6 an ordinance regulating the ~~conduct regulated by this section only if it strictly~~  
7 ~~conforms to this section sale or provision for nominal or no consideration of cigarettes~~  
8 ~~and tobacco products to persons under 18 years of age, the places where cigarettes~~  
9 ~~or tobacco products may be provided for nominal or no consideration, and the~~  
10 ~~placement of vending machines, if the ordinance is at least as strict as this section.~~  
11 ~~This section does not preclude a county, town, village, or city from enacting an~~  
12 ~~ordinance regulating the sale or provision for nominal or no consideration of~~  
13 ~~cigarettes and tobacco products to persons 18 years of age or over. A county ordinance~~  
14 ~~adopted enacted under this subsection does not apply within any town, village, or city~~  
15 ~~that has adopted or adepts enacted or enacts an ordinance under this subsection.~~

16 SECTION 8. 254.916 (1) (a) of the statutes is amended to read:

17 254.916 (1) (a) In the administration of this subchapter, the department may  
18 contract with local health departments, as agents of the department, with a state  
19 agency, or with law enforcement agencies of the state, or of a county, city, village, or  
20 town, to cause unannounced investigations to be conducted at least annually at retail  
21 outlets, including sites of tobacco vending machines, to survey overall levels of  
22 compliance with s. 134.66 (2) (a) and (am) ~~or a local ordinance that is at least as strict~~  
23 ~~as s. 134.66 (2) (a) or (am).~~ A person with whom the department contracts under this  
24 paragraph may contract with another person to conduct the investigations. ~~Except~~  
25 ~~any survey conducted under 21 CFR part 897, the~~ ~~The survey under this subsection~~



Page 11, line 9: delete lines 9 to 17 and substitute:

1 shall cover a range of retail outlets that are not preselected on the basis of prior  
 2 violations, in order to measure overall levels of compliance as well as to identify  
 3 violations. The survey shall be conducted so as to provide a sample of retail outlets  
 4 that reflects the distribution of minors throughout the state and the distribution of  
 5 the retail outlets throughout the state where minors are likely to attempt to purchase  
 6 cigarettes. The survey shall include all types of retail outlets that are required to  
 7 comply with s. 134.66 (2) (a) and (am) or a local ordinance that is at least as strict as  
 8 s. 134.66 (2) (a) or (am). The department shall use statistically sound sampling  
 9 techniques in designing the annual surveys so as to measure overall levels of  
 10 compliance and shall stratify the sample so as to measure compliance by type of retail  
 11 outlet, including a private place of business other than a retail establishment.

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

12  
 13 254.916 (1) (c) No retailer may be subject to unannounced investigations more  
 14 than twice annually unless the retailer is found to have violated s. 134.66 (2) (a) or  
 15 (am) or a local ordinance that is at least as strict as s. 134.66 (2) (a) or (am) during  
 16 each investigation.

SECTION 10. 254.916 (5) of the statutes is amended to read:

17  
 18 254.916 (5) No evidence obtained during or otherwise arising from the course  
 19 of an investigation under this section that is used to prosecute a person for a violation  
 20 of s. 134.66 (2) (a) or (am) or a local ordinance that is at least as strict as s. 134.66  
 21 (2) (a) or (am) may be used in the prosecution of an alleged violation of s. 125.07 (3)

SECTION 11. 254.92 (4) of the statutes is created to read:

22  
 23 254.92 (4) A county, town, village, or city may enact an ordinance regulating  
 24 the purchase, attempted purchase, or possession of, and the false representation of  
 25 age for the purpose of receiving, cigarettes or tobacco products by a person under 18

20c

21c  
- 5 -  
21r

1 years of age, if the ordinance is at least as strict as this section. A county ordinance  
2 enacted under this subsection does not apply within a town, village, or city that has  
3 enacted or enacts an ordinance under this subsection.

4 SECTION 12. 778.25 (1)(a) 4. of the statutes is created to read:

5 778.25 (1) (a) 4. Under s. 254.92 or under a local ordinance that is at least as  
6 strict as s. 254.92 brought against an adult in circuit court or against a minor in the  
7 court assigned to exercise jurisdiction under chs. 48 and 938.

8 SECTION 13. 938.343 (2) of the statutes, as affected by 2001 Wisconsin Act 16,  
9 is amended to read:

10 938.343 (2) Impose a forfeiture not to exceed the maximum forfeiture that may  
11 be imposed on an adult for committing that violation or, if the violation is only  
12 applicable to a person under 18 years of age, \$50 or, if the violation is of an ordinance  
13 that is at least as strict as s. 254.92, the amount specified in the ordinance. Any such  
14 order shall include a finding that the juvenile alone is financially able to pay and  
15 shall allow up to 12 months for the payment. If a juvenile fails to pay the forfeiture,  
16 the court may suspend any license issued under ch. 29 or suspend the juvenile's  
17 operating privilege, as defined in s. 340.01 (40), for not more than 2 years. The court  
18 shall immediately take possession of the suspended license and forward it to the  
19 department which issued the license, together with the notice of suspension clearly  
20 stating that the suspension is for failure to pay a forfeiture imposed by the court. If  
21 the forfeiture is paid during the period of suspension, the court shall immediately  
22 notify the department, which will thereupon return the license to the person. Any  
23 recovery under this subsection shall be reduced by the amount recovered as a  
24 forfeiture for the same act under s. 938.45 (1r) (b).<sup>1)</sup>

(END)