

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2001 SENATE BILL 360**

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), 254.916 (8) and 254.916 (11); *to repeal and*
5 *recreate* 254.916 (title) and 254.916 (1) (a); and *to create* 134.65 (1m), 134.66
6 (2m), 254.92 (4) and 778.25 (1) (a) 4. of the statutes; **relating to:** investigations
7 to 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

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

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

3 **SECTION 1.** 134.65 (1m) of the statutes is created to read:

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

8 **SECTION 2.** 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. 254.92 and that the purchaser is subject to a forfeiture of not to
13 exceed ~~\$25~~ \$50.

14 **SECTION 3.** 134.66 (2) (d) of the statutes is repealed.

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

16 134.66 (2m) TRAINING. (a) Except as provided in par. (b), at the time that a
17 retailer hires or contracts with an agent, employee, or independent contractor whose
18 duties will include the sale of cigarettes or tobacco products, the retailer shall provide
19 the agent, employee, or independent contractor with training on compliance with
20 sub. (2) (a) and (am), including training on the penalties under sub. (4) (a) 2. for a
21 violation of sub. (2) (a) or (am). The department of health and family services shall
22 make available to any retailer on request a training program developed or approved
23 by that department that provides the training required under this paragraph. A

1 retailer may comply with this paragraph by providing the training program
2 developed or approved by the department of health and family services or by
3 providing a comparable training program approved by that department. At the
4 completion of the training, the retailer and the agent, employee, or independent
5 contractor shall sign a form provided by the department of health and family services
6 verifying that the agent, employee, or independent contractor has received the
7 training, which the retailer shall retain in the personnel file of the agent, employee,
8 or independent contractor.

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

1 (c) If an agent, employee, or independent contractor who has not received the
2 training described in par. (a) commits a violation of sub. (2) (a) or (am), a
3 governmental regulatory authority, as defined in s. 254.911 (2), may issue a citation
4 based on that violation only to the retailer that hired or contracted with the agent,
5 employee, or independent contractor and not to the agent, employee, or independent
6 contractor who has not received that training. If an agent, employee, or independent
7 contractor who has received the training described in par. (a) commits a violation of
8 sub. (2) (a) or (am) for which a governmental regulatory authority issues a citation
9 to the retailer that hired or contracted with the agent, employee, or independent
10 contractor, the governmental regulatory authority shall also issue a citation based
11 on that violation to the agent, employee, or independent contractor who has received
12 that training.

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

14 **134.66 (3) DEFENSE OF RETAILER, MANUFACTURER AND DISTRIBUTOR; SALE TO MINOR.**
15 (intro.) Proof of all of the following facts by a retailer, manufacturer or distributor,
16 jobber, or subjobber, an agent, employee, or independent contractor of a retailer,
17 manufacturer, distributor, jobber, or subjobber, or an agent or employee of an
18 independent contractor who sells cigarettes or tobacco products to a person under the
19 age of 18 is a defense to any prosecution for a violation of sub. (2) (a):

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

21 134.66 (4) (a) 1. In this paragraph, “violation” means a violation of sub. (2) (a),
22 (am), (cm), ~~(d)~~ or (e) or a local ordinance which strictly conforms to sub. (2) (a), (am),
23 (cm), ~~(d)~~ or (e).

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

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

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

12 **CHAPTER 254**

13 SUBCHAPTER IX

14 ~~INVESTIGATIONS OF THE SALE OR~~

15 ~~GIFT OF CIGARETTES OR~~

16 ~~TOBACCO PRODUCTS TO MINORS~~

17 **SECTION 9.** 254.911 (2) of the statutes is amended to read:

18 254.911 (2) “Governmental regulatory authority” means the department; the,
19 a local health department, a state agency, or a state or local law enforcement agency
20 with which the department contracts under s. 254.916 (1) (a); or the a person with
21 whom the local health department, state agency, or state or local law enforcement
22 agency contracts to conduct investigations authorized under s. 254.916 (1) (a).

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

24 **254.916** (title) **Investigations.**

25 **SECTION 11.** 254.916 (1) (a) of the statutes is repealed and recreated to read:

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 local health
5 department, a state agency, or a state or local law enforcement agency to conduct
6 investigations authorized under this section, and a local health department, state
7 agency, or state or local law enforcement agency may contract with any other person
8 to conduct those investigations. A person who contracts to conduct investigations
9 authorized under this section shall agree in the contract to train all individuals
10 conducting investigations under the contract in accordance with the standards
11 established under par. (b) and to suspend from conducting any further investigations
12 for not less than 6 months any individual who fails to meet the requirements of sub.
13 (3) (a) to (f) and the standards established by the department.

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

15 254.916 (1) (b) The department, in consultation with retailers and other
16 governmental regulatory authorities and with retailers, shall establish standards
17 for procedures and training for conducting investigations under this section.

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

19 254.916 (1) (c) No retailer may be ~~subject to unannounced investigations~~
20 subjected to an unannounced investigation more than twice annually unless the
21 retailer is found to have violated s. 134.66 (2) (a) or (am), or a local ordinance adopted
22 under s. 134.66 (5), during each the most recent investigation.

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

24 254.916 (3) (e) A governmental regulatory authority shall make a good faith
25 effort to make known to the retailer or the retailer's employee or agent, within 72

1 hours after the occurrence of the violation, the results of an investigation, including
2 the issuance of any citation by a governmental regulatory authority for a violation
3 that occurs during the conduct of the investigation. This paragraph does not apply
4 to investigations conducted under a grant received under ~~42 USC 300x-021~~ 42 USC
5 300x-21.

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

7 254.916 (3) (f) (intro.) Except with respect to investigations conducted under
8 ~~42 USC 300x-021 or 21 CFR part 897~~ a grant received under 42 USC 300x-21, all
9 of the following information shall be reported to the retailer within 10 days after the
10 conduct of an investigation under this section:

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

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

13 254.916 (5) No evidence obtained during or otherwise arising from the course
14 of an investigation under this section that is used to prosecute a person for a violation
15 of s. 134.66 (2) (a) or (am) or a local ordinance adopted under s. 134.66 (5) may be used
16 in the prosecution of an alleged violation of s. 125.07 (3).

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

18 254.916 (8) A governmental regulatory agency that conducts an investigation
19 under this section shall meet the requirements of sub. (3) (a) to (f) and the standards
20 established by the department of health and family services. ~~The department shall~~
21 ~~annually evaluate the investigation program of each governmental regulatory~~
22 ~~authority. If, at any time, a governmental regulatory authority fails to meet the~~
23 ~~standards, the department of health and family services may terminate the contract~~
24 ~~under sub. (1).~~

25 **SECTION 18g.** 254.916 (11) of the statutes is amended to read:

1 254.916 (11) ~~The department shall hold a hearing under ch. 227 if any~~
2 ~~interested person, in lieu of proceeding under ch. 68, appeals to the department~~
3 ~~alleging that the A person making conducting an investigation of the appellant has~~
4 ~~under this section may not have a financial interest in a regulated cigarette and~~
5 ~~tobacco product retailer, a tobacco vending machine operator, a tobacco vending~~
6 ~~machine premises ~~or, or~~ a tobacco vending machine that may interfere with his or her~~
7 ~~ability to properly take that action conduct that investigation. A person who is~~
8 ~~investigated under this section may request the local health department or local law~~
9 ~~enforcement agency that contracted for the investigation to conduct a review under~~
10 ~~ch. 68 to determine whether the person conducting the investigation is in compliance~~
11 ~~with this subsection or, if applicable, may request the state agency or state law~~
12 ~~enforcement agency that contracted for the investigation to conduct a contested case~~
13 ~~hearing under ch. 227 to make that determination. The results of an investigation~~
14 ~~that is conducted by a person who is not in compliance with this subsection may not~~
15 ~~be used to prosecute a violation of s. 134.66 (2) (a) or (am) or a local ordinance adopted~~
16 ~~under s. 134.66 (5).~~

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.

