

2001 SENATE BILL 360

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

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) (e), 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.

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,

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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.

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.

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

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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.

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

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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) and any standards established by the
9 department of health and family services under s. 254.916 (1) (b).

10 **SECTION 3.** Subchapter IX (title) of chapter 254 [precedes 254.911] of the
11 statutes is amended to read:

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

17 **SECTION 4.** 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 5.** 254.916 (title) of the statutes is repealed and recreated to read:

24 **254.916 (title) Investigations.**

25 **SECTION 6.** 254.916 (1) (a) of the statutes is repealed and recreated to read:

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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:

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:

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

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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).~~

17 (END)