

**2001 DRAFTING REQUEST**

**Bill**

Received: 11/17/2000

Received By: isagerro

Wanted: As time permits

Identical to LRB:

For: Judith Robson (608) 266-2253

By/Representing: David

This file may be shown to any legislator: NO

Drafter: isagerro

May Contact:

Addl. Drafters:

Subject: Health - tobacco

Extra Copies: DAK

Submit via email: NO

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Tobacco compliance checks by municipalities

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**Instructions:**

See Attached

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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>
/?	isagerro 12/18/2000	wjackson 01/12/2001 gilfokm 01/17/2001 rschluet 01/17/2001		_____			S&L
/1			pgreensl 01/18/2001	_____	gretskl 01/18/2001	lrb_docadmin 12/04/2001 lrb_docadmin 12/04/2001	

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

FE Sent For:

<END>

At  
Intro.

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Alt. Drafters:

Subject: **Health - tobacco**

Extra Copies: **DAK**

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Subject: Health - tobacco

Extra Copies: DAK, MGG, RINK

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No specific pre topic given

Topic:

Tobacco compliance checks by municipalities

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See Attached

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/?	isagerro	109 12-18-00	1/17 p61	1/17 p61			

FE Sent For:

<END>

\* David, aide to Sen Robson

- redraft CRB 0377

- tobacco compliance checks

- no substantive changes

C/

-11/18/1  
LRB:km  
ISR:kg:km  
RM not run

RM

2001 Bill

SENATE SUBSTITUTE AMENDMENT 1,  
TO 1999 SENATE BILL 334

NOTE  
1/12/01  
1/18/01

Due Thurs,  
1/18/01

March 14, 2000 - Offered by COMMITTEE ON HUMAN SERVICES AND AGING.

Long

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

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

9 SECTION 1. 134.65 (1m) of the statutes is created to read:  
10 134.65 (1m) A city, village, or town clerk may not issue a license under sub. (1)  
11 unless the applicant specifies in the license application whether the applicant will

Insert Analysis\*

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

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

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

13 SECTION 3. Subchapter IX (title) of chapter 254 [precedes 254.911] of the  
14 statutes ~~as created by 1999 Wisconsin Act~~ is amended to read:

15 CHAPTER 254

16 SUBCHAPTER IX

17 INVESTIGATIONS OF THE SALE OR

18 GIFT OF CIGARETTES OR

19 TOBACCO PRODUCTS TO MINORS

20 SECTION 4. 254.911 (2) of the statutes ~~as created by 1999 Wisconsin Act~~ is  
21 amended to read:

22 254.911 (2) "Governmental regulatory authority" means the department; the  
23 a local health department, a state agency, or a state or local law enforcement agency  
24 ~~a local health department, state agency or a state or local law enforcement agency~~  
25 ~~with which the department contracts under s. 254.916 (1) (a);~~ or the a person with

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whom the local health department, state agency<sup>✓</sup> or state or local law enforcement agency contracts to conduct investigations authorized under s. 254.916 (1) (a).

**SECTION 5.** 254.916 (title) of the statutes, ~~as created by 1999 Wisconsin Act 9,~~ is repealed and recreated to read:

**254.916 (title) Investigations.**

**SECTION 6.** 254.916 (1) (a) of the statutes, ~~as created by 1999 Wisconsin Act 9,~~ is repealed and recreated to read:

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

**SECTION 7.** 254.916 (1) (c) of the statutes, ~~as created by 1999 Wisconsin Act 9,~~ is amended to read:

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

**SECTION 8.** 254.916 (4) of the statutes, ~~as created by 1999 Wisconsin Act 9,~~ is repealed.

**SECTION 9.** 254.916 (5) of the statutes, ~~as created by 1999 Wisconsin Act 9,~~ is amended to read:

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

P.W.F. 2

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Insert 3-12

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P.W.F. Insert 3-17

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P.W.F. 22

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SECTION 10. 254.916 (8) of the statutes, ~~as created by 1999 Wisconsin Act 9~~ is

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amended to read:

3

254.916 (8) A governmental regulatory agency that conducts an investigation

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under this section shall meet the requirements of sub. (3) and the standards

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established by the department of health and family services. The department shall

6

annually evaluate the investigation program of each governmental regulatory

7

authority. ~~If, at any time, a governmental regulatory authority fails to meet the~~

8

standards, ~~the department of health and family services may terminate the contract~~

9

under sub. (1).

10

(END)

P.W.F.

# 1999 ASSEMBLY BILL 868

March 9, 2000 - Introduced by Representative URBAN, cosponsored by Senator ROBSON. Referred to Committee on Public Health.

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

Current law ~~also~~ prohibits a retailer, manufacturer, distributor, jobber, or subjobber, or an agent or employee of an independent contractor or an agent, employee or independent contractor of a retailer, manufacturer, distributor, jobber or subjobber or an independent contractor from selling or giving cigarettes or tobacco products to a minor unless the minor purchased or possessed the cigarettes or

independent contractor,

"KAW  
Insert from  
page 3  
of this  
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any of these persons

ASSEMBLY BILL 868

tobacco products in the course of the minor's employment. In addition, ~~a retailer, manufacturer, distributor, jobber or subjobber or an agent, employe or independent contractor of a retailer, manufacturer, distributor, jobber or subjobber or an agent or employe of an independent contractor~~ is 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. ~~any~~ county, town, city, or village ~~may~~ adopt an ordinance regulating the sale or gift of cigarettes or tobacco products to a minor as long as the ordinance strictly conforms to ~~the~~ <sup>these</sup> statutory prohibitions.

Current law authorizes

These persons are to

Current law also prohibits a minor from possessing or purchasing cigarettes or tobacco products unless the minor possessed or purchased the cigarettes or tobacco products in the course the minor's employment. Prior to enactment of 1999 Wisconsin Act 9 (the biennial budget act), a county, town, city or village was authorized to adopt an ordinance regulating a minor's possession or purchase of cigarettes or tobacco products as long as the ordinance strictly conformed to the statutory provisions. The biennial budget act eliminated this authority.

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

~~The biennial budget act authorized the department of health and family services (DHFS) to contract with local health departments, as agents of DHFS, a state agency or a state or local law enforcement agency (governmental regulatory authority) to conduct unannounced investigations of retail outlets where cigarettes or tobacco products are sold, including premises on which tobacco vending machines are located, to survey overall levels of compliance with the prohibitions against selling cigarettes or tobacco products to minors. The biennial budget act authorizes a minor who is at least 15 years of age to buy, attempt to buy or possess cigarettes or tobacco products as part of a governmental regulatory authority's unannounced investigation if the minor has the permission of his or her parent or guardian, is directly supervised by an <sup>employee</sup> adult employe 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. Under the biennial budget act, a minor who purchases or possesses cigarettes or tobacco products during the course of an unannounced investigation does not violate the prohibition against a minor purchasing or possessing cigarettes or tobacco products.~~

governmental regulatory authorities, as agents of DHFS

governmental regulatory authority to use, as part of the governmental regulatory authority's unannounced investigations

Current law

The biennial budget act also requires that ~~to be included in the results of DHFS's survey, an investigation~~ ~~must~~ comply with standards established by DHFS and ~~must~~ meet all of the following requirements:

Current law

1. A minor, if asked his or her age during the course of an investigation, must give his or her age.

unannounced  
unannounced

A governmental regulatory authority is defined as a local health department, a state agency, or a state or local law enforcement agency.

ASSEMBLY BILL 868

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 ~~entity~~ <sup>entity</sup> 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 <sup>after</sup> of the investigation.

6. Within ~~10~~ <sup>ten</sup> days <sup>after</sup> of 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. current law

Finally, under ~~the biennial budget act~~, 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.

~~Under this bill, DHFS, a local health department, or a state or local law enforcement agency, or a local health department, state agency, or a state or local law enforcement agency, with which the department contracts, or a person who contracts with a local health department, state agency or a state or local law enforcement agency, may 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 is enacted in strict conformity with the state law provisions. Under this bill, if a governmental regulatory authority conducts unannounced investigations, the investigations must comply with the current statutory requirements 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 reveal that the retailer violated the prohibition against selling or giving cigarettes or tobacco products to minors.

\* ~~Under~~ 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.

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regulatory authority

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This bill defines a governmental regulatory authority as DHFS or other state agency, a local health department, or a state or local law enforcement agency.



2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1118/lins  
ISR:.....

Insert 3 12

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

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

History: 1999 a. 9, 84, 185.

Insert 3-17

SECTION 2. 254.916 (3) (e) of the statutes is amended to read:

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

History: 1999 a. 9, 84, 185.

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

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

History: 1999 a. 9, 84, 185.

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

LRB-1118/1dn

ISR:.....

05/1/00 mg

December 14, 2000

*new date*

Senator Robson:

*that*  
Please review this bill carefully to make sure *it* achieves your intent. I made ~~several~~ *several* technical corrections to this bill. Specifically, I added the local ordinance language to s. 254.916 (1) (c) to make it consistent with the rest of the bill. I also amended the definition of "governmental regulatory authority" in s. 254.911 (2) so that it is no longer circular. Is this okay? *vg*

I also eliminated the references to the federal tobacco regulations, 21 CFR 897, in s. 254.916 (3) (f) because these regulations no longer exist. The Federal Food and Drug Administration (FDA) withdrew these regulations after the U.S. Supreme Court ruled that the FDA did not have the authority to regulate tobacco products. See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000). Also, I corrected an incorrect reference to federal law. Instead of referring to 42 USC 300x-021, s. 254.916 (3) (e) and (f) should refer to 42 USC 300x-21.

If you have any questions or comments, please do not hesitate to contact me.

Ivy G. Sager-Rosenthal  
Legislative Attorney  
Phone: (608) 261-4455  
E-mail: ivy.sager-rosenthal@legis.state.wi.us

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

LRB-1118/1dn  
ISR:rs&kmg:pg

January 17, 2001

Senator Robson:

Please review this bill carefully to make sure that it achieves your intent. I made several technical corrections to this bill. Specifically, I added the local ordinance language to s. 254.916 (1) (c) to make it consistent with the rest of the bill. I also amended the definition of "governmental regulatory authority" in s. 254.911 (2) so that it is no longer circular. Is this okay?

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If you have any questions or comments, please do not hesitate to contact me.

Ivy G. Sager-Rosenthal  
Legislative Attorney  
Phone: (608) 261-4455  
E-mail: ivy.sager-rosenthal@legis.state.wi.us



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

LRB-1118/1dn  
ISR:rs&kmug:pg

January 17, 2001

Copy given  
to Ira  
06-11-2001  
Oked by  
Robson's  
Office

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If you have any questions or comments, please do not hesitate to contact me.

Ivy G. Sager-Rosenthal  
Legislative Attorney  
Phone: (608) 261-4455  
E-mail: ivy.sager-rosenthal@legis.state.wi.us

**Basford, Sarah**

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**From:** Austin, David  
**Sent:** Tuesday, December 04, 2001 12:55 PM  
**To:** LRB.Legal

Please jacket LRB 1118 for introduction in the Senate.

Thanks,

David Austin  
Senator Robson's office