

2001 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB360)

Received: **01/26/2002**

Received By: **malaigm**

Wanted: **01/28/2002**

Identical to LRB:

For: **Judith Robson (608) 266-2253**

By/Representing: **Herself**

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

Drafter: **malaigm**

May Contact: **David Austin, Aide**

Addl. Drafters:

Subject: **Health - tobacco**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Robson@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Sale of cigarettes to minors; compliance checks, training, local authority

Instructions:

See Attached

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	gilfokm 01/28/2002		_____			
/1			pgreensl 01/28/2002	_____	lrb_docadmin 01/28/2002	lrb_docadmin 01/28/2002	

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Page 2

LRBs0302

FE Sent For:

<END>

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1/?	malaigm	1-1/28 KMG	1/28 PJ	1/28 PJ/eh			

FE Sent For:

<END>

Sub. AM to SB 360

- SB 360 (local govt may do compliance checks w/out kw DAFS)

Plus

- ① Require employer to train employee who sells
(or provide for training)
 - ✓ Cigs not time of hire in compliance w/ s. 134.66 (2) (a)
 - o penalties for violation
 - ✓ - training program may be program developed by DAFS or program approved by DAFS
 - ✓ - require employer & employee to sign form
 - ✓ verifying that training has been received
 - o employer keep form on file
 - ✓ - except taverns - bartenders receive training when responsible beverage server course - shall include training w/CS 62 | must include
training for license not at time of hire D OR LAB
 - Dept shall develop, prepare & distribute training program
- ② Citation
 - review & approve " "
 - prepare form
 - ✓ - If employee rec'd training sells cigs to minor
 - o if issue citation to employer, must also issue citation to employee
 - If employee did not receive training sells cigs, citation only to employer

~~8~~ Restore authority for local ordinance prohibiting

minor possession of tobacco CR 254.92(4)

CR 778.25(1)(a)4,

~~9~~ More than 2 checks a year if most recent

investigation shows a violation AM 254.916(1)(c)

~~10~~ Contracted inspectors AM 254.916(8)

• Include provision in k that if individual violates

protocols re investigations, contractor must

suspend individual for 6 months

• Require training of investigators

~~11~~ Technical 134.66

(4)(a) add ref. to (2)(am)

(2)(2) redundant w/ (a)

(b)2 \$50

(3)(intro) jobber, agent, etc ... like (a) + (am)

2001

Date (time needed)

TODAY !!
4:30 P.M.

Mon 1/26

LRBs 0302 / 1

NOTE

GMM : Kmg

SUBSTITUTE AMENDMENT [TO A BILL]

Use the appropriate components and routines developed for substitute amendments.

(S) A SUBSTITUTE AMENDMENT

TO 2001 (SB) AB 360 (LRB- /)

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to:

.....
.....
.....
.....
.....

[NOTE: See section 4.02 (2) (hr), Drafting Manual, for specific order of standard phrases.]

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

SECTION #.

GMM

S 0302/1

2001 SENATE BILL 360

requiring retailers to provide training to their employees on compliance with those prohibitions; authorizing counties and municipalities to ^{en}act ordinances prohibiting minors from purchasing or possessing ~~cigarettes~~

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

cigarettes and tobacco products,

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) (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,

and providing an exemption from rule-making 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 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.

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

SENATE BILL 360

~~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:

✓
6
Insert
3-5

- 4 - ✓
(a) to (f)

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:

12 CHAPTER 254
13 SUBCHAPTER IX
14 INVESTIGATIONS OF THE SALE OR
15 GIFT OF CIGARETTES OR
16 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:

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
 7 254.916 (1) (b) The department, in consultation with ~~retailers and other~~ unannounced
 8 governmental regulatory authorities and with retailers, shall establish standards investigation
 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~~ the most recent
 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) (b). (no strike)

⁰
(a) to (e) ✓

plain ✓

16

17

(END)

Insert
6-16 ✓

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0302/1
GMM.....

(INSERT 3-5)

1 **SECTION 1.** 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 not to
6 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.

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

8 134.66 (2m) TRAINING. (a) Except as provided in par. (b), at the time ^{that} a retailer
9 hires or contracts with an agent, employee, or independent contractor whose duties
10 will include the sale of cigarettes or tobacco products, the retailer shall provide the
11 agent, employee, or independent contractor with training on compliance with sub.
12 (2) (a) [✓] and (am) [✓], including training on the penalties under sub. (4) (a) 2. [✓] for a violation
13 of sub. (2) (a) [✓] or (am) [✓]. The department of health and family services shall make
14 available to any retailer on request a training program developed or approved by that
15 department that provides the training required under this paragraph. A retailer
16 may comply with this paragraph by providing the training program developed or
17 approved by the department of health and family services or by providing a
18 comparable training program approved by that department. At the completion of the
19 training, the retailer and the agent, employee, or independent contractor shall sign
20 a form provided by the department of health and family services verifying that the
21 agent, employee, or independent contractor has received the training, which the
22 retailer shall retain in the personnel file of the agent, employee, or independent
23 contractor.

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., ^{that was} 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

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

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

6 134.66 (3) ~~DEFENSE OF RETAILER, MANUFACTURER AND DISTRIBUTOR; SALE TO MINOR.~~

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

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

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

13 134.66 (4) (a) 1. In this paragraph, "violation" means a violation of sub. (2) (a),
14 (am), (cm), ~~(d)~~ or (e) or a local ordinance which strictly conforms to sub. (2) (a), (am),
15 (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)

✓ (INSERT 5-5)

16 (no P) ← The department may contract with a local health department, a state agency,
17 or a state or local law enforcement agency to conduct investigations authorized under
18 this section, and a local health department, state agency, or state or local law
19 enforcement agency may contract with any other person to conduct those
20 investigations. A person who contracts to conduct investigations authorized under
21 this section shall agree in the contract to train all individuals conducting
22 investigations under the contract in accordance with the standards established

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

(END OF INSERT)

(INSERT 6-16)

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

5 254.92 (4) A county, town, village, or city may enact an ordinance regulating
6 the conduct regulated by this section only if the ordinance strictly conforms to this
7 section. A county ordinance enacted under this subsection does not apply within a
8 town, village, or city that has enacted or enacts an ordinance under this subsection.

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

10 778.25 (1) (a) 4. Under s. 254.92[✓] or under a local ordinance strictly conforming
11 to s. 254.92[✓] brought against an adult in circuit court or against a minor in the court
12 assigned to exercise jurisdiction under chs. 48[✓] and 938[✓].

13 SECTION 8. ^{auto-ref. "KA"} Nonstatutory provisions.

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

20 ^{auto-ref. "KB"} (2) TRAINING OF CURRENT EMPLOYEES. Notwithstanding section 134.66 (2m) (a)[✓]
21 of the statues, as created by this act, ^e no later than the first day of the 2nd month
22 beginning after the effective date of this subsection, a retailer, as defined in section

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

5 **SECTION 9. Initial applicability.**

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

Fix
comp (10)

10 **SECTION 10. Effective date** ⁵ KA

11 (1) COMPLIANCE TRAINING REQUIREMENT. The treatment of section 134.66 (2m)
12 of the statutes and SECTION ^{auto-ref. "KA"} (2) of this act take effect on the first day of the 3rd month
13 beginning after publication. ^{auto-ref. "KB"}

(END OF INSERT)

*This act takes effect
on the day after publication,
except as follows:*

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0302/1dn

GMM....
King

Senator Robson:

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^V, 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 ^{to} ~~modify~~ ^{the} ~~proposed~~ language.

Also, as I worked ^{to} on the draft I realized that portions of current s. 134.66 are inartfully drafted and that, therefore, certain technical corrections are in order. Specifically:

1. Section 134.66 (2) (b) 2. states ^{s.} that the fine for a minor who possesses cigarettes is \$25. The fine is actually \$50. See § 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

LRBs0302/1dn
GMM:kmg:pg

January 28, 2002

Senator Robson:

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 to modify the proposed language.

Also, as I worked on the draft I realized that portions of current s. 134.66 are inartfully 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.

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