



1995 ASSEMBLY BILL 1076

March 21, 1996 - Introduced by Representatives WALKER, DOBYNS, KREIBICH, HARSDF, LADWIG, OLSEN, KELSO, URBAN, DUFF and FREESE, cosponsored by Senators BUETTNER, DRZEWIECKI, RUDE, ROSENZWEIG, SCHULTZ, CLAUSING, DARLING, COWLES and GROBSCHMIDT. Referred to Calendar.

1 **AN ACT to repeal** 48.983 (1), 48.983 (5), 101.123 (1) (dg), 134.65 (2) (b), 134.66 (1)
2 (k) and (L), 134.66 (2) (c) 3. and 4., 134.66 (2) (cm) 2. and 3. and 134.66 (2) (d);
3 **to renumber** 134.65 (title), 134.66 (1) (a), (b), (c), (d) and (e), 134.66 (1) (hm),
4 (i) and (j), 134.66 (2) (title) and 134.66 (5) (title); **to renumber and amend**
5 48.983 (title), 48.983 (2), 48.983 (3), 48.983 (4), 134.65 (1) and (2) (a), 134.65 (3),
6 (4) and (5), 134.66 (title), 134.66 (1) (intro.), 134.66 (1) (g), 134.66 (1) (h), 134.66
7 (2) (a), 134.66 (2) (b) 1., 134.66 (2) (b) 2., 134.66 (2) (c) 1. (intro.), 134.66 (2) (c)
8 2., 134.66 (2) (cm) 1., 134.66 (2) (e), 134.66 (3) (title), 134.66 (3), 134.66 (4) and
9 134.66 (5); **to consolidate, renumber and amend** 134.66 (2) (c) 1. a. and b.;
10 **to amend** 20.435 (1) (gm), 47.03 (7), 77.54 (20) (c) 6., 101.123 (1) (c), 101.123
11 (2) (am) 1., 101.123 (2) (am) 2., 111.35 (2) (d), 139.08 (3), 139.30 (14), 139.39 (1),
12 139.39 (5) (a), 251.04 (1) and 778.25 (1) (a) 4.; and **to create** 101.123 (1) (ah),
13 101.123 (2) (am) 3., 139.34 (1) (c) 8., subchapter IX (title) of chapter 254
14 [precedes 254.911], 254.911 (5), (6m), (11) and (13) to (15), 254.914 (1m) and (2),
15 254.914 (5), 254.914 (8), 254.916, 254.92 (1) (c) 2., 254.92 (1) (c) 3., 254.92 (1) (c)
16 4., 254.92 (1) (c) 5., 254.92 (2) (c) and (d), 254.92 (3) (b), 254.92 (5) (b) and 254.922
17 of the statutes; **relating to:** transferring to the department of health and

1 family services authority for licensing cigarette and tobacco products retailers
2 and authority to enforce certain prohibitions on the sale, gift, purchase or
3 possession of cigarettes or tobacco products, locations and control of tobacco
4 vending machines, prohibiting smoking in health care provider offices and in
5 certain government buildings, granting rule-making authority, making an
6 appropriation and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, yearly licenses for the retail sale of cigarettes and tobacco products are issued upon submittal of an application and payment of a \$5 fee to the city, village or town in which the retail sale is sought to be conducted. Yearly permits for the manufacture or sale of cigarettes by a distributor, jobber, vending machine operator or multiple retailer and yearly permits for the storage of cigarettes by a warehouse operator are issued by the department of revenue (DOR). Unlicensed sale or gifting of cigarettes and tobacco products to a person who has neither a license nor a permit is prohibited and violators are subject to fines; if the violator is found personally guilty of failure to exercise due care, a court may terminate the license or permit for 5 years. Current law generally prohibits the purchase or possession of cigarettes or tobacco products by minors and prohibits the sale or gifting of cigarettes or tobacco products to minors by retailers, vending machine operators, manufacturers, distributors, jobbers and subjobbers. (A vending machine operator is not liable under this prohibition for the purchase of cigarettes or tobacco products by a minor if the vending machine operator was unaware of the purchase.) Retailers may place vending machines in public places open to minors only where the machines are under the retailers' control or the control of their employees. Retailers are prohibited from placing a vending machine within 500 feet of a school. Retailers are, in addition, prohibited from selling cigarettes in a form other than as a package or container which is stamped, for tax purposes, as required by DOR. Violation of these prohibitions subject the violator to forfeitures and, for repeated violations within certain time periods, to suspension of the license of the retailer or the permit of the manufacturer, distributor, jobber or subjobber. A retailer, manufacturer or distributor may assert a defense to prosecution for sale of cigarettes or tobacco products to a minor by proving that the purchaser falsely represented that he or she had attained age 18, that the purchaser's appearance indicated that he or she had attained the age of 18 and that the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser and the belief that he or she had attained age 18. A county, city, town or village may adopt an ordinance that regulates the sale or gifting of cigarettes or tobacco products if the ordinance strictly conforms to current law.

This bill, on July 1, 1996, transfers from cities, villages and towns to the department of health and family services (DHFS) (formerly the department of health and social services) the authority to license cigarette and tobacco products retailers and to regulate the sale or gifting of cigarettes or tobacco products to minors and the purchase or possession of cigarettes or tobacco products by minors. Under the bill, fines and misdemeanors for the unlicensed sale of cigarettes and tobacco products to persons who have neither a license nor a permit are changed to administrative forfeitures that may be imposed by DHFS. The bill prohibits a licensed retailer or the retailer's employe or agent from selling, exposing for sale, exchanging, bartering or disposing of cigarettes, or from selling, exposing for sale, exchanging, bartering, disposing of or giving tobacco products other than cigars, to a person who is not licensed as a retailer or who does not hold a permit as a manufacturer, distributor, jobber, vending machine operator, multiple retailer or warehouse operator, unless both the retailer or his or her employe or agent and the receiver of the cigarettes or tobacco products are physically present on the retailer's licensed premises during the transaction. The bill prohibits licensees from giving away cigarettes to anyone and prohibits the sale of single cigarettes. The bill expands prohibitions on the sale or gifting of cigarettes or tobacco products to minors to include sale or gifting by independent contractors of retailers, manufacturers, distributors, jobbers or subjobbers or by the independent contractor's agents or employes; further, the bill specifies that forfeitures that may be imposed by DHFS for gifting or sale of cigarettes or tobacco products to minors that is done by a retailer, manufacturer, distributor, jobber, subjobber or independent contractor or by their agents or employes apply to the retailer, manufacturer, distributor, jobber, subjobber or independent contractor. DHFS is authorized to designate local health departments as DHFS agents for issuance of licenses and inspections and investigations of licensed premises.

Local health departments, in cooperation with local law enforcement authorities, and law enforcement officers (under municipal ordinances) are required to conduct at least one random, unannounced investigation every 2 years to ensure compliance with the laws prohibiting the sale and gifting of cigarettes and tobacco products. Local health departments must, in conducting the investigations, authorize the use of minors who have written permission from a parent to assist in the performance of research to monitor compliance with sale or gifting restrictions and to conduct undercover operations. Except for the purposes of these investigations using minors, however, local health departments may not, however, contract or subcontract their regulation of restrictions on the sale or gifting of cigarettes or tobacco products. The bill permits a county, city, town or village to enact ordinances for these investigations that are at least as strict as the statutes. Local health departments must annually conduct at least one random, unannounced inspection of licensees. The amount of the fees for the annual licenses for retailers is changed to \$50, collectible by the local health departments; of this amount, DHFS must receive \$10 for its costs in setting standards, monitoring and evaluating activities of local health departments and providing education and training to local health departments. The affirmative defense of a retailer, manufacturer or

distributor to prosecution for the sale of cigarettes or tobacco products to a minor is extended to a jobber, subjobber or independent contractor. The bill permits a local board of health to adopt regulations concerning licensing requirements that are in strict conformity with the laws governing licensing or rules promulgated by DHFS. The bill permits a county, city, town or village to enact ordinances for regulation of the sale or gifting of cigarettes and tobacco products that are in strict conformity with the statutes or DHFS rules. The bill changes the definition of tobacco vending machine to include deposit of money or tokens in the machine. The bill allows vending machines to be placed in establishments such as factories, offices and clubs in areas that are not accessible to the general public or to minors, and on certain premises where fermented malt beverages or intoxicating liquor are sold. The overall prohibition against placing a vending machine within 500 feet of a school remains unchanged, except that the prohibition under the bill specifically prohibits the placement of a vending machine within a school. Lastly, the bill prohibits DOR from granting a permit to a person as a cigarette or tobacco products manufacturer, distributor, jobber, vending machine operator, multiple retailer or warehouse operator who (or whose employe or agent) has been found at least 6 times to be in violation of the prohibitions against unlicensed sale or gifting of cigarettes or tobacco products to persons who are not licensed as retailers or permitted by DOR under certain laws.

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.** 20.435 (1) (gm) of the statutes, as affected by 1995 Wisconsin Act
2 27, section 816m, and 1995 Wisconsin Act 98, is amended to read:

3 20.435 (1) (gm) *Licensing, review and certifying activities.* The amounts in the
4 schedule for the purposes specified in ss. 50.135, 50.49 (2) (b), 50.52 (2) (a), 146.50
5 (8), 250.05 (6), 254.176, 254.178, 254.20 (5) and (8), 254.31 to 254.39, 254.47, 254.61
6 to ~~254.89~~ 254.916 and 255.08 (2), subch. IV of ch. 50 and ch. 150. All moneys received
7 under ss. 50.135, 50.49 (2) (b), 50.52 (2) (a), 50.93 (1) (c), 146.50 (8) (d), 150.13, 250.05
8 (6), 254.176, 254.178, 254.20 (5) and (8), 254.31 to 254.39, 254.47, 254.61 to ~~254.89~~
9 254.916 and 255.08 (2) (b) shall be credited to this appropriation.

1 **SECTION 2.** 47.03 (7) of the statutes, as affected by 1995 Wisconsin Act 27, is
2 amended to read:

3 47.03 (7) If the department decides that a business under sub. (4) would not be
4 feasible and profitable in any state building, the department may contract with
5 vending machine operators, as defined in s. 254.61 (10), to install vending machines,
6 as defined in s. 254.61 (7), in the building, giving preference to blind operators of
7 vending machines. The department may, under the procedures established as
8 required under sub. (4) (b), charge the net proceeds of each business operating under
9 this subsection. The department shall deposit the moneys from the charges made
10 under this subsection in the appropriations under s. 20.445 (5) (h) and (hd) and shall
11 disburse the proceeds to provide services to blind persons under sub. (4) in
12 accordance with 20 USC 107 to 107f.

13 **SECTION 3.** 48.983 (title) of the statutes is renumbered 254.92 (2) (title) and
14 amended to read:

15 254.92 (2) (title) PURCHASE OR POSSESSION OF CIGARETTES OR TOBACCO PRODUCTS
16 BY A MINOR PROHIBITED.

17 **SECTION 4.** 48.983 (1) of the statutes is repealed.

18 **SECTION 5.** 48.983 (2) of the statutes is renumbered 254.92 (2) (a), and 254.92
19 (2) (a) (intro.), as renumbered, is amended to read:

20 254.92 (2) (a) (intro.) Except as provided in ~~sub. (3) pars. (b), (c) and (d)~~, no ~~child~~
21 minor may do any of the following:

22 **SECTION 6.** 48.983 (3) of the statutes is renumbered 254.92 (2) (b) and amended
23 to read:

1 254.92 (2) (b) A ~~child~~ minor may purchase or possess cigarettes or tobacco
2 products for the sole purpose of resale in the course of employment during his or her
3 working hours if employed by a retailer licensed under s. 134.65 (1).

4 **SECTION 7.** 48.983 (4) of the statutes is renumbered 254.92 (2) (e) and amended
5 to read:

6 254.92 (2) (e) A law enforcement officer or local health officer shall seize any
7 cigarette or tobacco product involved in any violation of sub. (2) committed in his or
8 her presence par. (a).

9 **SECTION 8.** 48.983 (5) of the statutes is repealed.

10 **SECTION 9.** 77.54 (20) (c) 6. of the statutes is amended to read:

11 77.54 (20) (c) 6. For purposes of subd. 1., “premises” shall be construed broadly,
12 and, by way of illustration but not limitation, shall include the lobby, aisles and
13 auditorium of a theater or the seating, aisles and parking area of an arena, rink or
14 stadium or the parking area of a drive-in or outdoor theater. The premises of a
15 caterer with respect to catered meals or beverages shall be the place where served.
16 ~~Vending machine premises~~ The premises of a vending machine, as defined in s.
17 254.61 (7), shall include the room or area in which located.

18 **SECTION 10.** 101.123 (1) (ah) of the statutes is created to read:

19 101.123 (1) (ah) “Health care provider” means any of the following:

- 20 1. A nurse licensed under ch. 441.
- 21 2. A dentist licensed under ch. 447.
- 22 3. A physician licensed under ch. 448.
- 23 4. A partnership of any providers specified under subds. 1. to 3. that provides
24 health care services.

1 5. A corporation or limited liability company of any providers specified under
2 subds. 1. to 3. that provides health care services.

3 **SECTION 11.** 101.123 (1) (c) of the statutes is amended to read:

4 101.123 (1) (c) "Office" means any area, whether publicly or privately owned
5 or occupied, that serves as a place of work at which the principal activities consist
6 of professional, clerical or administrative services, including any service offered by
7 health care providers.

8 **SECTION 12.** 101.123 (1) (dg) of the statutes is repealed.

9 **SECTION 13.** 101.123 (2) (am) 1. of the statutes is amended to read:

10 101.123 (2) (am) 1. Notwithstanding par. (a) and sub. (3) and except as provided
11 in ~~subd.~~ subds. 2. and 3., no person may smoke in a motor bus, in a hospital ~~or in a~~
12 physician's office, in an office of a health care provider or in any enclosed, indoor area
13 of a state, county, city, village or town building in which health care services are
14 delivered to children or pregnant women, except that jails and lockup facilities are
15 subject to sub. (4).

16 **SECTION 14.** 101.123 (2) (am) 2. of the statutes is amended to read:

17 101.123 (2) (am) 2. ~~Notwithstanding subd. 1., a~~ A person who is an adult
18 patient of a hospital or unit of a hospital that has as its primary purpose the care and
19 treatment of mental illness, alcoholism or drug abuse and who has the written
20 permission of a physician may smoke in a room that is designated as a smoking area
21 under sub. (4) (a) 2.

22 **SECTION 15.** 101.123 (2) (am) 3. of the statutes is created to read:

23 101.123 (2) (am) 3. The prohibition of smoking in a state, county, city, village
24 or town building under subd. 1 does not apply to such a building while it is being used

1 for a private function, if the arrangements for the function are under the control of
2 the sponsor of the function.

3 **SECTION 16.** 111.35 (2) (d) of the statutes is amended to read:

4 111.35 (2) (d) Constitutes a violation of s. ~~48.983~~ 254.92 (2) (a).

5 **SECTION 17.** 134.65 (title) of the statutes is renumbered 254.914 (title).

6 **SECTION 18.** 134.65 (1) and (2) (a) of the statutes are renumbered 254.914 (1)
7 and (3) and amended to read:

8 254.914 (1) ~~No person shall in any manner, or upon any pretense, or by any~~
9 ~~device, directly or indirectly~~ Unless a person holds a license issued under this
10 section, the person or the person's employe or agent may not sell, expose for sale,
11 possess with intent to sell, exchange, barter, or dispose of ~~or give away~~ any cigarettes
12 ~~or, and may not sell, expose for sale, possess with intent to sell, exchange, barter,~~
13 dispose of or give away any tobacco products, ~~to any person not holding a license as~~
14 ~~herein provided or anyone who is not licensed under this section or who does not hold~~
15 a permit under ss. 139.30 to 139.41 or 139.79 ~~without first obtaining a license from~~
16 ~~the clerk of the city, village or town wherein such privilege is sought to be exercised.~~

17 (3) ~~Except as provided in par. (b), upon filing~~ Upon receipt of a proper written
18 application, the department shall issue a license ~~shall be issued~~ on July 1 of each year
19 or when applied for ~~and~~. The license shall continue in force until the following June
20 30 unless the license is sooner revoked. The fee for the license is ~~\$5~~ \$50, which shall
21 be paid to the ~~city, village or town treasurer~~ department before the license is issued.

22 **SECTION 19.** 134.65 (2) (b) of the statutes is repealed.

23 **SECTION 20.** 134.65 (3), (4) and (5) of the statutes are renumbered 254.914 (4),
24 (6) and (7) and amended to read:

1 254.914 (4) ~~Each such~~ A license issued under this section shall name the
2 licensee and specifically describe the premises ~~where such~~ on which the business is
3 ~~to~~ may be conducted. ~~Such licenses shall not be~~ The license is not transferable from
4 one person to another ~~nor~~ and is not transferable from one premises to another.

5 (6) Every licensed retailer shall keep complete and accurate records of all
6 purchases and receipts of cigarettes and tobacco products. ~~Such~~ The records shall
7 be preserved on the licensed premises for 2 years in such a manner as to ~~insure~~
8 ensure permanency and accessibility for inspection and ~~shall be~~ are subject to
9 inspection at all reasonable hours by authorized state officials and local law
10 enforcement and local health officials.

11 (7) Any person violating this section shall ~~be fined~~ forfeit not more than \$100
12 nor less than \$25 for the first offense and not more than \$200 nor less than \$25 for
13 the 2nd or subsequent offense. If upon ~~such~~ the 2nd or subsequent violation, the
14 person ~~so~~ violating this section was is found to be personally guilty of a failure to
15 exercise due care to prevent the violation thereof, the person shall ~~be fined~~ forfeit not
16 more than \$300 nor less than \$25 ~~or imprisoned not exceeding 60 days or both.~~
17 ~~Conviction shall immediately terminate the license of the person convicted of being~~
18 ~~personally guilty of such failure to exercise due care and the person, his or her license~~
19 is immediately revoked, he or she is not entitled to another license ~~hereunder~~ under
20 this section for a period of 5 years thereafter, ~~nor shall the person~~ and he or she may
21 not in that period act as the servant employe or agent of a person licensed ~~hereunder~~
22 under this section for the performance of the acts authorized by such a license. The
23 5-year period shall be measured from the date of the violation that resulted in the
24 revocation of the license.

SECTION 21

1 **SECTION 21.** 134.66 (title) of the statutes is renumbered 254.92 (title) and
2 amended to read:

3 **254.92** (title) **Restrictions on sale or gift or certain purchase or**
4 **possession of cigarettes or tobacco products.**

5 **SECTION 22.** 134.66 (1) (intro.) of the statutes is renumbered 254.911 (intro.)
6 and amended to read:

7 **254.911 Definitions.** (intro.) In this ~~section~~ subchapter:

8 **SECTION 23.** 134.66 (1) (a), (b), (c), (d) and (e) of the statutes are renumbered
9 254.911 (1), (2), (3), (4) and (6).

10 **SECTION 24.** 134.66 (1) (g) of the statutes is renumbered 254.911 (7) and
11 amended to read:

12 254.911 (7) “Retailer” means any person licensed the holder of a license issued
13 under s. 134.65 (1) 254.914.

14 **SECTION 25.** 134.66 (1) (h) of the statutes is renumbered 254.911 (8) and
15 amended to read:

16 254.911 (8) (h) “School” has the meaning given in s. 118.257 (1) ~~(e)~~ (d).

17 **SECTION 26.** 134.66 (1) (hm), (i) and (j) of the statutes are renumbered 254.911
18 (9), (10) and (12).

19 **SECTION 27.** 134.66 (1) (k) and (L) of the statutes are repealed.

20 **SECTION 28.** 134.66 (2) (title) of the statutes is renumbered 254.92 (1) (title).

21 **SECTION 29.** 134.66 (2) (a) of the statutes is renumbered 254.92 (1) (a) and
22 amended to read:

23 254.92 (1) (a) No retailer, manufacturer ~~or~~ distributor, jobber or subjobber or
24 the agent, employe or independent contractor of a retailer, manufacturer, distributor,
25 jobber or subjobber or the agent or employe of an independent contractor may sell

1 or ~~give~~ provide for nominal or no consideration cigarettes or tobacco products to any
2 ~~person under the age of 18~~ a minor, except as provided in s. ~~48.983 (3)~~ sub. (2) (b).
3 A tobacco vending machine operator is not liable under this paragraph for the
4 purchase of cigarettes or tobacco products from his or her tobacco vending machine
5 by a ~~person under the age of 18~~ minor if the tobacco vending machine operator was
6 unaware of the purchase.

7 **SECTION 30.** 134.66 (2) (b) 1. of the statutes is renumbered 254.92 (1) (b) 1. and
8 amended to read:

9 254.92 (1) (b) 1. A retailer shall post a sign in areas within his or her premises
10 where cigarettes or tobacco products are sold to consumers stating that the sale to
11 a minor or purchase by a minor of any cigarette or tobacco product ~~to a person under~~
12 ~~the age of 18~~ is unlawful under this section and s. ~~48.983 par. (a) and sub. (2)~~.

13 **SECTION 31.** 134.66 (2) (b) 2. of the statutes is renumbered 254.92 (1) (b) 2. and
14 amended to read:

15 254.92 (1) (b) 2. A tobacco vending machine operator shall attach a notice in
16 a conspicuous place on the front of his or her tobacco vending machines stating that
17 the purchase of any cigarette or tobacco product by a ~~person under the age of 18~~ minor
18 is unlawful under s. ~~48.983 sub. (2)~~ and that the purchaser is subject to a forfeiture
19 of not to exceed \$~~25~~ \$50.

20 **SECTION 32.** 134.66 (2) (c) 1. (intro.) of the statutes is renumbered 254.92 (1)
21 (c) (intro.) and amended to read:

22 254.92 (1) (c) (intro.) ~~Except as provided in par. (c), no~~ No retailer may keep
23 a tobacco vending machine ~~in~~ within the premises of any public place that is open to
24 ~~persons under the age of 18~~ the general public unless all any of the following apply
25 applies:

1 **SECTION 33.** 134.66 (2) (c) 1. a. of the statutes is repealed.

2 **SECTION 34.** 134.66 (2) (c) 1. b. of the statutes is repealed.

3 **SECTION 35.** 134.66 (2) (c) 2. of the statutes is repealed.

4 **SECTION 36.** 134.66 (2) (c) 3. and 4. of the statutes are repealed.

5 **SECTION 37.** 134.66 (2) (cm) 1. of the statutes is renumbered 254.92 (1) (cm) and
6 amended to read:

7 254.92 (1) (cm) Notwithstanding par. (c), no retailer may place a tobacco
8 vending machine in a school within 500 feet of a school.

9 **SECTION 38.** 134.66 (2) (cm) 2. and 3. of the statutes are repealed.

10 **SECTION 39.** 134.66 (2) (d) of the statutes is repealed.

11 **SECTION 40.** 134.66 (2) (e) of the statutes is renumbered 254.92 (1) (e) and
12 amended to read:

13 254.92 (1) (e) No retailer or retailer's employe or agent may sell cigarettes in
14 a form other than as a package or container that contains more than a single
15 cigarette on which a stamp is affixed under s. 139.32 (1).

16 **SECTION 41.** 134.66 (3) (title) of the statutes is renumbered 254.92 (3) (title) and
17 amended to read:

18 254.92 (3) (title) DEFENSE OF RETAILER, MANUFACTURER AND, DISTRIBUTOR, JOBBER,
19 SUBJOBBER OR INDEPENDENT CONTRACTOR.

20 **SECTION 42.** 134.66 (3) of the statutes is renumbered 254.92 (3) (a), and 254.92
21 (3) (a) (intro.), as renumbered, is amended to read:

22 254.92 (3) (a) (intro.) Proof of all of the following facts by a retailer,
23 manufacturer ~~or~~, distributor, jobber or subjobber who sells cigarettes or tobacco
24 products to a person under the age of 18 is a defense to any prosecution for a violation
25 of sub. ~~(2)~~ (1) (a):

1 **SECTION 43.** 134.66 (4) of the statutes is renumbered 254.92 (4) and amended
2 to read:

3 254.92 (4) PENALTIES. (a) 1. In this paragraph, "violation" means a violation
4 of sub. ~~(2) (1)~~ (a), (c), ~~(cg)~~, (cm), ~~(d)~~ or (e) or of a local ordinance which strictly conforms
5 to sub. (2) (a), (c), (cm), (d) or (e) that is enacted in compliance with sub. (5).

6 2. ~~A person who commits~~ The following forfeitures apply to a retailer for a
7 violation is subject to a forfeiture of sub. (1) (a), (c), (cg), (cm) or (e) by the retailer or
8 the agent or employe of the retailer, apply to a manufacturer for a violation of sub.
9 (1) (a) by the manufacturer or the agent or employe of the manufacturer, apply to a
10 distributor for a violation of sub. (1) (a) by the distributor or the agent or employe of
11 the distributor, apply to a jobber for a violation of sub. (1) (a) by the jobber or the agent
12 or employe of the jobber and apply to a subjobber for a violation of sub. (1) (a) by the
13 subjobber or the agent or employe of the subjobber:

14 a. Not more than \$500 if the ~~person~~ retailer, manufacturer, distributor, jobber
15 or subjobber has not committed a previous violation within ~~12~~ 24 months of the
16 violation; or

17 b. Not less than \$200 nor more than \$500 if the ~~person~~ retailer, manufacturer,
18 distributor, jobber or subjobber has committed a previous violation within ~~12~~ 24
19 months of the violation.

20 3. ~~A court~~ The department or a local health department that is designated as
21 the department's agent under s. 254.916, that issued a license under s. 254.914 shall
22 suspend any license or permit issued under s. 134.65, 139.34 or 139.79 to a person
23 retailer for:

1 a. Not more than 3 days, if the ~~court~~ department or local health department
2 finds that the ~~person~~ retailer committed a violation within ~~12~~ 24 months after
3 committing one previous violation;

4 b. Not less than 3 days nor more than 10 days, if the ~~court~~ department or local
5 health department finds that the ~~person~~ retailer committed a violation within ~~12~~ 24
6 months after committing 2 other violations; or

7 c. Not less than 15 days nor more than 30 days, if the ~~court~~ department or local
8 health department finds that the ~~person~~ retailer committed a violation within ~~12~~ 24
9 months after committing 3 or more other violations.

10 4. ~~The court~~ If the department suspends a license under subd. 3., the
11 department shall promptly mail notice of a the suspension under subd. 3. to the local
12 health department of revenue and to the clerk of each municipality which has issued
13 a license or permit to the person that is designated as the department's agent under
14 s. 254.916 whose jurisdiction, if so designated, includes the retailer. If the local
15 health department suspends a license under subd. 3., the local health department
16 shall promptly mail notice of the suspension to the department.

17 (b) Whoever violates sub. (2) (1) (b) shall forfeit not more than \$25.

18 **SECTION 44.** 134.66 (5) of the statutes is renumbered 254.92 (5) and amended
19 to read:

20 254.92 (5) LOCAL ORDINANCE. A county, town, village or city may ~~adopt~~ enact
21 an ordinance regulating the conduct regulated by this section only if it strictly
22 conforms to this section. Such an ordinance shall provide for civil forfeitures that are
23 for the same amounts as the forfeitures that may be imposed by the department
24 under sub. (4) (a) 2. and shall require a court to act in place of the department under
25 sub. (4) or, if applicable, a local health department under sub. (4) (a) 3. and to notify

1 the department and, if applicable, the local health department of the court action.
2 Under such an ordinance, only one charge may result from each violation of this
3 section. A county ordinance ~~adopted~~ enacted under this subsection does not apply
4 within any town, village or city that has ~~adopted or adopts~~ enacted or enacts an
5 ordinance under this subsection.

6 **SECTION 45.** 139.08 (3) of the statutes is amended to read:

7 139.08 (3) POLICE POWERS. The department of revenue shall enforce and the
8 duly authorized employes of the department shall have all necessary police powers
9 to prevent violations of ~~s. 134.65~~, this subchapter and ch. 125.

10 **SECTION 46.** 139.30 (14) of the statutes is amended to read:

11 139.30 (14) "Vending machine" is any mechanical device ~~which~~ that
12 automatically dispenses cigarettes ~~upon the deposit therein of specified coins~~ when
13 money or tokens are deposited in the device in payment for such ~~the~~ cigarettes.

14 **SECTION 47.** 139.34 (1) (c) 8. of the statutes is created to read:

15 139.34 (1) (c) 8. The holder of a permit under ss. 139.30 to 139.41 or 139.79 or
16 the person has been found at least 6 times under s. 254.914 (7) to have violated s.
17 254.914.

18 **SECTION 48.** 139.39 (1) of the statutes is amended to read:

19 139.39 (1) The department shall administer and enforce ss. 139.30 to 139.44,
20 and 139.75 to 139.85 ~~and 134.65~~. The department shall ~~adopt~~ promulgate rules
21 necessary to administer and enforce its duties.

22 **SECTION 49.** 139.39 (5) (a) of the statutes is amended to read:

23 139.39 (5) (a) Any person may be compelled to testify in regard to any violation
24 of ~~ss. 134.65 and~~ 139.30 to 139.44 of which the person may have knowledge, even
25 though such testimony may tend to incriminate the person, upon being granted

1 immunity from prosecution in connection therewith, and upon the giving of such
2 testimony, the person shall not be prosecuted because of the violation relative to
3 which the person has testified.

4 **SECTION 50.** 251.04 (1) of the statutes is amended to read:

5 251.04 (1) A city or county board of health shall govern each local health
6 department and assure the enforcement of state public health statutes and public
7 health rules of the department as prescribed for a Level I local health department.
8 A local board of health may contract or subcontract to provide public health services,
9 except that this power does not extend to the authorized actions under subch. IX of
10 ch. 254, other than under s. 254.916 (2), of a local health department that is
11 designated as the department's agent under s. 254.916 (1). The contractor's staff
12 shall meet the appropriate qualifications for positions in a Level I local health
13 department.

14 **SECTION 51.** Subchapter IX (title) of chapter 254 [precedes 254.911] of the
15 statutes is created to read:

16 **CHAPTER 254**

17 **SUBCHAPTER IX**

18 **RESTRICTIONS ON SALE OR GIFT OF**

19 **CIGARETTES OR TOBACCO PRODUCTS**

20 **SECTION 52.** 254.911 (5), (11) and (13) to (15) of the statutes are created to read:

21 254.911 (5) "Law enforcement officer" has the meaning given in s. 165.85 (2)
22 (c).

23 (11) "Tavern" has the meaning given in s. 941.237 (1) (fm).

1 **(13)** “Tobacco vending machine” is any mechanical device that automatically
2 dispenses cigarettes or tobacco products when money or tokens are deposited in the
3 device in payment for the cigarettes or tobacco products.

4 **(14)** “Tobacco vending machine operator” means a person who acquires tobacco
5 products or stamped cigarettes from manufacturers or permittees, stores them and
6 sells them through the medium of tobacco vending machines that he or she owns,
7 operates or services and that are located on premises that are owned or under the
8 control of other persons.

9 **(15)** “Tobacco vending machine premises” includes the room or area in which
10 a tobacco vending machine is located.

11 **SECTION 53.** 254.914 (1m), (1r) and (2) of the statutes are created to read:

12 254.914 **(1m)** A retailer or the retailer’s employe or agent may not sell, expose
13 for sale, exchange, barter or dispose of any cigarettes, and may not sell, expose for
14 sale, exchange, barter, dispose of or give away any tobacco products, other than
15 cigars, to anyone who is not licensed under this section or who does not hold a permit
16 under ss. 139.30 to 139.41 or 139.79 unless the sale, exposure, exchange, bartering,
17 disposing or gift occurs on the premises described in the license and unless both the
18 retailer or the retailer’s employe or agent and the buyer, exchanger, barterer, donee
19 or other receiver of the cigarettes or tobacco products, other than cigars, are
20 physically present on the premises during the sale, exposure, exchange, bartering,
21 disposing or gifting.

22 **(1r)** A person licensed under this section may not give away any cigarettes to
23 anyone.

24 **(2)** An applicant for a license under this section shall complete the application
25 prepared by the department and provide, in writing, any additional information that

1 the department requires, including the applicant's signature to a statement,
2 provided by the department, that indicates that the applicant has knowledge of the
3 laws governing sales and gifting of cigarettes or tobacco products. The department
4 shall also provide the applicant with information on ways to prevent cigarette or
5 tobacco products sales to minors.

6 **SECTION 54.** 254.914 (5) of the statutes is created to read:

7 254.914 (5) Upon request, the department shall provide a current list of
8 persons or establishments that are licensed under this section.

9 **SECTION 55.** 254.914 (8) of the statutes is created to read:

10 254.914 (8) If the department imposes a forfeiture on or revokes the license of
11 a person under sub. (7), the department shall promptly mail notice of the forfeiture
12 imposition or license revocation to the department of revenue and to the local health
13 department that is designated as the department's agent under s. 254.916 whose
14 jurisdiction, if so designated, includes the retailer.

15 **SECTION 56.** 254.916 of the statutes is created to read:

16 **254.916 Agent status for local health departments.** (1) In the
17 administration of this subchapter, the department may enter into a written
18 agreement with a local health department with a jurisdictional area that has a
19 population of more than 5,000, which designates the local health department as the
20 department's agent in issuing or, if applicable, suspending licenses under s. 254.914
21 and making investigations, in cooperation with local law enforcement authorities,
22 or inspections of retailers, tobacco vending machine operators, tobacco vending
23 machine premises and tobacco vending machines. In a jurisdictional area of a local
24 health department that is not so designated, the department of health and family
25 services may issue licenses, collect licenses fees and make investigations or

1 inspections of retailers, tobacco vending machine operators, tobacco vending
2 machine premises and tobacco vending machines. If the department designates a
3 local health department as its agent, the department or local health department may
4 require no license for the same operations other than the license issued by the local
5 health department.

6 (2) A local health department that is designated as the department's agent
7 under this section and that acts in cooperation with local law enforcement
8 authorities shall, or a law enforcement officer shall, conduct on each licensee under
9 s. 254.914 at least one random, unannounced investigation every 2 years, as
10 authorized under sub. (1), to ensure compliance with s. 254.92, including the use of
11 signs or notices as required under s. 254.92 (1) and the placement of tobacco vending
12 machines as required under s. 254.92 (1) (c). The investigations shall be conducted
13 as follows:

14 (a) The local health department or law enforcement officer shall solicit a minor
15 who has written permission from a parent to conduct undercover operations to
16 purchase or attempt to purchase cigarettes or tobacco products.

17 (b) The local health department may authorize the use of a minor, who has
18 written permission from a parent and who is supervised by an adult, to assist in
19 performance of governmental or nongovernmental research to monitor compliance
20 with s. 254.92.

21 (c) The local health department shall provide to local law enforcement
22 authorities notice before conducting an investigation.

23 (d) Local law enforcement authorities shall cooperate with a local health
24 department that is conducting an investigation under this subsection.

1 **(2m)** The local health department shall annually conduct on each licensee at
2 least one random, unannounced inspection to ensure that each licensee is in
3 compliance with s. 254.914.

4 **(3)** A local health department that is designated as the department's agent
5 under this section shall meet standards promulgated, by rule, by the department of
6 health and family services. The department shall annually evaluate the licensing,
7 investigation and inspection program of each local health department that is
8 designated as the department's agent. If, at any time, a local health department that
9 is designated as the department's agent fails to meet the standards, the department
10 of health and family services may revoke the designation as agent.

11 **(4)** The department shall provide education and training to agents designated
12 under this section to ensure uniformity in the enforcement of this subchapter and
13 rules promulgated under this subchapter.

14 **(5)** Except as provided in sub. (6), a local health department that is designated
15 as the department's agent under this section shall establish and collect the license
16 fee for each applicant under s. 254.914 (3).

17 **(6)** A local health department that is designated as the department's agent
18 under this section may contract with the department of health and family services
19 for the department of health and family services to collect fees and issue licenses.
20 The department shall collect from the local health department the actual and
21 reasonable cost of providing the services.

22 **(7)** Unless sub. (6) or (8) applies, the department shall receive \$10 of each
23 license fee paid under s. 254.914 (3) for its costs related to setting standards under
24 this subchapter and monitoring and evaluating the activities of, and providing
25 education and training to, agent local health departments. Agent local health

1 departments shall collect the fees and reimburse the department for the amount
2 required under this subsection.

3 (8) If, under this section, a local health department becomes an agent or its
4 agent designation is revoked during a licensee's license year, the department of
5 health and family services and the local health department shall divide any license
6 fee paid by the licensee for that license year according to the proportions of the license
7 year occurring before and after the local health department is designated as agent
8 or the designation is revoked. No additional fee may be required during the license
9 year due to the change in agent designation.

10 (9) A local board of health may adopt regulations regarding the licensees and
11 premises over which the department, or the local health department that is the
12 department's designated agent under this section, has jurisdiction under s. 254.914,
13 for which the requirements are in strict conformity with s. 254.914 or rules
14 promulgated by the department of health and family services under s. 254.914.

15 (10) This section does not limit the authority of the department to inspect
16 establishments in jurisdictional areas of local health departments that are
17 designated as the department's agents if the department inspects in response to an
18 emergency, for the purpose of monitoring and evaluating the local health
19 department's licensing, inspection and enforcement program or at the request of the
20 local health department.

21 (11) The department shall hold a hearing under ch. 227 if any interested
22 person, in lieu of proceeding under ch. 68, appeals to the department alleging any of
23 the following:

1 (a) A license fee established by a local health department that is designated as
2 the department's agent under this section exceeds the reasonable costs described
3 under sub. (5).

4 (b) The person issuing, refusing to issue, suspending or revoking a license or
5 making an investigation or inspection of the appellant has a financial interest in a
6 regulated cigarette and tobacco product retailer, tobacco vending machine operator,
7 tobacco vending machine premises or tobacco vending machine which may interfere
8 with his or her ability to properly take that action.

9 (12) A county, town, village or city may enact an ordinance regulating the
10 investigations authorized by this section only if the ordinance is at least as strict as
11 this section.

12 **SECTION 57.** 254.92 (1) (c) 1. of the statutes is created to read:

13 254.92 (1) (c) 1. The tobacco vending machine is in a barroom, as defined in s.
14 125.51 (3m) (a), located on premises described in a license issued under s. 125.26 or
15 125.51 (3).

16 **SECTION 58.** 254.92 (1) (c) 2. of the statutes is created to read:

17 254.92 (1) (c) 2. The tobacco vending machine is located in a portion of a factory,
18 business, office, club or other establishment to which members of the general public
19 and minors do not have access.

20 **SECTION 59.** 254.92 (2) (c) and (d) of the statutes are created to read:

21 254.92 (2) (c) A minor who has written permission from a parent may purchase
22 or possess cigarettes or tobacco products for the sole purpose of assisting in the
23 conduct of undercover operations for which the minor is solicited by a local health
24 department or a law enforcement officer as required under s. 254.916 (2).

1 (d) A minor who has written permission from a parent and who is under the
2 supervision of an adult may purchase or possess cigarettes or tobacco products for
3 the sole purpose of assisting in the performance of governmental or
4 nongovernmental research, as authorized by the local health department under s.
5 254.916 (2), to monitor compliance with this section.

6 **SECTION 60.** 254.92 (3) (b) of the statutes is created to read:

7 254.92 (3) (b) Failure by the retailer or the employe or agent of the retailer to
8 prove the facts under par. (a) 1. to 3. is conclusive evidence that the retailer has
9 violated sub. (1) (a). Failure by the manufacturer or the employe or agent of the
10 manufacturer to prove the facts under par. (a) 1. to 3. is conclusive evidence that the
11 manufacturer has violated sub. (1) (a). Failure by the distributor or the employe or
12 agent of the distributor to prove the facts under par. (a) 1. to 3. is conclusive evidence
13 that the distributor has violated sub. (1) (a). Failure by the jobber of the agent or
14 employe of the jobber to prove the facts under par. (a) 1. to 3. is conclusive evidence
15 that the jobber has violated sub. (1) (a). Failure by the subjobber or the agent or
16 employe of the subjobber to prove the facts under par. (a) 1. to 3. is conclusive
17 evidence that the subjobber has violated sub. (1) (a). Failure by the agent or employe
18 of an independent contractor of a retailer, manufacturer, distributor, jobber or
19 subjobber to prove the facts under par. (a) 1. to 3. is conclusive evidence that the
20 independent contractor has violated sub. (1) (a).

21 **SECTION 61.** 254.922 of the statutes is created to read:

22 **254.922 Assessment of forfeitures; appeal; judicial review.** (1) The
23 department may directly assess forfeitures provided for under s. 254.914 (7) or
24 254.92 (4). If the department determines that a forfeiture should be assessed for a
25 particular violation or for failure to correct it, the department shall send a notice of

1 assessment to the alleged violator. The notice shall specify the amount of the
2 forfeiture assessed, the violation and the statute or rule alleged to have been violated
3 and shall inform the alleged violator of the right to hearing under sub. (3).

4 (2) A forfeiture may be assessed for each day of the period during which the
5 violation occurred.

6 (3) All forfeitures shall be paid to the department within 10 days after receipt
7 of notice of assessment or, if the forfeiture is contested under sub. (4), within 10 days
8 after receipt of the final decision after exhaustion of administrative review, unless
9 the final decision is appealed. The department shall remit all forfeitures paid to the
10 state treasurer for deposit in the school fund.

11 (4) A person who is assessed a forfeiture under sub. (1) may contest the
12 assessment of the forfeiture by sending, within 10 days after receipt of notice of a
13 contested action, a written request for hearing under s. 227.44 to the division of
14 hearings and appeals in the department of administration. The administrator of the
15 division may designate a hearing examiner to preside over the case and recommend
16 a decision to the administrator under s. 227.46. The decision of the administrator
17 of the division shall be the final administrative decision. The division shall
18 commence the hearing within 30 days after receipt of the request for hearing and
19 shall issue a final decision within 15 days after the close of the hearing. Proceedings
20 before the division are governed by ch. 227. In any petition for judicial review of a
21 decision by the division, the party, other than the petitioner, who was in the
22 proceeding before the division shall be the named respondent.

23 (5) (a) All administrative remedies shall be exhausted before an agency
24 determination under this subchapter shall be subject to judicial review. Final
25 decisions after hearing shall be subject to judicial review exclusively as provided in

1 s. 227.52, except that any petition for review of department action under this
2 subchapter shall be filed within 15 days after receipt of notice of the final agency
3 determination.

4 (b) The court may stay enforcement under s. 227.54 of the department's final
5 decision if a showing is made that there is a substantial probability that the party
6 seeking review will prevail on the merits and will suffer irreparable harm if a stay
7 is not granted, and that the party will meet the requirements of this subchapter and
8 the rules promulgated under this subchapter during such stay.

9 (c) The attorney general may delegate to the department the authority to
10 represent the state in any action brought to challenge department decisions prior to
11 exhaustion of administrative remedies and final disposition by the department.

12 **(6)** The attorney general may bring an action in the name of the state to collect
13 any forfeiture imposed under this subchapter if the forfeiture has not been paid
14 following the exhaustion of all administrative and judicial reviews. The only issue
15 to be contested in any such action shall be whether the forfeiture has been paid.

16 **SECTION 62.** 778.25 (1) (a) 4. of the statutes, as affected by 1995 Wisconsin Act
17 77, is amended to read:

18 778.25 **(1)** (a) 4. Under s. ~~48.983~~ 254.92 (2) brought against a minor in the court
19 assigned to exercise jurisdiction under chs. 48 and 938.

20 **SECTION 63. Initial applicability; health and social services.**

21 (1) CIGARETTE AND TOBACCO PRODUCTS RETAILER LICENSE. The treatment of
22 section 134.65 (title), (1), (2) (a) and (b), (3), (4) and (5) of the statutes first applies
23 to new or renewed licenses issued under section 254.914 of the statutes, as affected
24 by this act, on July 1, 1996.

