

## TOBACCO CONTROL BOARD

<b>Budget Summary</b>							
Fund	1998-99 Base Year Doubled	1999-01 Governor	1999-01 Jt. Finance	1999-01 Legislature	1999-01 Act 9	Act 9 Change Over Base Year Doubled Amount	Percent
SEG	\$0	\$0	\$0	\$25,992,000	\$23,500,000	\$23,500,000	N.A.

<b>FTE Position Summary</b>						
Fund	1998-99 Base	2000-01 Governor	2000-01 Jt. Finance	2000-01 Legislature	2000-01 Act 9	Act 9 Change Over 1998-99 Base
SEG	0.00	0.00	0.00	2.00	2.00	2.00

### Budget Change Items

#### 1. TOBACCO SETTLEMENT REVENUES [LFB Paper 455]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR-REV			
1998-99	\$49,728,900	-\$49,728,900	\$0
1999-00	136,839,600	48,192,300	185,031,900
2000-01	<u>152,068,600</u>	<u>- 3,083,800</u>	<u>148,984,800</u>
TOTAL	\$338,637,100	-\$4,620,400	\$334,016,700

**Governor:** Estimate revenues of \$338,637,100 in tobacco settlement monies to be deposited to the general fund as follows: (a) \$49,728,900 in 1998-99; (b) \$136,839,600 in 1999-00; and (c) \$152,068,600 in 2000-01. These amounts are reflected in the bill's general fund condition statement. Estimated 1998-99 revenues are reflected in the opening balance, while 1999-00 and 2000-01 revenues are reflected under estimated departmental revenues.

On November 23, 1998, Wisconsin and 45 other states signed a settlement agreement with the tobacco industry. This agreement settled a lawsuit that Wisconsin filed against the tobacco industry on February 5, 1997. Under the agreement, Wisconsin is estimated to receive \$338.6

million by June 30, 2001 (through the year 2025, Wisconsin is estimated to receive \$5.9 billion). In addition, legal fees for Department of Justice and private attorneys involved with the suit will be paid from separate funds. Initial payments will be disbursed to Wisconsin the earlier of June 30, 2000, or once 80 percent of the 46 states have obtained state-specific finality and those states represent 80 percent of the payments. State-specific finality occurs when a state's case has achieved an official court dismissal and the time for appeal has expired. Wisconsin's suit was officially dismissed on December 4, 1998, and the time for appeal has expired. Therefore, Wisconsin has achieved state-specific finality. However, recent appeals in New York, New Jersey and California make it likely that the initial payment will not be made before June 30, 2000.

**Joint Finance/Legislature:** Reestimate tobacco settlement revenues by -\$49,728,900 in 1998-99, \$48,192,300 in 1999-00 and -\$3,083,800 in 2000-01 to reflect the anticipated receipt of the first tobacco settlement payment on June 30, 2000, and to reestimate payments in 1999-00 and 2000-01.

**2. STATEWIDE TOBACCO CONTROL PROGRAM [LFB Paper 455]**

	<b>Jt. Finance (Chg. to Base)</b>		<b>Legislature (Chg. to JFC)</b>		<b>Veto (Chg. to Leg.)</b>		<b>Net Change</b>	
	<b>Funding</b>	<b>Positions</b>	<b>Funding</b>	<b>Positions</b>	<b>Funding</b>	<b>Positions</b>	<b>Funding</b>	<b>Positions</b>
GPR-REV	- \$29,092,000		\$3,100,000		\$2,492,000		- \$23,500,000	
SEG-REV	29,092,000		- 3,100,000		- 2,492,000		23,500,000	
SEG	\$0	0.00	\$25,992,000	2.00	- \$2,492,000	0.00	\$23,500,000	2.00

**Joint Finance:** Establish a segregated, nonlapsible tobacco control fund to support activities related to a statewide, comprehensive tobacco control program, as follows.

*Segregated Fund.* Specify that the first \$2,492,000 of tobacco settlement revenues received in 1999-00 and the first \$26,600,000 of tobacco settlement revenues received in 2000-01 and annually thereafter would be deposited in the tobacco control fund.

*Expenditures.* Increase the DHFS budget by \$2,492,000 SEG in 1999-00 and the Joint Finance Committee's program supplements appropriation by \$26,600,000 SEG in 2000-01 to fund a variety of tobacco control activities. (The fiscal effect of this provision is summarized under "Health and Family Services -- Public Health" and "Program Supplements." Create a SEG biennial appropriation to fund state operations and a SEG continuing appropriation to fund specified program activities.

In 1999-00, funding would be used to support: (a) DHFS surveillance activities and administration, including 1.0 SEG epidemiologist position to coordinate surveillance activities and 1.0 SEG program manager position to coordinate program activities and staff the Tobacco

Control Advisory Council (\$400,000); (b) the UW Center for Tobacco Research and Intervention (\$1,000,000); (c) increased funding for the Thomas T. Melvin tobacco prevention and education program (\$1,000,000); and (d) a youth smokeless tobacco cessation and prevention campaign program (\$92,000).

In 2000-01, all funding would be placed in the Joint Finance Committee's program supplements appropriation for release once the Joint Committee on Finance has reviewed and approved the annual budget for a statewide tobacco control program. However, a portion of this funding would be earmarked for the following: (a) the UW Center for Tobacco Research and Intervention (\$1,000,000 in 2000-01 and each year thereafter); (b) increased funding for the Thomas T. Melvin program (\$1,000,000 in 2000-01 and each year thereafter); (c) the Medical College of Wisconsin, for activities directly related to preventing individuals from smoking and assisting smokers to quit smoking (\$500,000 in 2000-01 and each year thereafter); and (d) grants to schools offering instruction in grades six, seven or eight that purchased in calendar year 1998 or after the smoking/tobacco component of the Body Awareness Resources Network (BARN) software (\$150,000 in 2000-01 only).

With respect to the BARN software, require schools to submit a grant application to DHFS in order to be eligible for a grant in an amount not to exceed the costs of the smoking/tobacco component of the BARN software. Further, direct the Department of Public Instruction to coordinate with the software manufacturer and CESA staff training sessions for the use of software in the classroom at no additional cost.

*Limit on Administrative Expenses.* Specify that grant recipients could not expend more than 10% of grant amounts for administrative costs. In addition, beginning July 1, 2000, prohibit DHFS from expending more than 5% of the amounts deposited in the tobacco control fund for the state administration of the statewide tobacco control fund in each fiscal year.

*Tobacco Control Advisory Council.* Create a 20-member Tobacco Control Advisory Council, which would consist of: (a) the Attorney General or his or her designee; (b) one majority party senator, one minority party senator, one majority party representative to the Assembly and one minority party representative to the Assembly, appointed as are the members of standing committees in their respective houses; (c) the DHFS Secretary or his or her designee; (d) the Superintendent of Public Instruction or his or her designee; (e) one physician with expertise in oncology, smoking cessation or public health; (f) one student who is enrolled in an institution within the University of Wisconsin System; (g) two high school students, including at least one minority student; (h) five representatives of organizations that have as their primary organizational mission reducing the health or economic consequences of tobacco use or ameliorating the effects of tobacco use and reducing the incidence of particular diseases or health conditions associated with tobacco use; (i) one local health officer; (j) a member of the Wisconsin Grocer Association; (k) one person who is a minority group member; and (l) a member of the Wisconsin Health and Hospital Association.

Specify that the 13 nonpublic Council members would be appointed by the Governor for three-year terms, except that if a student member loses the status upon which the appointment was based, he or she would no longer be a Council member. Specify that the Governor would appoint one member of the Council to serve as the chairperson. Specify that the Council would meet at least four times per year, eleven members would constitute a quorum and that for the purpose of conducting business and making final recommendations to DHFS, a majority vote of the entire Council is required. Specify that, if the Council creates subcommittees, one subcommittee would address the issue of populations most adversely affected by tobacco.

Specify that the initial nonpublic members of the Council would serve the following terms: (a) four would serve for terms expiring on July 1, 2003; (b) five would serve for terms expiring on July 1, 2002; and (c) four would serve for terms expiring on July 1, 2001.

*Statewide Tobacco Control Program.* Require DHFS to develop a statewide tobacco control program in consultation with the Council. Require the Council to develop program and budget recommendations for a statewide tobacco control program and submit these recommendations to the DHFS Secretary not later than February 1, 2000, and annually thereafter. Require DHFS to review these recommendations and to prepare the detailed annual budget for a statewide tobacco control program. Require DHFS to submit a detailed budget to the Joint Committee on Finance not later than March 1, 2000, and annually thereafter, under a 14-day passive review process.

Require the Council to base its plan on the U.S. Centers for Disease Control's funding allocation recommendations for comprehensive tobacco control programs. In addition, require DHFS and the Council to consider successful tobacco control programs in other states when developing their recommendations. Provide that the annual plan would specify how the tobacco control funds would be distributed and the projected cost of administering the statewide tobacco control program. Finally, require DHFS to solicit input from the Council regarding the selection of specific programs or activities to be funded under the statewide tobacco control program.

Specify that grant funds could be used to support the following activities: (a) community-based programs to reduce tobacco use; (b) community-based programs to reduce the burden of tobacco-related diseases; (c) school-based programs relating to tobacco use cessation and prevention; (d) enforcement of local laws aimed at restricting underage access to tobacco products and reducing exposure to secondhand smoke; (e) partnership grants with statewide organizations and businesses that support activities related to tobacco use cessation and prevention; (f) marketing activities that promote tobacco use cessation and prevention; (g) projects designed to reduce tobacco use among minorities and pregnant women; (h) other tobacco use cessation programs; and (i) surveillance of indicators of tobacco use and evaluation activities.

*Reporting Requirements.* Require DHFS to submit to the Governor and Legislature, no later than September 1, 2002, and annually thereafter, a report that evaluates the success of the

program. Require the report to include the number of grants awarded during the preceding fiscal year, the purpose for which each grant was made and the donations and grants accepted by the Board.

*Audits of the Medical College of Wisconsin and the UW Center for Tobacco Research and Intervention.* Beginning July 1, 2001, require the Legislative Audit Bureau (LAB) to conduct a financial audit of the Medical College of Wisconsin that examines the use of funds provided to MCW from the tobacco control fund and to file its report by June 30, 2002. Beginning July 1, 2000, require LAB to conduct a financial audit of the UW Tobacco Research and Intervention Center that examines the use of funds provided to UW from the tobacco control fund and to file its report by June 30, 2001.

**Assembly:** Modify Joint Finance provisions as follows.

*Segregated Fund.* Reduce the amount of funding transferred from the general fund to the segregated fund from \$2,092,000 to \$400,000 in 1999-00 and from \$26,600,000 to \$14,600,000 in 2000-01. Specify that, beginning in 2001-02, \$13,000,000 would be transferred annually to the segregated fund. This funding would be released by the Joint Committee on Finance under the same conditions specified in the substitute amendment. Rename the tobacco control fund the "cigarette use and resistance education" (CURE) fund.

*Expenditures.* Reduce the DHFS budget by \$2,092,000 SEG in 1999-00 and increase the DHFS budget by \$1,500,000 SEG in 2000-01 to: (a) delete all funding for programs supported by the segregated fund in 1999-00, except funding to support DHFS surveillance activities and administration (\$400,000); and (b) budget funding in DHFS in 2000-01 to support a grant to the UW Center for Tobacco Research (\$500,000), increased support for the Thomas T. Melvin program (\$500,000), a grant to the Medical College of Wisconsin to support smoking cessation and prevention activities (\$500,000) and agricultural diversification grants distributed by DATCP to provide assistance to tobacco farmers (\$100,000). Create an annual SEG appropriation in DATCP for this purpose.

Reduce funding in the Joint Committee on Finance supplemental appropriation from \$26,600,000 SEG in 2000-01 to \$13,000,000 SEG to reflect a reestimate of the amount of funding not budgeted in other agencies that would be available for grants, subject to approval of a plan submitted by DHFS by the Joint Committee on Finance. The fiscal effect of these changes are summarized under "Health and Family Services -- Public Health," "Agriculture, Trade and Consumer Protection," "Program Supplements," and "University of Wisconsin System."

*Study to Sell the State's Rights to Tobacco Settlement Revenues.* Direct the Department of Administration to study the idea of selling and transferring the state's rights to the tobacco settlement revenues for the purpose of establishing an endowment fund. Require DOA to submit the study to the Legislature by January 1, 2000.

**Senate:** Modify the Joint Finance provisions as follows.

*Segregated Fund.* Increase the amount of general fund revenues that would be transferred to the tobacco control fund by \$2,000,000 in 2000-01, so that \$28,600,000, rather than \$26,600,000, would be transferred to the fund in that year and in each year thereafter.

*Expenditures.* Provide \$2,492,000 SEG in 1999-00 and \$28,600,000 SEG in 2000-01 to support activities of, and grants distributed by the Tobacco Control Board. In 1999-00, this funding would be used to support the same programs that would be funded under the substitute amendment. However, this funding would be budgeted in the Board's appropriations, rather than in DHFS. Provide 2.0 SEG positions for the Board, rather than DHFS, beginning in 1999-00. In 2000-01, earmark a portion of the grant funds for the same purposes specified in the substitute amendment.

Reduce DHFS funding by \$2,492,000 SEG in 1999-00 and funding budgeted in the Joint Committee on Finance program supplements appropriation by \$26,600,000 in 2000-01 to reflect that all funding would be budgeted in the Board's budget. Create three appropriations to support the activities of the Board: (a) a biennial general program operations appropriation; (b) a continuing appropriation for grants; and (c) a continuing PR appropriation to authorize the Board to expend moneys received as gifts and grants. The fiscal effect of deleting funding budgeted in the substitute amendment for DHFS and the Joint Committee on Finance program supplements appropriation is summarized under "Health and Family Services – Public Health" and "Program Supplements."

*Create Board.* Modify the Joint Finance provisions relating to the Tobacco Advisory Council by: (a) converting the Advisory Council to an independent Board; (b) requiring the Superintendent of Public Instruction to serve on the Board, rather than permitting his or her designee to serve; (c) specifying that the physician could have expertise in cardiovascular disease as a qualification to serve on the Board; (d) specifying that one member would be a retailer who sells tobacco products, rather than a member of the Wisconsin Grocer Association; and (e) specifying that one member would be a representative of a hospital, rather than a member of the Wisconsin Health and Hospital Association. Specify that ten members, rather than 11 members, would constitute a quorum.

Delete Joint Finance provisions relating to the Council's and DHFS responsibilities. Instead, require the Board to: (a) appoint an Executive Director within the classified service who would employ staff within the classified service with appropriate programmatic and technical expertise; (b) administer the grant program; (c) promulgate rules establishing criteria for grant recipients, including performance-based standards for grant recipients that propose to use the grant for media efforts; (d) provide a forum for the discussion, development and a recommendation of public policy alternatives in the field of smoking cessation and prevention; (e) provide a clearinghouse of information on matters relating to tobacco issues and how they are being met in different places throughout the nation such that both lay and professional

groups in the field of government, health care and education may have additional avenues for sharing experiences and interchanging ideas in the formulation of public policy on tobacco; and (f) develop and prepare an annual plan regarding the allocation of funding for a statewide tobacco control program, based on successful tobacco control programs in other states and the recommendations of the U.S. Centers for Disease Control.

Require the DHFS Secretary to submit to the DOA Secretary the proposed budget of the Board, as it was prepared by the Board, to the extent that it meets DOA requirements.

Authorize the Board to accept for any of its purposes any donations and grants for money, equipment, supplies, materials and services from any person.

*Grants.* Expand the purposes specified in the substitute amendment for which grants could be used to include the development of policies that restrict access to tobacco products and reduce exposure to environmental tobacco smoke.

*Reports.* Require the Board to submit to the Governor and the Legislature, no later than July 1, 2001, and annually thereafter, a report that evaluates the success off the grant program. Require the report to include the number of grants awarded during the preceding fiscal year, the purpose for which each grant was made and the donations and grants accepted by the Board.

**Conference Committee/Legislature:** Adopt the Senate provisions with the following modifications. First, reduce total funding budgeted for the Board from \$28.6 million SEG to \$23.5 million SEG in 2000-01. Second, reduce the annual amount of revenue that would be transferred from the general fund to the tobacco control fund, beginning in 2000-01, from \$28.6 million to \$23.5 million. Third, attach the Board to DHFS for limited administrative support services (budgeting, program coordination and related management functions). Fourth, delete the provision that would prohibit the Board from expending more than 5% of the amounts deposited in the tobacco control fund for administration of the statewide tobacco control program in each fiscal year because the bill would place funding for the Board's administration in a separate appropriation. Fifth, correct a reference to DHFS and clarify that the Board's staff would be classified positions by deleting a reference to staff in the unclassified service.

In addition, include the Assembly provision that would direct DOA to study the idea of selling and transferring the state's rights to the tobacco settlement revenues for the purpose of establishing an endowment fund.

Under the enrolled bill, a total of \$2,492,000 SEG in 1999-00 would be provided to: (a) fund the University of Wisconsin Center for Tobacco Research and Intervention (\$1.0 million); (b) increase support for the Thomas T. Melvin program (\$1.0 million); (c) fund a youth smokeless tobacco campaign (\$92,000); and (d) support the Board's administrative and operating costs (\$400,000). Beginning in 2000-01, a total of \$23.5 million would be available to support: (a) the University of Wisconsin Center for Tobacco Research and Intervention (\$1.0 million); (b)

increased funding for the Thomas T. Melvin program (at least \$1.0 million annually); (c) the Medical College of Wisconsin for tobacco use prevention and cessation activities (\$500,000); and (d) the Board's administrative and operating costs (\$400,000). The rest of the funding budgeted in 2000-01 (up to \$20.6 million annually) would be available for the Board to award as grants to public and private organizations for authorized purposes.

**Veto by Governor [C-19]:** Modify provisions in the enrolled bill as follows.

*Program Funding.* Delete the amount appropriated for the Board's operations in 1999-00 (\$400,000) and insert a lower amount (\$200,000). In addition, delete the amount appropriated for grants in 2000-01 (\$23,100,000) and insert a lower amount (\$20,808,000). The Governor's partial vetoes do not affect provisions in Enrolled AB 133 that earmark a portion of the grant funding for specific projects. Consequently, the effect of the Governor's partial vetoes is to reduce funding for the Board's program operations by \$200,000 in 1999-00 and reduce funding for grants that would be provided on a competitive basis by \$2,292,000 in 2000-01.

The following table summarizes the funding provided in Act 9 for the Tobacco Control Board.

	Act 9	
	<u>1999-00</u>	<u>2000-01</u>
State Operations	\$200,000	\$400,000
Grants		
UW Center for Tobacco Research	\$1,000,000	\$1,000,000
Thomas T. Melvin Program	1,000,000	1,000,000
Youth Smokeless Tobacco Campaign	92,000	0
Medical College of Wisconsin	0	500,000
Competitive Grants	<u>0</u>	<u>18,308,000</u>
Subtotal	\$2,092,000	\$20,808,000
Grand Total	\$2,292,000	\$21,208,000

*Transfers to the Segregated Fund.* Delete references to the \$2,492,000 amount that would be transferred in 1999-00 and references to transfers in subsequent years. Consequently, the Governor's partial veto creates a single transfer of \$23,500,000 in 1999-00 from moneys the state receives from the tobacco settlement to the segregated tobacco control fund. This amount equals the total funding that would be budgeted from the fund to support the Board's expenditures in the 1999-01 biennium.

*Board Composition, Operations and Plan Requirements.* Delete: (a) the provision that requires the DHFS Secretary to submit the Board's budget request exactly as it was prepared by the Board to the extent that it comports with DOA requirements; (b) all of the specifications relating to Board membership, including the number of persons who would serve on the Board, qualifications for Board members and length of service on the Board; and (c) provisions relating

to the Board's meeting procedures. In addition, delete the requirement that the Board's annual plan be based on successful tobacco control programs in other states and the recommendations of the U.S. Centers for Disease Control regarding the allocation of funding for comprehensive tobacco control programs.

*DOA Study.* Delete the January 1, 2000, deadline for DOA to submit a study on the idea of selling and transferring Wisconsin's rights to the tobacco settlement funds for the purpose of creating a permanent endowment fund.

[Act 9 Sections: 30d, 250m, 294g, 457m, 698m, 717t, 2486g, 9101(20c), 9131(2g) and 9158(9c)]

[Act 9 Vetoed Sections: 30d, 172 (as it relates to 20.436(1)(tb)&(tc)), 717t, 2486g, 9101(20c) and 9158(llmg)]

### 3. INVESTIGATIONS OF THE SALE OF TOBACCO PRODUCTS TO MINORS

**Governor:** Create session law language, to be retroactively effective on February 28, 1999, requiring the Department of Administration (DOA) to submit instructions to the Legislative Reference Bureau by March 1, 1999, to draft legislation authorizing the development of a statewide protocol for licensing authorities and law enforcement agencies in conducting compliance surveys to determine the prevalence of illegal retail sales of tobacco products to underage individuals. Require DOA to submit the proposed legislation to the Co-chairs of the Joint Committee on Finance no later than April 1, 1999.

Under federal law, states are required to take steps to reduce the sale of tobacco products to minors, including performing random, unannounced inspections of licensed tobacco vendors to determine the percentage of vendors who sell to minors, and to reduce the percentage of vendors who sell to minors to less than 20% by the year 2001. The U.S. Department of Health and Human Services is authorized to withhold 40% of a state's substance abuse prevention and treatment (SAPT) block grant if a state fails to comply with this requirement.

**Joint Finance:** Delete provision as non-fiscal policy.

**Assembly:** Create a new subchapter under Chapter 254 relating to investigations of the sale or gift of cigarettes or tobacco products to minors. In creating this subchapter, authorize DHFS to contract with local health departments, as agents of DHFS, with a state agency or with law enforcement agencies of the state or of a county, city, village or town, to cause unannounced investigations to be conducted annually at retail outlets, including sites of tobacco vending machines, to survey overall levels of compliance with the prohibition to sell tobacco products to minors.

*Development of the Compliance Survey.* In developing the compliance survey, specify the following:

- Except for any survey conducted as required by the U.S. Food and Drug Administration, require that any survey conducted under this new subchapter cover a range of retail outlets that are not preselected on the basis of prior violations, in order to measure the overall levels of compliance, as well as to identify violations;

- Require that the survey be conducted so as to provide a sample of retail outlets that reflects the distribution of minors throughout the state and the distribution of the retail outlets throughout the state where minors are likely to attempt to purchase cigarettes;

- Specify that the survey include all types of retail outlets prohibited to sell or provide cigarettes or tobacco products to minors;

- Require DHFS to use statistically sound sampling techniques in designing the annual surveys so as to measure overall levels of compliance; and

- Require DHFS to stratify the sample so as to measure compliance by type of retail outlet, including a private place of business other than a retail establishment and a barroom.

*Conducting Investigations.* Require DHFS, in consultation with retailers, to establish standards for procedures and training for conducting unannounced investigations for the survey. Additionally, specify the following.

- With the permission of his or her parent or guardian, a person under 18 years of age, but not under 15 years of age, may buy, attempt to buy or possess any cigarette or tobacco product if: (a) the person commits the act for the purpose of conducting an investigation under this provision; (b) the person is directly supervised during the investigation by an adult employe of a governmental regulatory authority; and (c) the person has prior written authorization to commit the act from a governmental regulatory authority or a district attorney or from an authorized agent of a governmental regulatory authority or a district attorney.

- If questioned about his or her age during the course of an investigation, a minor participating in the investigation must state his or her true age.

- A minor may not be used for the purposes of an investigation at a retail outlet at which the minor is a regular customer.

- The appearance of the minor participating in the investigation may not be materially altered so as to indicate greater age.

- A photograph or videotape of the minor participating in the investigation must be made before and after the investigation or series of investigations, and must be retained for two years.

- Except for investigations conducted under the federal substance abuse prevention and treatment (SAPT) block grant, within 24 hours of completion of a sale or other distribution of cigarettes or tobacco products, the employe of the agency supervising the minor must inform

the person who sold or distributed the cigarettes or tobacco products to the minor of the investigation.

- The results of the investigation, including the issuance of any citation by a governmental regulatory authority for a violation that occurs during an investigation, must be made known to the retailer or the retailer's employe or agent within 24 hours after the occurrence of the violation, except when the investigation was conducted under the federal SAPT block grant.

- Except for investigations conducted under the federal SAPT block grant requirements or as required by the U.S. Food and Drug Administration, within seven days after the conduct of an investigation under this provision, the governmental regulatory authority must report to DHFS and the retailer the following: (a) the name and position of the authority's employe who directly supervised the investigation; (b) the date of birth of the minor participating in the investigation; (c) the date and time of the investigation; (d) a reasonably detailed description of the circumstances giving rise to the violation, if any, or, if there is no violation, written notice to that effect; and (e) any other relevant information requested by DHFS.

*Results of the Investigations.* Require DHFS to strive annually to negotiate with the federal Department of Health and Human Services (DHHS) realistic and attainable interim performance targets for compliance with federal requirements regarding the SAPT block grant regarding restricting minors' access to tobacco products.

Require DHFS to compile the results of investigations performed under this provision and prepare an annual report that reflects the results for submission with the state's application for the federal SAPT block grant. Such a report must be published for public comment at least sixty days before DHFS begins negotiations with the federal DHHS, as required above.

*Enforcement.* Specify the following.

- An investigation conducted by a governmental regulatory authority must be conducted in strict conformity with this provision. No results of an investigation conducted under this provision may be included in the compliance survey, if it is proved that the requirements under this section were not met in conducting the investigation.

- No evidence obtained during or otherwise arising from the course of an investigation that is used to prosecute a person for selling or providing cigarettes or other tobacco products to a minor may be used in the prosecution of an alleged violation allowing a minor on to premises licensed for retail sale of alcohol.

- Require DHFS to provide education and training to governmental regulatory authorities to ensure uniformity of enforcement under this provision.

- These provisions would not limit DHFS authority to investigate establishments in the jurisdiction of the governmental regulatory authority if DHFS investigates in response to an emergency, for the purpose of monitoring and evaluating the authority's investigation and enforcement program, or at the request of the governmental regulatory authority.

- If an interested person appeals an investigation alleging that the person making the investigation has a financial interest in a regulated cigarette and tobacco product retailer, tobacco vending machine operator, tobacco vending machine premises or tobacco vending machine which may interfere with his or her ability to properly take that action, specify that DHFS must hold an administrative hearing in lieu of a municipal administrative hearing.

*Current Provisions Regarding Purchase or Possession of Tobacco Products by Minors.* Renumber current provisions in Chapter 938 (the Juvenile Justice Code) regarding minors' purchasing or possessing tobacco products to include these provisions under the new subchapter created under this provision instead and modify the corresponding cross-references.

Delete the current provision which authorizes a county, town, village or city to adopt an ordinance regulating the purchase or possession of tobacco products by minors only if such an ordinance strictly conforms to the current provisions. Delete the provisions that specifies that a county ordinance adopted under these provisions does not apply within any town, village or city that has adopted or adopts its own ordinance under these provisions. The provision does not delete a similar provision regarding the sale or distribution of tobacco products to minors.

*Definition.* Create definitions for "cigarette," "governmental regulatory authority," "law enforcement officer," "retailer," "retail outlet," "state agency," "tobacco products," "tobacco vending machine," "tobacco vending machine operator" and "tobacco vending machine premises" that apply to this subchapter.

**Conference Committee/Legislature:** Adopt the Assembly provision with the following modifications:

- Specify that no retailer may be subject to unannounced investigations more than twice annually for the purposes of enforcing the prohibition against the sale of tobacco products to minors unless that retailer is found in violation of the prohibition during both investigations. In this case, there would be no limit on the number of unannounced investigations of that retailer.

- Specify that a photograph or videotape of a minor participating in an unannounced investigation must be taken on the day the minor participates in the investigation or series of investigations and, if a prosecution results from the investigation, the photograph or videotape must be kept on file until there is a final disposition in the case. This photograph or videotape may be taken either before or after the investigation or series of investigations are conducted.

- Specify that a barroom would not be included as a private place of business to be included in the sample of establishments to be investigated.

- Specify that the owner or employer of the agency licensed to sell tobacco products be notified within 72 hours of a violation, rather than 24 hours as required by the Assembly provision. Delete the provision that would require that the person who sold or distributed the tobacco products to the minor be notified within 24 hours of a violation. Further, specify that the agency conducting the investigation would meet this requirement if it makes a good-faith effort to notify the owner or employer of the violation.
- Specify that agencies must notify DHFS and the retailer within ten days, rather than seven days, of an unannounced investigation and the results of that investigation, including if no violation was found, written notice to that effect.
- Specify that, in reporting the results of an investigation to DHFS and the retailer, the agency would be required to include the minor's age, rather than the minor's date of birth, as required under the Assembly provision.
- Specify that the requirements regarding the development of the compliance survey, conducting of investigations and notification of the results of investigations and enforcement activities would not apply to local efforts to survey compliance with the prohibition against selling tobacco products to minors. Specify that information obtained from unannounced investigations conducted as part of local efforts to survey compliance rates cannot be used for enforcement proceedings against a retailer, including the issuance of warnings or citations or be included in the limit on the number of investigations to be conducted annually.
- Specify that the requirements included in the provision would not apply to investigations conducted by the City of Madison, its health department or law enforcement agency within its jurisdictional area.

**Veto by Governor [C-9]:** Delete provisions that would have provided an exemption from the new requirement for investigations conducted by the City of Madison and its agencies and investigations conducted by local units of government for survey purposes only. Further, delete provisions that would require that DHFS be notified of certain information within ten days of an investigation. Finally, delete the provision that would exclude barrooms from other private places of business that would be subject to compliance surveys.

[Act 9 Sections: 2033p, 2165mr thru 2165p, 2353sm, 2485g thru 2485L, 3072g and 3176m thru 3176t]

[Act 9 Vetoed Section: 2485j]