



2013 ASSEMBLY BILL 481

November 1, 2013 - Introduced by Representatives BIES, BERCEAU, BERNARD SCHABER, BEWLEY, BILLINGS, GENRICH, GOYKE, HESSELBEIN, HULSEY, KAHL, KOLSTE, KRUG, T. LARSON, MASON, MURPHY, OHNSTAD, A. OTT, RICHARDS, RIEMER, RINGHAND, SARGENT, SPIROS, TITTL and WRIGHT, cosponsored by Senators HARRIS, CARPENTER, HANSEN, LEHMAN and SHILLING. Referred to Committee on State Affairs and Government Operations.

1 **AN ACT to amend** 73.01 (4) (a), 134.66 (4) (a) 1., 139.30 (1m), 139.75 (5d), 139.75
2 (12), 139.76 (1), 139.78 (1), 139.78 (2), 139.803 (intro.), 139.805 and 139.82 (8);
3 and **to create** 134.66 (2) (f), 139.75 (4b), 139.75 (9n), 139.75 (14), 139.76 (3),
4 139.761 and 139.78 (3m) of the statutes; **relating to:** a minimum tax on tobacco
5 products, placement of cigarettes or tobacco products by retailers, and
6 providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the excise tax rate on tobacco products sold in this state is 71 percent of the manufacturer's list price to distributors, except that the tax rate on moist snuff sold in this state is 100 percent of the manufacturer's list price to distributors. Under current law, the maximum tax on cigars is 50 cents for each cigar.

This bill increases the tobacco products tax rate on tobacco products, not including moist snuff, to 84 percent of the manufacturer's list price to distributors and eliminates the maximum rate on cigars of 50 cents on each cigar. Under the bill, however, the excise tax rate on tobacco products sold or consumed in this state is the greater of the rate based on the manufacturer's list price or the rate determined as follows:

1. For a package of four cigars, an amount equal to the amount of the cigarette excise tax (cigarette tax) imposed on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.

ASSEMBLY BILL 481

2. For single-unit tobacco products, on each single-use unit, an amount equal to the cigarette tax imposed on one cigarette.

3. For any smokeless tobacco product that consists of loose tobacco, including moist snuff, on 1.2 ounces, an amount equal to the cigarette tax imposed on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.

4. For any loose tobacco that is intended for smoking, on 0.65 ounce, an amount equal to the cigarette tax imposed on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.

5. For any other tobacco product, on each package or container, an amount equal to the cigarette tax imposed on a pack of 20 cigarettes.

Under current law the cigarette tax is 12.6 cents per cigarette (\$2.52 for a pack of 20 cigarettes). Under current law, an inventory tax is imposed on cigarettes held in inventory for sale or resale so that, if the cigarette tax rate increases, the person holding cigarettes in inventory must pay the increase on those cigarettes. The bill creates an inventory tax on tobacco products held in inventory for sale or resale so that, if the tobacco products tax rates increase, the person holding tobacco products must pay the increase on those products.

Under current law, for cigarette tax purposes, a cigarette is defined as any roll of tobacco wrapped in paper or any substance other than tobacco. Under the bill, a cigarette is defined as any roll of tobacco weighing not more than 4.5 pounds per thousand that is wrapped in paper or any substance other than tobacco or that is wrapped in any substance containing tobacco that, because of the type of tobacco used in the filter or because of its appearance, size, packaging, pricing, or marketing, is likely to be offered to, purchased by, or consumed by individuals as a cigarette, regardless of how the roll of tobacco is labeled, but not including any roll of tobacco that is wrapped in whole tobacco leaf and does not have a filter.

Under current law, for purposes of the tax imposed on tobacco products, moist snuff is defined as any finely cut, ground, or powdered smokeless tobacco that is intended to be placed or dipped in the mouth. Under the bill, moist snuff is defined as any finely cut, ground, or powdered smokeless tobacco, or blend containing tobacco, that is intended for oral consumption without being lit.

Under current law, a retailer of cigarettes or tobacco products must obtain a license from the city, village, or town in which the sales take place. Current law also imposes certain restrictions on a retailer's sale of cigarettes or tobacco products. This bill creates a new restriction by allowing a retailer to place the cigarettes or tobacco products only in locations that are inaccessible to customers without the assistance of the retailer or the retailer's employee or agent. The bill specifies that an allowable location includes behind the counter or in a locked case. The bill's restriction does not apply to cigarettes or tobacco products sold in a vending machine or at a business where individuals under the age of 18 are prohibited from entering. Current law imposes restrictions on sales from a vending machine that this bill does not affect.

A retailer who violates the bill's restriction is subject to the same penalties that apply to violations of certain restrictions that apply under current law to retailers of cigarettes or tobacco products. Those penalties include: 1) a forfeiture of not more than \$500, if the retailer has committed a previous violation within 12 months; 2) a

ASSEMBLY BILL 481

forfeiture of not less than \$200 nor more than \$500, if the retailer has not committed a previous violation within 12 months; and 3) suspension of the retailer's license for a period of time that depends on the number of previous violations committed by the retailer.

For further information see the *state* 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.** 73.01 (4) (a) of the statutes is amended to read:

2 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
3 the commission shall be the final authority for the hearing and determination of all
4 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
5 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4)
6 (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555,
7 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.761, 139.78, 341.405,
8 and 341.45, subch. XIV of ch. 71, and subch. VII of ch. 77. Whenever with respect
9 to a pending appeal there is filed with the commission a stipulation signed by the
10 department of revenue and the adverse party, under s. 73.03 (25), or the department
11 of transportation and the adverse party agreeing to an affirmance, modification, or
12 reversal of the department of revenue's or department of transportation's position
13 with respect to some or all of the issues raised in the appeal, the commission shall
14 enter an order affirming or modifying in whole or in part, or canceling the assessment
15 appealed from, or allowing in whole or in part or denying the petitioner's refund
16 claim, as the case may be, pursuant to and in accordance with the stipulation filed.
17 No responsibility shall devolve upon the commission, respecting the signing of an
18 order of dismissal as to any pending appeal settled by the department of revenue or
19 the department of transportation without the approval of the commission.

ASSEMBLY BILL 481

1 **SECTION 2.** 134.66 (2) (f) of the statutes is created to read:

2 134.66 (2) (f) A retailer may place cigarettes or tobacco products only in
3 locations that are inaccessible to customers without the assistance of the retailer or
4 the retailer's employee or agent, including behind the counter or in a locked case.
5 This paragraph does not apply to cigarettes or tobacco products sold from a vending
6 machine or at a business where individuals who are less than 18 years old are
7 prohibited from entering.

8 **SECTION 3.** 134.66 (4) (a) 1. of the statutes is amended to read:

9 134.66 (4) (a) 1. In this paragraph, "violation" means a violation of sub. (2) (a),
10 (am), (cm), ~~or (e), or (f)~~ or a local ordinance which strictly conforms to sub. (2) (a), (am),
11 (cm), ~~or (e), or (f)~~.

12 **SECTION 4.** 139.30 (1m) of the statutes is amended to read:

13 139.30 (1m) "Cigarette" means any roll of tobacco weighing not more than 4.5
14 pounds per thousand that is wrapped in paper or any substance other than tobacco
15 or that is wrapped in any substance containing tobacco that, because of the type of
16 tobacco used in the filter or because of its appearance, size, packaging, pricing, or
17 marketing, is likely to be offered to, purchased by, or consumed by individuals as a
18 cigarette, regardless of how the roll of tobacco is labeled, but not including any roll
19 of tobacco that is wrapped in whole tobacco leaf and does not have a filter.

20 **SECTION 5.** 139.75 (4b) of the statutes is created to read:

21 139.75 (4b) "Dry pipe tobacco" means tobacco that is labeled as pipe tobacco
22 but, because of its moisture content and pricing, is likely to be offered to, purchased
23 by, or consumed by individuals as tobacco for rolling cigarettes.

24 **SECTION 6.** 139.75 (5d) of the statutes is amended to read:

ASSEMBLY BILL 481

1 139.75 (5d) “Moist snuff” means any finely cut, ground, or powdered smokeless
2 tobacco, or blend containing tobacco, that is intended to be placed or dipped in the
3 mouth for oral consumption without being lit, not including any single-unit tobacco
4 product.

5 **SECTION 7.** 139.75 (9n) of the statutes is created to read:

6 139.75 (9n) “Single-unit tobacco product” means any tobacco product other
7 than a cigarette or cigar that is is offered in discrete single-use tablets, lozenges,
8 pouches, pills, or other single dose or single unit, or in packages of such single-use
9 doses or units.

10 **SECTION 8.** 139.75 (12) of the statutes is amended to read:

11 139.75 (12) “Tobacco products” means cigars; cheroots; stogies; periques;
12 granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff,
13 including moist snuff; single-unit tobacco products; snuff flour; cavendish; plug and
14 twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings,
15 cuttings and sweepings of tobacco and ~~other kinds and forms of tobacco prepared in~~
16 ~~such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both~~
17 ~~for chewing and smoking~~ any other product containing, or made or derived from,
18 tobacco that is intended for human consumption, regardless of whether it is chewed,
19 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by other means;
20 but “tobacco products” does not include cigarettes, as defined under s. 139.30 (1m),
21 or any tobacco product that the federal Food and Drug Administration has approved
22 for sale as a tobacco cessation or tobacco dependence product, or for another medical
23 purpose, and that is being marketed and sold solely for the approved purpose.

24 **SECTION 9.** 139.75 (14) of the statutes is created to read:

ASSEMBLY BILL 481**SECTION 9**

1 139.75 (14) "Wet pipe tobacco" means tobacco that is intended for smoking in
2 a pipe and that is not suitable or practical for use in rolling cigarettes because of its
3 moisture content and pricing.

4 **SECTION 10.** 139.76 (1) of the statutes is amended to read:

5 139.76 (1) An Except as provided in sub. (3), an excise tax is imposed upon the
6 sale, offering or exposing for sale, possession with intent to sell or removal for
7 consumption or sale or other disposition for any purpose of tobacco products by any
8 person engaged as a distributor of them at the rate, for tobacco products, not
9 including moist snuff, of 71 ~~84~~ percent of the manufacturer's established list price
10 to distributors without diminution by volume or other discounts on domestic
11 products and, for moist snuff, at the rate of 100 percent of the manufacturer's
12 established list price to distributors without diminution by volume or other discounts
13 on domestic products. ~~The tax imposed under this subsection on cigars shall not~~
14 ~~exceed an amount equal to 50 cents for each cigar.~~ On products imported from
15 another country, not including moist snuff, the rate of tax is 71 ~~84~~ percent of the
16 amount obtained by adding the manufacturer's list price to the federal tax, duties
17 and transportation costs to the United States. On moist snuff imported from another
18 country, the rate of the tax is 100 percent of the amount obtained by adding the
19 manufacturer's list price to the federal tax, duties, and transportation costs to the
20 United States. The tax attaches at the time the tobacco products are received by the
21 distributor in this state. The tax shall be passed on to the ultimate consumer of the
22 tobacco products. All tobacco products received in this state for sale or distribution
23 within this state, except tobacco products actually sold as provided in sub. (2), shall
24 be subject to such tax.

25 **SECTION 11.** 139.76 (3) of the statutes is created to read:

ASSEMBLY BILL 481

1 139.76 (3) Beginning on the effective date of this subsection [LRB inserts
2 date], a person who is subject to the tax imposed under sub. (1) shall pay the greater
3 of the amount determined under sub. (1) or the following:

4 (a) For a package of 4 cigars, an amount equal to the amount of the tax imposed
5 under s. 139.31 (1) (a) on a pack of 20 cigarettes, and at a proportionate rate for any
6 other quantity. No cigars with a wholesale price of less than \$1 per cigar may be sold
7 in this state in a package containing fewer than 5 such cigars.

8 (b) For single-unit tobacco products, on each single-use unit, an amount equal
9 to the amount of the tax imposed under s. 139.31 (1) (a) on one cigarette. No
10 single-unit tobacco products may be sold in this state in packages containing fewer
11 than 20 single-use units.

12 (c) For any smokeless tobacco product that consists of loose tobacco, including
13 moist snuff, or that is otherwise not a product described under par. (b), on 1.2 ounces,
14 an amount equal to the tax imposed under s. 139.31 (1) (a) on a pack of 20 cigarettes,
15 and at a proportionate rate for any other quantity.

16 (d) For any loose tobacco that is intended for smoking, including dry pipe
17 tobacco, but not including wet pipe tobacco, on 0.65 ounces, an amount equal to the
18 tax imposed under s. 139.31 (1) (a) on a pack of 20 cigarettes, and at a proportionate
19 rate for any other quantity.

20 (e) For any tobacco product other than that listed in pars. (a) to (d), on each
21 package or container, an amount equal to the tax imposed under s. 139.31 (1) (a) on
22 a pack of 20 cigarettes. For purposes of this paragraph, the tax applies to the
23 smallest, discrete package or container in any larger package or container intended
24 for sale to consumers that contains multiple smaller packages or containers.

25 **SECTION 12.** 139.761 of the statutes is created to read:

ASSEMBLY BILL 481**SECTION 12****1 139.761 Tobacco products inventory tax imposed; procedures. (1)**

2 INVENTORY TAX IMPOSED. On the effective date of any increase in the rates under s.
3 139.76 (1) and (3), including any increase in the rates calculated under s. 139.76 (3)
4 resulting from an increase in the rate imposed under s. 139.31 (1) (a), an inventory
5 tax is imposed on tobacco products held in inventory for sale or resale on which the
6 tobacco products tax has been paid at the prior rate. Any person who is in possession
7 of any such tobacco products shall pay the tax imposed under this section. Any
8 person liable for this tax shall determine the amount of the tobacco products in the
9 person's possession on the effective date of the increase and shall file a return, and
10 pay the tax due, on or before the 30th day after the effective date of the increase.

11 **(2) INVENTORY TAX COMPUTATION.** The tobacco products inventory tax under this
12 section is computed by multiplying the amount of tobacco products held in inventory
13 for sale or resale by the difference between the prior tax rate and the new tax rate.

14 **(3) ADMINISTRATION.** Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (4)
15 to (7), 71.80 (12), 71.82 (2), 71.83 (2) (b) 3., 71.88 (1) (a) and (2) (a), 71.89, 71.90, 71.91
16 (1) (a) and (c) and (2) to (7), 71.92, 73.01, 73.015 and 73.0301 apply to this section.

17 **(4) LATE FILING FEE.** Any person who fails to file a tobacco products inventory
18 tax return when due shall pay a late filing fee of \$50. A return that is mailed is timely
19 if it is mailed in a properly addressed envelope with postage prepaid, if the envelope
20 is postmarked, or marked or recorded electronically as provided under section 7502
21 (f) (2) (c) of the Internal Revenue Code, on the due date and if the return is actually
22 received by the department or at the destination that the department prescribes
23 within 5 days of the due date. A return that is not mailed is timely if it is received
24 on or before the due date by the department or at the destination that the department

ASSEMBLY BILL 481

1 prescribes. For purposes of this subsection, “mailed” includes delivery by a delivery
2 service designated under section 7502 (f) of the Internal Revenue Code.

3 **(5) INTEREST ON DELINQUENT PAYMENTS.** If any person does not timely pay the
4 tax imposed under this section, that person is liable for interest at the rate of 2
5 percent per month or fraction of a month from the date on which the tax is due until
6 the date when the tax is paid.

7 **(6) PENALTY.** If any person who is liable for the tax under this section files a false
8 or fraudulent return, that person is also liable, in addition to the tax due, for an
9 amount equal to the amount of tax the person evaded or attempted to evade.

10 **SECTION 13.** 139.78 (1) of the statutes is amended to read:

11 139.78 (1) ~~A~~ Except as provided in sub. (3m), a tax is imposed upon the use or
12 storage by consumers of tobacco products in this state at the rate, for tobacco
13 products, not including moist snuff, of ~~71~~ 84 percent of the cost of the tobacco products
14 and, for moist snuff, at the rate of 100 percent of the manufacturer’s established list
15 price to distributors without diminution by volume or other discounts on domestic
16 products. ~~The tax imposed under this subsection on cigars shall not exceed an~~
17 ~~amount equal to 50 cents for each cigar.~~ The tax does not apply if the tax imposed
18 by s. 139.76 (1) on the tobacco products has been paid or if the tobacco products are
19 exempt from the tobacco products tax under s. 139.76 (2).

20 **SECTION 14.** 139.78 (2) of the statutes is amended to read:

21 139.78 (2) On or before the 15th day of each month, every consumer who during
22 the preceding month has acquired title to or possession for use or storage in this state
23 of tobacco products upon which the tax imposed by s. 139.76 (1) and (3) has not been
24 paid shall file a return showing the quantity of tobacco products acquired. At the
25 time when the return is filed, the consumer shall pay the tax.

ASSEMBLY BILL 481

1 **SECTION 15.** 139.78 (3m) of the statutes is created to read:

2 139.78 **(3m)** Beginning on the effective date of this subsection ... [LRB inserts
3 date], a person who is subject to the tax imposed under sub. (1) shall pay the greater
4 of the amount determined under sub. (1) or the amount determined under s. 139.76
5 (3).

6 **SECTION 16.** 139.803 (intro.) of the statutes is amended to read:

7 **139.803 Refunds to Indian tribes.** (intro.) The department may refund the
8 taxes collected under s. 139.76 (1) and (3) in respect to sales on reservations or trust
9 lands of an Indian tribe to the tribal council of the tribe having jurisdiction over the
10 reservation or trust land on which the sale is made only if all of the following
11 conditions are fulfilled:

12 **SECTION 17.** 139.805 of the statutes is amended to read:

13 **139.805 Agreements with Indian tribes.** The department may enter into
14 agreements with Indian tribes to provide for the refunding of the tobacco products
15 tax imposed under s. 139.76 (1) and (3). If the department enters into an agreement
16 with an Indian tribe, the agreement may provide for refunding 100% of that tax on
17 tobacco products sold on the tribal reservation to enrolled members of the tribe
18 residing on the tribal reservation and may provide for refunding 50% of that tax on
19 tobacco products sold on the tribal reservation to persons who are not enrolled
20 members of the tribe residing on the tribal reservation.

21 **SECTION 18.** 139.82 (8) of the statutes is amended to read:

22 139.82 **(8)** Each distributor shall collect and remit the excise tax imposed by
23 s. 139.76 (1) and (3) on tobacco products not exempt from the tobacco products tax
24 under s. 139.76 (2), with the reports required to be filed under this section.

25 **SECTION 19. Nonstatutory provisions.**

ASSEMBLY BILL 481

1 (1) TOBACCO PRODUCTS INVENTORY TAX. Any person who is in possession of
2 tobacco products in inventory for sale or resale on the effective date of this subsection
3 is subject to the tobacco products inventory tax imposed under section 139.761 of the
4 statutes, as created by this act, based on the difference between the prior tax rate
5 imposed under section 139.76 (1) of the statutes and the new tax rates imposed under
6 section 139.76 (1), 2011 stats., as affected by this act, and section 139.76 (3) of the
7 statutes, as created by this act.

8 (2) CIGARETTE INVENTORY TAX. Any person who is in possession of tobacco
9 products in inventory for sale or resale on the effective date of this subsection is
10 subject to the cigarette inventory tax imposed under section 139.315 of the statutes
11 for any such tobacco products that are considered cigarettes under section 139.30
12 (1m) of the statutes, as affected by this act. The calculation of the cigarette inventory
13 tax is based on the difference between the tax rate imposed under section 139.76 (1)
14 of the statutes, as affected by this act, and the tax rate imposed under section 139.31
15 (1) of the statutes.

16 **SECTION 20. Effective dates.** This act takes effect on the day after publication,
17 except as follows:

18 (1) The treatment of sections 73.01 (4) (a), 139.30 (1m), 139.75 (4b), (5d), (9n),
19 (12), and (14), 139.76 (1) and (3), 139.761, 139.78 (1), (2), and (3m), 139.803 (intro.),
20 139.805, and 139.82 (8) of the statutes takes effect on the first day of the 3rd month
21 beginning after publication.

22 (2) The treatment of section 134.66 (2) (f) and (4) (a) 1. of the statutes takes
23 effect on the first day of the 7th month beginning after publication.

24 (END)