

138.09 History: 1929 c. 408; Stats. 1929 s. 115.09; 1937 c. 284 s. 3; 1939 c. 476; 1947 c. 411 s. 11 (220.02 (5)); 1947 c. 462, 612; 1949 c. 262; 1951 c. 261 s. 10; 1953 c. 61; 1961 c. 315, 431; 1963 c. 158, 343; 1965 c. 51; 1967 c. 92 ss. 16, 22; 1967 c. 288; Stats. 1967 s. 138.09; 1969 c. 276 s. 592 (7); 1969 c. 376.

Questions as to charges permitted under 115.09, Stats. 1939, are answered in 29 Atty. Gen. 10.

115.07 (3), 115.09 and Ch. 214, Stats. 1939, constitute distinct legislative schemes for regulation of loan transactions; and one person may hold licenses under either or all of these 3 provisions. 29 Atty. Gen. 360.

115.09, Stats. 1943, does not apply to banks and the banking commission has no authority to issue a license thereunder to a state bank. 32 Atty. Gen. 216.

Questions arising under 115.09, Stats. 1943, are answered in 34 Atty. Gen. 15.

See note to 138.07, citing 34 Atty. Gen. 298. Insurance against loss resulting from conversion, embezzlement or secretion of an automobile by a retail purchaser or borrower in lawful possession under a conditional sale, mortgage or other pledge is "insurance on property" within the meaning of 115.09 (7) (f) and may be lawfully required of a borrower by licensee or permittee under ch. 115. 37 Atty. Gen. 203.

See note to 138.07, citing 39 Atty. Gen. 95.

138.10 History: 1951 c. 655; Stats. 1951 s. 115.10; 1967 c. 92 s. 16; Stats. 1967 s. 138.10.

CHAPTER 139.

Beverage, Cigarette and Oleomargarine Taxes.

Revisor's Note, 1963: This is a consolidation and revision of the sections of Ch. 139 dealing with the tax on fermented malt beverages and intoxicating liquors. Only a few minor substantive changes have been made; each one is indicated in a note after the section changed.

This revision was prompted by the enactment of ss. 139.11 and 139.12 (Ch. 178, Laws 1953) which provide for the payment of the occupational tax on fermented malt beverages on a monthly basis instead of by affixing tax stamps. The provisions of Ch. 139 providing for such tax stamps were not repealed, since s. 139.27 made those provisions applicable to the tax on intoxicating beverages.

This change in 1953 made the statute confusing to anyone but a very careful reader. The revision separates the taxing sections so as to make their applicability clear and combines a number of overlapping provisions.

This bill is sponsored jointly by the beverage and cigarette tax division and the revisor of statutes. [Bill 218-S]

On exercises of police power and taxing power see notes to sec. 1, art. I; and on the rule of taxation (privilege taxes) see notes to sec. 1, art. VIII.

139.01 History: 1963 c. 141; Stats. 1963 s. 139.01; 1969 c. 276.

Revisor's Note, 1963: (1) and (2) are from 66.054 (see present 139.02). (3) is from 139.02. (4) to (6) are from 139.25 (1) to (3). (7) and

(8) are from 139.02 and 139.25 (4) and (5). (9) and (10) are new definitions put in to allow shortening language in other sections. (9) is patterned after 139.26 (1) and 176.01 (4).

There are 2 minor changes: The definition of "sales company" now in 139.02 is omitted as obsolete. The definition of "wholesaler" in (7) is changed to specify that a wholesaler is a person who sells to "licensed retailers and permittees" rather than simply one who sells for resale. [Bill 218-S]

139.02 History: 1963 c. 19, 141; 1963 c. 459 ss. 33, 34; Stats. 1963 s. 139.02; 1965 c. 634; 1969 c. 185.

Revisor's Note, 1963: The first sentence is from 139.01; see new 139.04 for exclusions from tax. The second sentence is from 139.03 (2) (last sentence). [Bill 218-S]

Fermented malt beverages containing 7½% of alcohol by volume or 6.01% of alcohol by weight are not taxable as intoxicating liquors under ch. 139, Stats. 1941, but sale of such beverages is subject to provisions of ch. 176, regulating sale of intoxicating liquors. 32 Atty. Gen. 48.

139.03 History: 1963 c. 19 s. 5; 1963 c. 103, 141; 1963 c. 224 ss. 104a, 104b, 104c, 104d; 1963 c. 459 ss. 35, 37 to 40; 1963 c. 561 s. 1; Stats. 1963 s. 139.03; 1965 c. 249, 549, 634; 1967 c. 226; 1969 c. 276 s. 590(1).

Revisor's Note, 1963: Introductory paragraph is from 139.26 (1). (1) is from 139.26 (1). (2) is from 139.26 (1b). See new 139.04 for exclusions from tax. (3) is from 139.03 (2) (last sentence). [Bill 218-S]

The additional liquor tax imposed by an increase in the rates by ch. 412, Laws 1947, amending this section, applied to all intoxicating liquor offered for sale from and after the date when the act became a law, including intoxicating liquor in the possession of dealers on such date and bearing previously affixed tax stamps in the amount specified prior to the amendment. *Berlowitz v. Roach*, 252 W 61, 30 NW (2d) 265.

Under ch. 139, Stats. 1933, the occupational tax is not confined to liquids which are intended for beverage purposes. The tax is imposed upon liquids reasonably capable of being drunk either for pleasure or for after effect. Liquid is fit for beverage purposes and taxable when it can with little or very simple change by dilution or subtraction be put in condition for use as a beverage. 23 Atty. Gen. 36.

139.04 History: 1963 c. 141; Stats. 1963 s. 139.04.

Revisor's Note, 1963: (1) is from 139.26 (2); see also 176.45. (2) is from 139.03 (13). (3) is from 139.09 and 139.25 (1). (4) is from 139.01 and 139.26 (1). (5) is from 139.01 and 139.26 (1). (6), (7) and (8) are from 139.26 (1).

There are 4 minor changes: (1) No reference is made to exclusion from tax for sales of malt beverages to sales companies, since there are no such companies and since such sales were only for interstate commerce. (2) Old 139.26 (1) permitted tax free sales only by manufacturers to rectifiers; the new 139.04 (4) adds "wineries" and permits tax free sales both ways between such persons; such sales

must be "in bulk". (3) The new 139.04 (1) is perhaps slightly more restrictive than the old 139.26 (2) in that it makes it clear that home made wine is tax free only for use in the home where made; this corresponds with 176.45; cider is added to this provision. (4) The new 139.04 (7) and (8) make it clear that to be tax exempt the sales of alcohol must be to industrial and medicinal permittees; the present provision reads "for industrial, hospital purposes." [Bill 218-S]

139.05 History: 1963 c. 141; Stats. 1963 s. 139.05; 1969 c. 211; 1969 c. 276 s. 590 (2), (3), (6).

Revisor's Note, 1963: From 139.11. Old (4) omitted because covered by new 139.11 (1). Old (8) omitted because covered by new 139.10.

In (2) the return on which the malt beverage tax is based must now include information as to shipments coming in from outside the state so that the department can be sure of collecting taxes from the shipper. [Bill 218-S]

139.06 History: 1963 c. 141; Stats. 1963 s. 139.06; 1969 c. 276 s. 590 (3).

Revisor's Note, 1963: (1) is from 139.03 (2) and 139.26 (3) (a), (c). (2) is from 139.03 (3) and 139.27 (2). (3) is from 139.03 (14); the last sentence is new. (4) is from 176.75. (5) is from 139.26 (3) (d). (6) is from 139.03 (5). (7) is from 139.03 (8) and (12). (8) is from 139.03 (1) and (6).

There are 3 changes: (1) In (4), which is taken from old 176.75, the reference to wholesalers is omitted; this means that wholesalers will not be permitted to store unlabeled and unstamped liquor except as such liquor is tax exempt. (4) also requires reports of sales by pledgees.

(2) (5) is changed to make it clear that only out-of-state vendors who have Wisconsin permits may buy stamps.

(3) (6) is clarified in that it removes the implication in the old 139.03 (5) that retailers may affix stamps; retailers are not allowed to purchase unstamped liquor. [Bill 218-S]

139.061 History: 1963 c. 561; Stats. 1963 s. 139.061; 1969 c. 276 s. 590 (3).

139.07 History: 1963 c. 141, 561; Stats. 1963 s. 139.07; 1969 c. 211.

Revisor's Note, 1963: From last sentence of old 139.27 (3). [Bill 218-S]

139.08 History: 1963 c. 141; Stats. 1963 s. 139.08; 1969 c. 276.

Revisor's Note, 1963: (1) is from 139.03 (7), (11) and 139.26 (3) (b), (c). (2) is from 139.03 (11). (3) is from 139.27 (3). (4) is from 139.06. [Bill 218-S]

139.09 History: 1963 c. 141; Stats. 1963 s. 139.09; 1969 c. 276 s. 590 (3).

Revisor's Note, 1963: From 139.03 (1). [Bill 218-S]

139.10 History: 1963 c. 141; Stats. 1963 s. 139.10; 1969 c. 276 s. 590 (3); 1969 c. 392 s. 87 (9).

Revisor's Note, 1963: (1) is from 139.03 (7) and 139.11 (8). (2) is from 139.26 (1a). (3) is

from 139.03 (7), 139.11 (8) and 139.26 (1a). [Bill 218-S]

The words "spoiled" and "unfit for beverage purposes," as used in 139.03 (7), Stats. 1937, mean "not fit for drinking," and this is a question of taste rather than one of law. In order to entitle a dealer to a refund, salability of a product for beverage purposes should be entirely gone. 27 Atty. Gen. 406.

139.11 History: 1963 c. 134, 141; 1963 c. 459 s. 36; Stats. 1963 s. 139.11; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 276 s. 590 (3).

Revisor's Note, 1963: (1) is from 139.295 (1). (2) is from 139.03 (15a). (3) is from 139.29.

There are 2 changes: (1) "Rectifiers" are added to the list of persons who must keep records under (1). (2) The reports made under (2) must show malt beverages and liquor received as well as that manufactured, etc. [Bill 218-S]

139.12 History: 1963 c. 141; Stats. 1963 s. 139.12; 1969 c. 276.

Revisor's Note, 1963: From 139.04. The provision for service of the summons on the attorney general is new to this chapter, but is a standard requirement of other chapters of the statutes. [Bill 218-S]

Provisions in 139.04, Stats. 1947, that no action shall be maintained to restrain or delay the collection or payment of the liquor tax, and that the taxpayer shall pay the tax and may then bring an action at law to recover the money so paid, did not prescribe an exclusive procedure such as to bar a taxpayer from maintaining an action under the declaratory judgments act to obtain a construction of the application of an act increasing the rates of the tax. *Berlowitz v. Roach*, 252 W 61, 30 NW (2d) 256.

139.13 History: 1963 c. 141, 561, 563; Stats. 1963 s. 139.13; 1965 c. 249; 1965 c. 433 s. 121; 1967 c. 291.

139.18 History: 1963 c. 141; Stats. 1963 s. 139.18.

Revisor's Note, 1963: (1) is from 139.05. (2) is from 139.35. [Bill 218-S]

139.20 History: 1963 c. 141; Stats. 1963 s. 139.20.

Revisor's Note, 1963: From 139.07. [Bill 218-S]

139.22 History: 1963 c. 141; Stats. 1963 s. 139.22; 1969 c. 276.

Revisor's Note, 1963: From 139.03 (10). [Bill 218-S]

139.25 History: 1963 c. 141, 561; Stats. 1963 s. 139.25; 1969 c. 276 s. 590 (2), (3).

Revisor's Note, 1963: (1) is from 139.03 (9). (2) and (3) are from 139.03 (16). (4) is from 139.295 (2). (5) and (6) are from 139.08. Under the old provisions there was a conflict between the last sentence of 139.03 (16) and 139.295 (2), both of which provided a penalty for a failure to keep accurate records. This bill incorporates the lighter penalty of 139.295 (2) for this offense, which is in accordance with the policy of the commissioner. [Bill 218-S]

139.30 History: 1965 c. 67; Stats. 1965 s. 139.30; 1969 c. 276.

Revisor's Note, 1965: This section is important. The definitions have been redrawn to more clearly reflect trade functions. The person who performs more than one function will have to obtain a permit for each. This is not clearly stated in the old law.

Any person who acquires unstamped cigarettes and stamps them (except for exempt sales) will have to get a distributor's permit even though he may also have to have another permit for other types of operations.

The definition of vending machine operator has been changed to eliminate the old exemption of persons operating less than 5 machines. [Bill 112-S]

139.31 History: 1965 c. 67, 163; 1965 c. 433 s. 121; Stats. 1965 s. 139.31; 1967 c. 179; 1967 c. 291 s. 14; 1969 c. 154, 353.

139.32 History: 1965 c. 67, 163; 1965 c. 433 s. 121; Stats. 1965 s. 139.32; 1967 c. 179; 1967 c. 291 s. 14; 1969 c. 211; 1969 c. 276 s. 590 (3); 1969 c. 392, 424.

139.33 History: 1965 c. 67, 163; 1965 c. 433 s. 121; Stats. 1965 s. 139.33; 1967 c. 179; 1967 c. 291 s. 14; 1969 c. 154; 1969 c. 276 s. 590 (3); 1969 c. 353.

Revisor's Note, 1965: This is a restatement of old s. 139.51. It has been shortened and modernized. [Bill 112-S]

139.34 History: 1965 c. 67, 218; Stats. 1965 s. 139.34; 1967 c. 179; 1969 c. 252; 1969 c. 276 s. 590 (3).

Revisor's Note, 1965: Since warehouse permits are combined with the other types, the warehouse permit fee is raised from \$10 to \$50 a year.

The revision makes it clear that permits are needed for each place of business and no permit is transferable.

Subsection (10) eliminates the old requirement that vending machine operators inform the department of the location of each machine and its number. This requirement was unworkable. [Bill 112-S]

Questions relating to the interpretation of 139.50, Stats. 1939, as to persons required thereby to have a permit to purchase cigarette tax stamps, are considered and answered in 28 Atty. Gen. 637.

139.50, Stats. 1939, is applicable to sales of cigarettes on boats on the Great Lakes while within the territorial boundaries of Wisconsin. 29 Atty. Gen. 283.

139.35 History: 1965 c. 67; Stats. 1965 s. 139.35; 1969 c. 276 s. 590 (3); 1969 c. 392 s. 87 (9).

139.36 History: 1965 c. 67, 625; Stats. 1965 s. 139.36; 1967 c. 291 s. 14; 1969 c. 276 ss. 588 (10), 590 (3); 1969 c. 424.

139.37 History: 1965 c. 67; Stats. 1965 s. 139.37; 1969 c. 252.

139.38 History: 1965 c. 67, 218; Stats. 1965 s. 139.38; 1969 c. 276 s. 590 (3).

Revisor's Note, 1965: Monthly reports will be required from all permittees, not just man-

ufacturers and wholesalers. Permission to mail reports on the due date is new but is the standard provision now used as to most tax returns. [Bill 112-S]

139.39 History: 1965 c. 67; Stats. 1965 s. 139.39; 1969 c. 276.

139.40 History: 1965 c. 67, 433; Stats. 1965 s. 139.40; 1969 c. 276 s. 590 (3).

Revisor's Note: Old s. 139.50 (33) and (35) restated. They overlapped and were confusing, and in some particulars conflicted. [Bill 112-S]

139.41 History: 1965 c. 67; Stats. 1965 s. 139.41.

139.42 History: 1965 c. 67; Stats. 1965 s. 139.42.

139.43 History: 1965 c. 67; Stats. 1965 s. 139.43; 1967 c. 26.

139.44 History: 1965 c. 67; Stats. 1965 s. 139.44; 1967 c. 26, 179; 1969 c. 276 s. 590 (3).

139.60 History: 1931 c. 96; Stats. 1931 s. 98.39; Spl. S. 1931-32 c. 3, 17; 1935 c. 210; 1935 c. 550 s. 240, 241, 282 to 285; Stats. 1935 s. 97.41, 97.72 (2); 1939 c. 432; 1943 c. 61, 174, 229; 1945 c. 33; 1947 c. 9 s. 31; 1949 c. 340; 1951 c. 223 s. 9; 1951 c. 261 s. 10; 1953 c. 560, 605; 1959 c. 459; 1959 c. 659 s. 69; Stats. 1959 s. 139.60; 1967 c. 42; 1969 c. 276 s. 590 (2), (3); 1969 c. 286; 1969 c. 392 s. 87 (22).

The U.S. circuit court of appeals will judicially notice legislation in Wisconsin and other states of large vested interests in dairying imposing heavy restrictions upon the competition of oleomargarine with butter. *Vitamin Technologists v. Wisconsin A. R. F.* 146 F (2d) 941.

Forty per cent dairy-margarine blend products, legally salable under 97.46 and 97.39, Stats. 1967, are oleomargarine products as that term is defined in 139.60, and are subject to regulation and taxation under that section. 57 Atty. Gen. 58.

CHAPTER 140.

Health; Administration and Supervision.

140.01 History: 1969 c. 366; Stats. 1969 s. 140.01.

140.02 History: 1969 c. 366; Stats. 1969 s. 140.02.

140.05 History: 1876 c. 366 s. 2, 3; R. S. 1878 s. 1407; 1887 c. 452 s. 5; Ann. Stats. 1889 s. 1407; Stats. 1898 s. 1407; 1899 c. 351 s. 22; 1905 c. 433 s. 2; Supl. 1906 s. 1407; 1913 c. 674; 1917 c. 145; 1921 c. 422 s. 46; 1923 c. 448 s. 2; Stats. 1923 s. 140.05; 1927 c. 494 s. 3; 1929 c. 439 s. 8; 1931 c. 67 s. 169, 169a; 1933 c. 111; 1941 c. 49 s. 93; 1943 c. 288, 326; Stats. 1943 s. 50.14 (1), 140.05; 1947 c. 132; 1949 c. 82; 1953 c. 61; 1955 c. 221 s. 45; 1955 c. 377, 534; 1955 c. 570 s. 3; 1957 c. 526 s. 24; Stats. 1957 s. 140.05; 1959 c. 628; 1963 c. 155; 1969 c. 55, 146; 1969 c. 276 s. 603 (2), (3); 1969 c. 366 ss. 58, 59, 117 (1) (a); 1969 c. 448.

On exercises of police power see notes to sec. 1, art. I; on delegation of power see notes