State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1228/P3
JK:hjk:rs

DOA:.....Lillethun, BB0300 – Direct marketing of cigarettes and tobacco products

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, generally, a person may not sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer without having a permit from DOR. A "jobber" is any person who acquires cigarettes from manufacturers or distributors, stores the cigarettes, and sells the cigarettes to retailers for resale.

Current law also prohibits a direct marketer from selling cigarettes to consumers in this state unless the direct marketer fulfills certain requirements. Current law defines "direct marketing" as publishing or making accessible an offer for the sale of cigarettes to consumers in this state, or selling cigarettes, using any means by which the consumer is not physically present on a premise that sells cigarettes.

Under current law, a direct marketer must certify to DOR: that the person will register with debit and credit card companies; that the invoices for all shipments of cigarettes will bear the direct marketer's name and address; and that the direct marketer will provide DOR any information that DOR considers necessary. The direct marketer may not sell any cigarettes unless the sales tax, use tax, or cigarette tax, as appropriate, has been paid on the sale of the cigarettes.

Current law requires a direct marketer who sells cigarettes to consumers in this state to verify the consumer's name and address and that the consumer is at least 18 years of age. In addition, any person who delivers such cigarettes to consumers in this state must verify that the person who purchased the cigarettes, and who receives the delivery, is at least 18 years of age.

Under this bill, generally, the same provisions under current law that apply to the direct marketing of cigarettes also apply to the direct marketing of tobacco products. In addition, no person may sell cigarettes or tobacco products to consumers in this state unless the person applies to DOR for a permit.

Under current law, a person may not sell cigarettes or tobacco products to consumers in this state unless the person obtains a license from each city, village, or town in which the person intends to sell cigarettes or tobacco products. Under the bill, no city, village, or town may issue a license to any person who has an arrest or conviction record related to selling cigarettes or tobacco products. Under the bill, a direct marketer who holds a valid permit to sell cigarettes or tobacco products to consumers in this state is not required to obtain a license from each city, village, or town in which the cigarettes or tobacco products are sold.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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:

SECTION 1. 77.61 (11) of the statutes is amended to read:

77.61 **(11)** Any city, village or town clerk or other official whose duty it is to issue licenses or permits to engage in a business involving the sale at retail of tangible personal property subject to tax under this subchapter, or the furnishing of services so subject to tax, shall, before issuing such license or permit, require proof that the person to whom such license or permit is to be issued is the holder of a seller's permit or use tax registration certificate as required by this subchapter or has been informed by an employee of the department that the department will issue a seller's permit or use tax registration certificate to that person.

SECTION 2. 100.20 (1n) of the statutes is amended to read:

100.20 **(1n)** It is an unfair method of competition or an unfair trade practice for any person to sell cigarettes to consumers in this state in violation of s. 139.345 or to sell tobacco products to consumers in this state in violation of s. 139.795.

SECTION 3. 100.30 (2) (c) 1. b. of the statutes is amended to read:

100.30 **(2)** (c) 1. b. For every person holding a permit as a bonded direct marketer as defined in s. 139.30 (1d), as a distributor as defined in s. 139.30 (3), or as a multiple retailer as defined in s. 139.30 (8), with respect to that portion of the person's business which involves the purchase and sale of cigarettes "cost to wholesaler" means the cost charged by the cigarette manufacturer, disregarding any manufacturer's discount or any discount under s. 139.32 (5), plus the amount of tax imposed under s. 139.31. Except for a sale at wholesale between wholesalers, a markup to cover a proportionate part of the cost of doing business shall be added to the cost to wholesaler. In the absence of proof of a lesser cost, this markup shall be 3% of the cost to wholesaler as set forth in this subd. 1. b.

SECTION 4. 100.30 (2) (L) (intro.) of the statutes is amended to read:

100.30 **(2)** (L) (intro.) "Wholesaler" includes every person holding a permit as a bonded direct marketer as defined in s. 139.30 (1d) or as a multiple retailer under s. 139.30 (8) and every person engaged in the business of making sales at wholesale, other than sales of motor vehicle fuel at wholesale, within this state except as follows:

SECTION 5. 100.30 (2) (L) 2. of the statutes is amended to read:

100.30 **(2)** (L) 2. In the case of a person holding a permit as a bonded direct marketer as defined in s. 139.30 (1d) or as a multiple retailer as defined in s. 139.30 (8), "wholesaler" applies to that portion of the person's business involving the purchase and sale of cigarettes and to any wholesale portion of that person's business.

SECTION 6. 134.65 (1) of the statutes is amended to read:

134.65 **(1)** No person shall in any manner, or upon any pretense, or by any device, directly or indirectly sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any cigarettes or tobacco products to any person not holding a license as herein provided or a permit under ss. 139.30 to 139.41 ~~or~~, 139.79, or 139.795 without first obtaining a license from the clerk of the city, village, or town wherein such privilege is sought to be exercised. This subsection does not apply to a person who holds a valid permit under s. 139.345 or 139.795 and who sells cigarettes or tobacco products solely as a direct marketer.

SECTION 7. 134.65 (1n) of the statutes is created to read:

134.65 **(1n)** (a) The department of revenue shall prepare an application form for licenses issued under this section. In addition to the information required under sub. (1m), the form shall require all of the following information:

1. The applicant's history relevant to the applicant's fitness to hold a license under this section.

2. The kind of license for which the applicant is applying.

3. The premises where cigarettes or tobacco products will be sold or stored.

4. If the applicant is a corporation, the identity of the corporate officers and agent.

5. If the applicant is a limited liability company, the identity of the company members or managers and agent.

6. The applicant's trade name, if any.

7. Any other information required by the department.

(b) The department of revenue shall provide one copy of the application form prepared under this subsection to each city, village, and town.

(c) Each applicant for a license under this section shall use the application form prepared under this subsection.

(d) 1. Each application for a license under this section shall be sworn to by the applicant and the applicant shall submit the application with the clerk of the city, village, or town where the intended place of sale is located.

2. Within 10 days of any change in any fact set forth in an application, the applicant or license holder shall file a written description of the change with the clerk of the city, village, or town where the application was submitted.

3. Any person may inspect applications submitted under this paragraph. The clerk of each city, village, or town where such applications are submitted shall retain all applications submitted under this paragraph, but may destroy all applications that have been retained for 4 years or longer.

SECTION 8. 134.65 (1r) of the statutes is created to read:

134.65 **(1r)** (a) A license under sub. (1) may only be issued to a person to whom all of the following apply:

1. Subject to ss. 111.321, 111.322, and 111.335, the person does not have an arrest record or a conviction record.

2. Unless pardoned, the person has not been convicted of a felony or as a habitual offender.

3. The person is the holder of a seller's permit or use tax registration certificate as required by this subchapter or has been informed by an employee of the department that the department will issue a seller's permit or use tax registration certificate to that person.

4. The person is 18 years of age or older.

(b) The requirements under par. (a) apply to all partners of a partnership, all members of limited liability company, all agents of a limited liability company or corporation, and all officers of a corporation. Subject to ss. 111.321, 111.322, and 111.335, if a business entity has been convicted of a crime, the entity may not be issued a license under sub. (1) unless the entity has terminated its relationship with the individuals whose actions directly contributed to the conviction.

SECTION 9. 134.65 (1s) of the statutes is created to read:

134.65 **(1s)** (a) No corporation or limited liability company organized under the laws of this state or of any other state or foreign country may be issued a license under this section unless:

1. The entity first appoints an agent in the manner prescribed by the city, village, or town issuing the license. In addition to the qualifications under sub. (1r), the agent must, with respect to character, record and reputation, be satisfactory to the city, village, or town.

2. The entity vests in the agent, by properly authorized and executed written delegation, full authority and control of the premises described in the entity's license, and of the conduct of all business on the premises relative to the sale of cigarettes and tobacco products, that the licensee could have and exercise if it were a natural person.

(b) A corporation or limited liability company may cancel the appointment of an agent and appoint a successor agent to act in the agent's place, for the remainder of the license year or until another agent is appointed, as follows:

1. The successor agent shall meet the same qualifications required of the first appointed agent.

2. The entity shall immediately notify the city, village, or town, in writing, of the appointment of the successor agent and the reason for the cancellation and new appointment.

(c) A successor agent shall have all the authority, perform all the functions and be charged with all the duties of the previous agent of the corporation or limited liability company until the next regular or special meeting of the city, village, or town is held. However, the license of the corporation or limited liability company shall cease to be in force if, prior to the next regular or special meeting of the city, village, or town, the city, village, or town clerk receives notice of disapproval of the successor agent by a peace officer of the city, village, or town issuing the license.

(d) The license of the corporation or limited liability company shall not be in force after the next regular or special meeting of the city, village, or town unless and until the successor agent or another qualified agent is appointed and approved by the city, village, or town.

(e) The corporation or limited liability company shall, following the approval of each successor agent or another qualified agent by the city, village, or town, pay to the city, village, or town a fee of $10.

(f) If an agent appointed under this subsection resigns, he or she shall notify in writing the corporation or limited liability company and the city, village, or town issuing the license within 48 hours of the resignation.

SECTION 10. 134.65 (2) (a) of the statutes is amended to read:

134.65 **(2)** (a) ~~Except~~ Subject to subs. (1r) and (1s), and except as provided in par. (b), upon filing of a proper written application a license shall be issued on July 1 of each year or when applied for and continue in force until the following June 30 unless sooner revoked. The city, village or town may charge a fee for the license of

not less than $5 nor more than $100 per year which shall be paid to the city, village or town treasurer before the license is issued.

SECTION 11. 134.65 (5) of the statutes is renumbered 134.65 (5) (a) and amended to read:

134.65 **(5)** (a) ~~Any~~ Except as provided in par. (b), any person violating this section shall be fined not more than ~~$100~~ $1,000 nor less than ~~$25~~ $500 for the first offense and shall be fined not more than ~~$200~~ $5,000 nor less than ~~$25~~ $1,000 or imprisoned for not more than 180 days or both for the 2nd or subsequent offense. ~~If upon such 2nd or subsequent violation, the person so violating this section was personally guilty of a failure to exercise due care to prevent violation thereof, the person shall be fined not more than $300 nor less than $25 or imprisoned not exceeding 60 days or both. Conviction~~ Upon conviction of a 2nd or subsequent offense, the court shall immediately terminate the license of the person convicted ~~of being personally guilty of such failure to exercise due care~~ and the person shall not be entitled to another license hereunder for a period of 5 years thereafter, nor shall the person in that period act as the servant or agent of a person licensed hereunder for the performance of the acts authorized by such license.

SECTION 12. 134.65 (5) (b) of the statutes is created to read:

134.65 **(5)** (b) No penalty shall be imposed under par. (a) if any of the following apply:

1. The secretary of revenue determines that imposing a penalty would be inequitable because of inadvertent acts, mistakes, or unusual circumstances related to the violation.

2. The person who is subject to a penalty under par. (a) had good cause to violate this section, and such violation did not result from the person's neglect.

SECTION 13. 134.66 (2) (d) of the statutes is created to read:

134.66 **(2)** (d) No retailer, direct marketer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, direct marketer, manufacturer, distributor, jobber or subjobber, and no agent or employee of an independent contractor may provide cigarettes or tobacco products for nominal or no consideration to any person under the age of 18.

SECTION 14. 134.66 (3m) of the statutes is created to read:

134.66 **(3m)** DEFENSE OF DIRECT MARKETER. Proof of all of the following facts by a direct marketer who sells cigarettes or tobacco products to a person under the age of 18 is a defense to any prosecution for a violation under sub. (2) (a):

(a) That the direct marketer used a mechanism, approved by the department of revenue, for verifying the age of the purchaser.

(b) That the purchaser falsely represented that he or she had attained the age of 18 and presented a copy or facsimile of an identification card.

(c) That the name and birthdate of the purchaser, as indicated by the purchaser, matched the name and birthdate on the identification presented under par. (b).

(d) That the sale was made in good faith, in reasonable reliance on the mechanism described in par. (a) and the representation and identification under pars. (b) and (c), and in the belief that the purchaser had attained the age of 18.

SECTION 15. 139.30 (4n) of the statutes is repealed and recreated to read:

139.30 **(4n)** "Identification card" has the meaning given in s. 134.66 (1) (c).

SECTION 16. 139.30 (7) of the statutes is amended to read:

139.30 **(7)** "Manufacturer" means any person who <u>directly</u> manufactures cigarettes for the purpose of sale, including the authorized agent of a person who <u>directly</u> manufactures cigarettes for the purpose of sale.

SECTION 17. 139.30 (8s) of the statutes is created to read:

139.30 **(8s)** "Person" means any individual, sole proprietorship, partnership, limited liability company, corporation, or association, or any owner of a single-owner entity that is disregarded as a separate entity under ch. 71.

SECTION 18. 139.32 (4) of the statutes is amended to read:

139.32 **(4)** In lieu of stamps the secretary may authorize impressions applied by the use of ~~meter~~ machines. The secretary shall prescribe by rule the type of impression and the kind of machines which may be used.

SECTION 19. 139.321 (1) (intro.) of the statutes is amended to read:

139.321 **(1)** (intro.) It is unlawful for any person to purchase or possess cigarettes unless the required stamps are properly affixed as provided in ss. 139.32 (1) and 139.33 (4).

SECTION 20. 139.321 (1) (a) 1. of the statutes is amended to read:

139.321 **(1)** (a) 1. Manufacturers, bonded direct marketers, distributors or warehouse operators possessing valid permits issued by the secretary.

SECTION 21. 139.34 (1) (a) of the statutes is amended to read:

139.34 **(1)** (a) No person may manufacture cigarettes in this state or sell cigarettes in this state as a distributor, manufacturer, jobber, vending machine operator, direct marketer, or multiple retailer and no person may operate a warehouse in this state for the storage of cigarettes for another person without first filing an application for and obtaining the proper permit to perform such operations from the department.

SECTION 22. 139.34 (1) (b) of the statutes is repealed.

SECTION 23. 139.34 (1) (c) (intro.) of the statutes is repealed and recreated to read:

139.34 **(1)** (c) (intro.) A permit under this section may only be issued to a person to whom all of the following apply:

SECTION 24. 139.34 (1) (c) 1. of the statutes is repealed.

SECTION 25. 139.34 (1) (c) 1m. of the statutes is created to read:

139.34 **(1)** (c) 1m. Subject to ss. 111.321, 111.322, and 111.335, the person does not have an arrest record or a conviction record.

SECTION 26. 139.34 (1) (c) 2. of the statutes is amended to read:

139.34 **(1)** (c) 2. ~~The~~ Unless pardoned, the person has not been convicted of a felony, ~~unless pardoned~~ or as a habitual offender.

SECTION 27. 139.34 (1) (c) 3. of the statutes is repealed.

SECTION 28. 139.34 (1) (c) 3m. of the statutes is created to read:

139.34 **(1)** (c) 3m. The person is the holder of a seller's permit or use tax registration certificate as required by this subchapter or has been informed by an employee of the department that the department will issue a seller's permit or use tax registration certificate to that person.

SECTION 29. 139.34 (1) (c) 4. of the statutes is repealed.

SECTION 30. 139.34 (1) (c) 4m. of the statutes is created to read:

139.34 **(1)** (c) 4m. The person is not 18 years of age or older.

SECTION 31. 139.34 (1) (c) 5. of the statutes is repealed.

SECTION 32. 139.34 (1) (c) 6. of the statutes is repealed.

SECTION 33. 139.34 (1) (c) 7. of the statutes is renumbered 139.34 (1) (c) 5m.

SECTION 34. 139.34 (1) (cm) of the statutes is created to read:

139.34 **(1)** (cm) The requirements under par. (c) apply to all partners of a partnership, all members of a limited liability company, all agents of a limited liability company or corporation, and all officers of a corporation.

SECTION 35. 139.34 (1s) of the statutes is created to read:

139.34 **(1s)** (a) No corporation or limited liability company organized under the laws of this state or of any other state or foreign country may be issued a permit under this section unless:

1. The entity first appoints an agent in the manner prescribed by the department. In addition to the qualifications under sub. (1), the agent must, with respect to character, record and reputation, be satisfactory to the department.

2. The entity vests in the agent, by properly authorized and executed written delegation, full authority and control of the premises described in the entity's permit, and of the conduct of all business on the premises relative to the sale of cigarettes, that the permittee could have and exercise if it were a natural person.

(b) A corporation or limited liability company may cancel the appointment of an agent and appoint a successor agent to act in the agent's place, for the remainder of the permit year or until another agent is appointed, as follows:

1. The successor agent shall meet the same qualifications required of the first appointed agent.

2. The entity shall immediately notify the department, in writing, of the appointment of the successor agent and the reason for the cancellation and new appointment.

(c) A successor agent shall have all the authority, perform all the functions and be charged with all the duties of the previous agent of the corporation or limited liability company until the department approves or disapproves of the successor agent.

(d) The corporation or limited liability company shall, following the department's approval of each successor agent or another qualified agent, pay the department a fee of $10.

(e) If an agent appointed under this subsection resigns, he or she shall notify in writing the corporation or limited liability company and the department within 48 hours of the resignation.

SECTION 36. 139.34 (4) of the statutes is amended to read:

139.34 **(4)** A separate permit shall be required of and issued to each class of permittee and the holder of any permit shall perform only the operations thereby authorized. Such permit shall not be transferable from one person to another or from one premises to another. A separate permit shall be required for each place where cigarettes are stamped or where cigarettes are stored for sale at wholesale ~~or,~~ through vending machines or multiple retail outlets, or by direct marketing.

SECTION 37. 139.34 (6) of the statutes is amended to read:

139.34 **(6)** A vending machine operator or a multiple retailer may acquire unstamped cigarettes from the manufacturers thereof and affix the stamps to packages or other containers only if the vending machine operator or multiple retailer also holds a permit as a distributor or bonded direct marketer.

SECTION 38. 139.34 (8) of the statutes is amended to read:

139.34 **(8)** The holder of a warehouse permit is entitled to store cigarettes on the premises described in the permit. The warehouse permit shall not authorize the holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a manufacturer, bonded direct marketer, or distributor may be delivered only to a person holding a permit as a manufacturer ~~or,~~ distributor, or bonded direct marketer who is authorized by the department to purchase and affix tax stamps.

SECTION 39. 139.345 (1) (a) of the statutes is amended to read:

139.345 **(1)** (a) No person may sell cigarettes to consumers in this state as a direct marketer or solicit sales of cigarettes to consumers in this state by direct marketing unless the person ~~submits to~~ has obtained a permit under s. 139.34 from the department ~~the person's name, trade name, address of the person's principal place of business, phone number, e-mail address, and Web site address~~ to make such sales or solicitations. The person shall file an application for a permit under this subsection with the department, in the manner prescribed by the department.

SECTION 40. 139.345 (1) (b) of the statutes is amended to read:

139.345 **(1)** (b) No person may sell cigarettes as described under this section unless the person obtains a permit under par. (a) and certifies to the department, in the manner prescribed by the department, that the person shall acquire stamped cigarettes from a licensed distributor or unstamped cigarettes from the manufacturer thereof, pay the tax imposed under this subchapter on all unstamped cigarettes and affix stamps to the cigarette packages or containers as provided under s. 139.32 (1), store such packages or containers, and sell only such packages or containers to consumers in this state by direct marketing; or acquire cigarettes from a distributor, to the packages or containers of which stamps have been affixed as provided under s. 139.32 (1), and sell only such packages or containers to consumers in this state by direct marketing.

SECTION 41. 139.345 (1) (d) of the statutes is amended to read:

139.345 **(1)** (d) No person may sell cigarettes as described in this section unless the person obtains a permit under par. (a) and certifies to the department, in the manner prescribed by the department, that the person shall register with credit card and debit card companies; that the invoices and all means of solicitation for all

shipments of cigarette sales from the person shall bear the person's name and address and the permit number of the permit ultimately issued under this subsection; and that the person shall provide the department any information the department considers necessary to administer this section.

SECTION 42. 139.345 (3) (intro.) of the statutes is amended to read:

139.345 **(3)** (intro.) No person may sell cigarettes to ~~consumers~~ a consumer in this state unless the person does all of the following:

SECTION 43. 139.345 (3) (a) (intro.) of the statutes is amended to read:

139.345 **(3)** (a) (intro.) Verifies the consumer's ~~name~~ identity and address and that the consumer is at least 18 years of age by any of the following methods:

SECTION 44. 139.345 (3) (a) 2. of the statutes is amended to read:

139.345 **(3)** (a) 2. The person receives from the consumer, at the time of purchase, a copy of ~~a government issued~~ an identification card and verifies that the name specified on the identification card matches the name of the consumer and that the birth date on the identification card indicates that the consumer is at least 18 years of age.

SECTION 45. 139.345 (7) of the statutes is repealed.

SECTION 46. 139.345 (8) of the statutes is created to read:

139.345 **(8)** (a) No person may sell cigarettes to consumers in this state by direct marketing unless the tax imposed under s. 139.31 (1) is paid on the cigarettes and stamps are affixed to the cigarette packages or containers as provided under s. 139.32.

(b) No person may sell cigarettes to consumers in this state by direct marketing unless the cigarette brands are approved by the department and listed in the

directory of certified tobacco product manufacturers and brands as provided under s. 995.12 (2) (b).

SECTION 47. 139.345 (9) of the statutes is created to read:

139.345 **(9)** Except as provided in sub. (12), any person who, without having a valid permit under sub. (1), sells or solicits sales of cigarettes to consumers in this state by direct marketing shall pay a penalty to the department of $5,000 or an amount that is equal to $50 for every 200 cigarettes, or fraction of 200 cigarettes, sold to consumers in this state by direct marketing, whichever is greater.

SECTION 48. 139.345 (10) of the statutes is created to read:

139.345 **(10)** (a) No sale of cigarettes to a consumer in this state by direct marketing may exceed 10 cartons for each invoice or 20 cartons in a 30-day period for each purchaser or address.

(b) Except as provided in sub. (12), any person who sells cigarettes in an amount that exceeds the amounts allowed under par. (a) shall pay a penalty to the department of $5,000 or an amount that is equal to $50 for every 200 cigarettes, or fraction of 200 cigarettes, sold in excess of the amounts allowed under par. (a), whichever is greater.

(c) Except as provided in sub. (12), any person who purchases cigarettes in an amount that exceeds the amounts allowed under par. (a) shall apply for a permit under s. 139.34 and shall pay a penalty to the department of $25 for every 200 cigarettes, or fraction of 200 cigarettes, purchased in excess of the amounts allowed under par. (a).

SECTION 49. 139.345 (11) of the statutes is created to read:

139.345 **(11)** (a) Any nonresident or foreign direct marketer that has not registered to do business in this state as a foreign corporation or business entity

shall, as a condition precedent to obtaining a permit under s. 139.34 (1), appoint and continually engage the services of an agent in this state to act as agent for the service of process on whom all processes, and any action or proceeding against it concerning or arising out of the enforcement of this chapter, may be served in any manner authorized by law. That service shall constitute legal and valid service of process on the direct marketer. The direct marketer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the department.

(b) A direct marketer described under par. (a) shall provide notice to the department no later than 30 calendar days before termination of the authority of an agent under par. (a) and shall provide proof to the satisfaction of the department of the appointment of a new agent no later than 5 calendar days before the termination of an existing appointment. In the event an agent terminates an appointment, the direct marketer shall notify the department of that termination no later than 5 calendar days after the termination and shall include proof to the satisfaction of the department of the appointment of a new agent.

(c) The secretary of state is the agent in this state for the service of process of any direct marketer who has not appointed and engaged an agent as provided under par. (a), except that the secretary of state acting as the direct marketer's agent for the service of process does not satisfy the requirements imposed by par. (a).

SECTION 50. 139.345 (12) of the statutes is created to read:

139.345 **(12)** No penalty shall be imposed under subs. (9) and (10) if any of the following apply:

(a) The secretary of revenue determines that imposing a penalty would be inequitable because of inadvertent acts, mistakes, or unusual circumstances related to the violation.

(b) The person who is subject to a penalty under sub. (9) or (10) had good cause to violate sub. (9) or (10), and such violation did not result from the person's neglect.

SECTION 51. 139.37 (1) (a) of the statutes is amended to read:

139.37 **(1)** (a) No person shall sell ~~or~~ cigarettes, take orders for cigarettes for resale, or solicit cigarette sales in this state ~~for any manufacturer or permittee without first obtaining a~~ unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit from the department ~~of revenue~~. No ~~manufacturer or~~ permittee shall authorize any person to sell ~~or~~ cigarettes, take orders for cigarettes, or solicit cigarette sales in this state ~~without first having such person secure~~ unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize the sale of cigarettes or the solicitation of cigarette sales in this state unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.34. The department shall issue the required number of permits to ~~manufacturers and~~ permittees who hold a valid certificate issued under s. 73.03 (50). Each application for a salesperson's permit shall disclose the name and address of the employer or the person for whom the salesperson is selling or soliciting and such permit shall remain effective only while the salesperson represents such named employer or person. If such salesperson is thereafter employed by another ~~manufacturer or permittee~~ person, the salesperson shall obtain a new salesperson's permit. ~~Each manufacturer and~~ The permittee of

any such salesperson shall notify the department within 10 days after the resignation or dismissal of ~~any such~~ the salesperson ~~holding a permit~~.

SECTION 52. 139.40 (1) of the statutes is amended to read:

139.40 **(1)** All cigarettes acquired, owned, imported, possessed, kept, stored, made, sold, distributed or transported in violation of this chapter or s. 134.65, and all personal property used in connection therewith is unlawful property and subject to seizure by the secretary or any peace officer. All cigarettes seized for violating s. 139.31 (4) or (5) shall be destroyed, except as provided in sub. (2).

SECTION 53. 139.40 (2) of the statutes is amended to read:

139.40 **(2)** ~~If cigarettes which do not bear the proper tax stamps or on which the tax has not been paid~~ Cigarettes that are ~~so~~ seized ~~they~~ as provided under sub. (1) may be given to law enforcement officers to use in criminal investigations or sold to qualified buyers by the secretary, without notice. If the cigarettes are sold, after deducting the costs of the sale and ~~the keeping~~ of storing the property, the proceeds of the sale shall be paid into the state treasury. If the secretary finds that such cigarettes may deteriorate or become unfit for use in criminal investigations or for sale or that those uses would otherwise be impractical, the secretary may order them destroyed ~~or give them to a charitable or penal institution for free distribution to patients or inmates~~.

SECTION 54. 139.44 (1m) of the statutes is amended to read:

139.44 **(1m)** Any person who falsely or fraudulently tampers with a cigarette ~~meter~~ tax impression machine or tax indicia in order to evade the tax under s. 139.31 is guilty of a Class G felony.

SECTION 55. 139.44 (2) of the statutes is amended to read:

139.44 **(2)** Any person who makes or signs any false or fraudulent report or who attempts to evade the tax imposed by s. 139.31 or 139.76, or who aids in or abets the evasion or attempted evasion of that tax ~~may be fined not more than $10,000 or imprisoned for not more than 9 months or both~~, is guilty of a Class H felony.

SECTION 56. 139.44 (3) of the statutes is amended to read:

139.44 **(3)** Any permittee or licensee who fails to keep the records required by ss. 134.65, 139.30 to 139.42, or 139.77 to 139.82 shall be fined not less than ~~$100~~ $500 nor more than ~~$500~~ $1,000 for the first offense and shall be fined not less than $1,000 nor more than $5,000 or imprisoned not more than ~~6 months~~ 180 days or both for a 2nd or subsequent offense.

SECTION 57. 139.44 (4) of the statutes is amended to read:

139.44 **(4)** Any person who refuses to permit the examination or inspection authorized in s. 139.39 (2) or 139.83 may be fined not ~~more~~ less than $500 nor more than $1,000 or imprisoned not more than ~~90~~ 180 days or both. Such refusal shall be cause for immediate ~~suspension or~~ revocation of permit or license by the secretary.

SECTION 58. 139.44 (5) of the statutes is amended to read:

139.44 **(5)** Any person who violates any of the provisions of ss. 139.30 to 139.41 or 139.75 to 139.83 for which no other penalty is prescribed shall be fined not ~~less than $100 nor~~ more than ~~$1,000~~ $10,000 or imprisoned not ~~less than 10 days nor~~ more than ~~90 days~~ 9 months or both.

SECTION 59. 139.44 (6) of the statutes is amended to read:

139.44 **(6)** Any person who violates any of the rules of the department shall be fined not less than ~~$100~~ $500 nor more than ~~$500~~ $1,000 or be imprisoned not more than ~~6~~ 9 months or both.

SECTION 60. 139.44 (6m) of the statutes is created to read:

139.44 **(6m)** Any person who manufactures or sells cigarettes in this state without holding the proper permit or license issued under this subchapter is guilty of a Class I felony.

SECTION 61. 139.44 (7) of the statutes is amended to read:

139.44 **(7)** In addition to the penalties imposed for violation of ss. 139.30 to 139.41 or 139.75 to 139.83 or any of the rules of the department, the permit of any person convicted of a 2nd or subsequent offense shall be automatically revoked and ~~he or she~~ the person shall not be granted another permit for a period of ~~2~~ 5 years following such revocation.

SECTION 62. 139.44 (13) of the statutes is created to read:

139.44 **(13)** Notwithstanding subs. (1) to (8), no penalty shall be imposed under subs. (1) to (8) if any of the following apply:

(a) The secretary of revenue determines that imposing a penalty would be inequitable because of inadvertent acts, mistakes, or unusual circumstances related to the violation.

(b) The person who is subject to a penalty under subs. (1) to (8) had good cause to commit the violation to which the penalty applies, and such violation did not result from the person's neglect.

SECTION 63. 139.46 of the statutes is amended to read:

139.46 ~~Lists~~ List. The department shall compile and maintain a list of direct marketers who have complied with the requirements of s. 139.345 ~~and a list of direct marketers who the department knows have not complied with such requirements~~. The department shall provide copies of the ~~lists described under this section~~ list to the attorney general and to each person who delivers cigarettes to consumers in this state that are sold by direct marketing under s. 139.345.

SECTION 64. 139.75 (2) of the statutes is amended to read:

139.75 **(2)** "Consumer" means any individual who receives tobacco products for his or her personal use or consumption or any ~~person~~ individual who has title to or possession of tobacco products ~~in storage~~ for ~~use or other consumption in this state~~ any purpose other than for sale or resale.

SECTION 65. 139.75 (3g) of the statutes is created to read:

139.75 **(3g)** "Direct marketer" means any person who solicits sales of or sells tobacco products to consumers in this state by direct marketing.

SECTION 66. 139.75 (3r) of the statutes is created to read:

139.75 **(3r)** "Direct marketing" means publishing or making accessible an offer for the sale of tobacco products to consumers in this state, or selling tobacco products to consumers in this state, using any means by which the consumer is not physically present on a premise that sells tobacco products.

SECTION 67. 139.75 (4) (a) of the statutes is amended to read:

139.75 **(4)** (a) Any person in this state engaged in the business of selling tobacco products ~~in this state~~ who brings, or causes to be brought, into this state from outside the state any tobacco products for sale or resale;

SECTION 68. 139.75 (4) (c) of the statutes is amended to read:

139.75 **(4)** (c) Any person outside this state engaged in the business of selling tobacco products ~~outside this state~~ who ships or transports tobacco products to retailers in this state to be sold by those retailers.

SECTION 69. 139.75 (4) (cm) of the statutes is created to read:

139.75 **(4)** (cm) Any person outside this state engaged in the business of selling tobacco products who ships or transports tobacco products to consumers in this state.

SECTION 70. 139.75 (4n) of the statutes is created to read:

139.75 **(4n)** "Identification card" has the meaning given in s. 134.66 (1) (c).

SECTION 71. 139.75 (5s) of the statutes is created to read:

139.75 **(5s)** "Person" means any individual, sole proprietorship, partnership, limited liability company, corporation, or association, or any owner of a single-owner entity that is disregarded as a separate entity under ch. 71.

SECTION 72. 139.75 (7) of the statutes is amended to read:

139.75 **(7)** "Retail outlet" means each place of business from which tobacco products are sold to consumers by a retailer.

SECTION 73. 139.75 (8) of the statutes is amended to read:

139.75 **(8)** "Retailer" ~~means any person engaged in the business of selling tobacco products to ultimate consumers~~ has the meaning given in s. 134.66 (1) (g).

SECTION 74. 139.76 (3) of the statutes is created to read:

139.76 **(3)** Except as provided in sub. (2), no person may possess tobacco products in this state unless the tax imposed under sub. (1) is paid on such tobacco products.

SECTION 75. 139.78 (1m) of the statutes is created to read:

139.78 **(1m)** Except as provided in s. 139.76 (2), no person other than a distributor with a valid permit under s. 139.79 may import, ship, or transport into this state tobacco products for which the tax imposed under s. 139.76 (1) has not been paid.

SECTION 76. 139.79 (title) of the statutes is amended to read:

139.79 (title) **Permits; ~~distributor; subjobber.~~**

SECTION 77. 139.79 (1) of the statutes is amended to read:

139.79 **(1)** No person may engage in the business of a distributor, direct marketer, or subjobber of tobacco products at any place of business unless that

person has filed an application for and obtained a permit from the department to engage in that business at such place.

SECTION 78. 139.79 (2) of the statutes is amended to read:

139.79 **(2)** Section 139.34 (1) ~~(b)~~ (c) to (f), (1s), (4) and (9) applies to the permits under this section.

SECTION 79. 139.795 of the statutes is created to read:

139.795 Direct marketing. (1) (a) No person may sell tobacco products by direct marketing to consumers in this state as a direct marketer or solicit sales of tobacco products to consumers in this state by direct marketing unless the person has obtained a permit from the department to make such sales or solicitations. The person shall file an application for a permit under this subsection with the department, in the manner prescribed by the department.

(b) No person may be issued a permit under this subsection unless the person holds a valid distributor's permit under s. 139.79. Section 139.34 (1) (c) to (f), (4), and (9), as it applies to permits issued under s. 139.34, applies to permits issued under this subsection.

(c) No person may be issued a permit under this subsection unless the person certifies to the department, in the manner prescribed by the department, that the person shall register with credit card and debit card companies; that the invoices and all means of solicitation for all shipments of tobacco product sales from the person shall bear the person's name and address and the permit number of the permit ultimately issued under this subsection; and that the person shall provide the department any information the department considers necessary to administer this section.

(2) No person may sell tobacco products to consumers in this state by direct marketing unless the tax imposed under s. 139.76, and under s. 77.52 or 77.53, has been paid with regard to such products.

(3) No person may sell tobacco products to a consumer in this state by direct marketing unless the person does all of the following:

(a) Verifies the consumer's identity and address and that the consumer is at least 18 years of age by any of the following methods:

1. The person uses a database that includes information based on public records.

2. The person receives from the consumer, at the time of purchase, a copy of an identification card and verifies that the name specified on the identification card matches the name of the consumer and that the birth date on the identification card indicates that the consumer is at least 18 years of age.

3. The person uses a mechanism, other than a mechanism specified under subd. 1. or 2., that is approved by the department.

(b) Obtains from the consumer, at the time of purchase, a statement signed by the consumer that confirms all of the following:

1. The consumer's name, address, and birth date.

2. That the consumer understands that no person who is under 18 years of age may purchase or possess tobacco products or falsely represent his or her age for the purpose of receiving tobacco products, as provided under s. 254.92.

3. That the consumer understands that any person who, for the purpose of obtaining credit, goods, or services, intentionally uses, attempts to use, or possesses with intent to use, any personal identifying information or personal identification document of an individual, including a deceased individual, without the

authorization or consent of the individual and by representing that he or she is the individual, that he or she is acting with the authorization or consent of the individual, or that the information or document belongs to him or her, is guilty of a Class H felony, as provided under s. 943.201.

(4) Any person who, without having a valid permit under sub. (1), sells or solicits sales of tobacco products to consumers in this state by direct marketing shall pay a penalty to the department of $5,000 or an amount that is equal to 50 percent of the tax due on the tobacco products the person sold, without having a valid permit under sub. (1), to consumers in this state by direct marketing, whichever is greater.

(5) All packages of tobacco products shipped to consumers in this state shall be clearly labelled "TOBACCO PRODUCTS" on the outside of such packages.

(6) (a) Any nonresident or foreign direct marketer that has not registered to do business in this state as a foreign corporation or business entity shall, as a condition precedent to obtaining a permit under s. 139.79 (1), appoint and continually engage the services of an agent in this state to act as agent for the service of process on whom all processes, and any action or proceeding against it concerning or arising out of the enforcement of this chapter, may be served in any manner authorized by law. That service shall constitute legal and valid service of process on the direct marketer. The direct marketer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the department.

(b) A direct marketer described under par. (a) shall provide notice to the department no later than 30 calendar days before termination of the authority of an agent under par. (a) and shall provide proof to the satisfaction of the department of the appointment of a new agent no later than 5 calendar days before the termination

of an existing appointment. In the event an agent terminates an appointment, the direct marketer shall notify the department of that termination no later than 5 calendar days after the termination and shall include proof to the satisfaction of the department of the appointment of a new agent.

(c) The secretary of state is the agent in this state for the service of process of any direct marketer who has not appointed and engaged an agent as provided under par. (a), except that the secretary of state acting as the direct marketer's agent for the service of process does not satisfy the requirements imposed by par. (a).

SECTION 80. 139.81 (1) of the statutes is amended to read:

139.81 **(1)** No person may sell ~~or take orders for~~ tobacco products ~~for resale~~ or solicit sales of tobacco products in this state ~~for any manufacturer or permittee~~ unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit from the department. No ~~manufacturer or~~ permittee shall authorize any person to sell ~~or take orders for~~ tobacco products or solicit sales of tobacco products in this state unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit. No person may authorize the sale of tobacco products or the solicitation of sales of tobacco products in this state unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.79. Each application for a salesperson's permit shall disclose the name and address of the employer or the person for whom the salesperson is selling or soliciting and shall remain effective only while the salesperson represents the named employer or person. If the salesperson is thereafter employed by another ~~manufacturer or permittee~~ person the salesperson shall obtain a new salesperson's permit. ~~Each manufacturer and permittee~~ The employer of any such salesperson shall notify the

department within 10 days after the resignation or dismissal of ~~any~~ the salesperson ~~holding a permit~~.

SECTION 81. 139.81 (2) of the statutes is amended to read:

139.81 **(2)** Section 139.34 (1) ~~(b)~~ (c) to (e) applies to the permits under this section.

SECTION 82. 139.86 of the statutes is amended to read:

139.86 Prosecutions by attorney general. Upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any case arising under this subchapter. The attorney general may take any action necessary to enforce s. 139.795.

SECTION 83. 139.87 of the statutes is created to read:

139.87 Lists. The department shall compile and maintain a list of direct marketers who have complied with the requirements of s. 139.795. The department shall provide copies of the list to the attorney general and to each person who delivers tobacco products to consumers in this state that are sold by direct marketing under s. 139.795.

SECTION 9343. Initial applicability; Revenue.

(1) DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS. The treatment of sections 77.61 (11), 100.20 (1n), 100.30 (2) (c) 1. b. and (L) (intro.) and 2., 134.65 (1), (1n), (1r), (1s), and (2) (a), 134.66 (2) (d) and (3m), 139.30 (4n), (7), and (8s), 139.32 (4), 139.321 (1) (intro.) and (a) 1., 139.34 (1) (a), (b), (c) (intro.), 1., 1m., 2., 3., 3m., 4., 4m., 5., 6., and 7., and (cm), (1s), (4), (6), and (8), 139.345 (1) (a), (b), and (d), (3) (intro.) and (a) (intro.) and 2., (7), (8), (9), (10), (11), and (12), 139.37 (1) (a), 139.40 (1) and (2), 139.44 (1m), (2), (3), (4), (5), (6), (6m), (7), and (13), 139.46, 139.75 (2), (3g), (3r), (4) (a), (c), and (cm), (4n), (5s), (7), and (8), 139.76 (3), 139.78 (1m), 139.79 (title), (1),

and (2), 139.795, 139.81 (1) and (2), 139.86, and 139.87 of the statutes, the renumbering and amendment of section 134.65 (5) of the statutes, and the creation of section 134.65 (5) (b) of the statutes first apply to sales of cigarettes and tobacco products made on the effective date of this subsection.

(END)