



2005 ASSEMBLY BILL 411

May 10, 2005 - Introduced by Representatives J. FITZGERALD, DAVIS, MOLEPSKE, LAMB, VAN ROY, SHILLING, HAHN, HINES, BERCEAU, NERISON, OTT, BLACK, AINSWORTH, ALBERS, CULLEN, PRIDEMORE, VOS, LEHMAN, NISCHKE, GIELOW and KREIBICH, cosponsored by Senators S. FITZGERALD, STEPP, DARLING, HARSDDORF, ROESSLER, OLSEN and LAZICH. Referred to Committee on State Affairs.

1 **AN ACT** *to renumber* 139.30 (1); *to amend* 134.66 (1) (a), 134.66 (2) (a), 134.66
2 (2) (am), 134.66 (2) (d), 134.66 (2) (e), 139.30 (10), 139.32 (1), 139.32 (5), 139.32
3 (5m), 139.32 (6), 139.321 (1) (intro.), 139.33 (3), 139.34 (3), 139.35 (1), 139.38
4 (1), 139.38 (2), 139.395, 139.45, 139.75 (12), 254.911 (1) and 891.455 (4); and *to*
5 **create** 100.20 (1n), 134.66 (1) (am), 139.30 (1d), 139.30 (1s), 139.30 (2n), 139.30
6 (2p), 139.30 (4n), 139.30 (8d), 139.345, 139.38 (1m) and 254.92 (2m) of the
7 statutes; **relating to:** selling cigarettes to consumers in this state via direct
8 marketing and providing penalties.

Analysis by the Legislative Reference Bureau

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 the Department of Revenue (DOR). A “jobber” is any person who acquires cigarettes from manufacturers or distributors, stores the cigarettes, and sells the cigarettes to retailers for resale.

This bill prohibits a direct marketer from selling cigarettes to consumers in this state unless the direct marketer fulfills certain requirements. The bill 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.

ASSEMBLY BILL 411

Under the bill, 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.

This bill also 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. The bill also requires that any person who delivers such cigarettes to consumers in this state verify that the person who purchased the cigarettes, and who receives the delivery, is at least 18 years of age.

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* 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.** 100.20 (1n) of the statutes is created to read:

2 100.20 **(1n)** It is an unfair method of competition or an unfair trade practice
3 for any person to sell cigarettes to consumers in this state in violation of s. 139.345.

4 **SECTION 2.** 134.66 (1) (a) of the statutes is amended to read:

5 134.66 **(1)** (a) "Cigarette" has the meaning given in s. 139.30 ~~(1)~~ (1m).

6 **SECTION 3.** 134.66 (1) (am) of the statutes is created to read:

7 134.66 **(1)** (am) "Direct marketer" has the meaning given in s. 139.30 (2n).

8 **SECTION 4.** 134.66 (2) (a) of the statutes is amended to read:

9 134.66 **(2)** (a) No retailer, direct marketer, manufacturer, distributor, jobber or
10 subjobber, no agent, employee or independent contractor of a retailer, direct
11 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
12 of an independent contractor may sell or provide for nominal or no consideration
13 cigarettes or tobacco products to any person under the age of 18, except as provided

ASSEMBLY BILL 411

1 in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph
2 for the purchase of cigarettes or tobacco products from his or her vending machine
3 by a person under the age of 18 if the vending machine operator was unaware of the
4 purchase.

5 **SECTION 5.** 134.66 (2) (am) of the statutes is amended to read:

6 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,
7 subjobber, no agent, employee or independent contractor of a retailer, direct
8 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
9 of an independent contractor may provide for nominal or no consideration cigarettes
10 or tobacco products to any person except in a place where no person younger than 18
11 years of age is present or permitted to enter unless the person who is younger than
12 18 years of age is accompanied by his or her parent or guardian or by his or her spouse
13 who has attained the age of 18 years.

14 **SECTION 6.** 134.66 (2) (d) of the statutes is amended to read:

15 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber
16 or retailer, or their employees or agents, may provide cigarettes or tobacco products
17 for nominal or no consideration to any person under the age of 18.

18 **SECTION 7.** 134.66 (2) (e) of the statutes is amended to read:

19 134.66 (2) (e) No retailer or direct marketer may sell cigarettes in a form other
20 than as a package or container on which a stamp is affixed under s. 139.32 (1).

21 **SECTION 8.** 139.30 (1) of the statutes is renumbered 139.30 (1m).

22 **SECTION 9.** 139.30 (1d) of the statutes is created to read:

23 139.30 (1d) "Bonded direct marketer" means any person who acquires
24 unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages
25 or other containers, stores them and sells them by direct marketing to consumers for

ASSEMBLY BILL 411**SECTION 9**

1 their own personal use and who may also acquire stamped cigarettes from
2 manufacturers or distributors for such sales.

3 **SECTION 10.** 139.30 (1s) of the statutes is created to read:

4 139.30 (1s) "Consumer" means any individual who receives cigarettes for his
5 or her personal use or consumption or any individual who has title to or possession
6 of cigarettes for any purpose other than for sale or resale.

7 **SECTION 11.** 139.30 (2n) of the statutes is created to read:

8 139.30 (2n) "Direct marketer" means a bonded direct marketer or a nonbonded
9 direct marketer.

10 **SECTION 12.** 139.30 (2p) of the statutes is created to read:

11 139.30 (2p) "Direct marketing" means publishing or making accessible an offer
12 for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers
13 in this state, using any means by which the consumer is not physically present at the
14 time of sale on a premise that sells cigarettes.

15 **SECTION 13.** 139.30 (4n) of the statutes is created to read:

16 139.30 (4n) "Government issued identification" includes a valid driver's
17 license, state identification card, passport, or military identification.

18 **SECTION 14.** 139.30 (8d) of the statutes is created to read:

19 139.30 (8d) "Nonbonded direct marketer" means any person who acquires
20 stamped cigarettes from the manufacturers or distributors, stores them, and sells
21 them by direct marketing to consumers for their own personal use.

22 **SECTION 15.** 139.30 (10) of the statutes is amended to read:

23 139.30 (10) "Retailer" means any person who sells, exposes for sale or possesses
24 with intent to sell to consumers any cigarettes has the meaning given in s. 134.66 (1)
25 (g).

ASSEMBLY BILL 411

1 **SECTION 16.** 139.32 (1) of the statutes is amended to read:

2 139.32 (1) The tax imposed by s. 139.31 (1) shall be paid. To evidence the
3 payment, the department shall provide stamps. A person who has paid the tax shall
4 affix stamps of the proper denomination to each package in which cigarettes are
5 packed, prior to the first sale within this state. First sale does not include a sale by
6 a manufacturer to a distributor or to a bonded direct marketer or by a distributor to
7 a permittee who has obtained department approval as provided for in s. 139.321 (1)
8 (a) 2. The tax shall be paid only once on each package or container.

9 **SECTION 17.** 139.32 (5) of the statutes is amended to read:

10 139.32 (5) Manufacturers, bonded direct marketers, and distributors ~~having~~
11 ~~a permit from the secretary who are authorized by the department to purchase tax~~
12 ~~stamps~~ shall receive a discount of 1.6% of the tax paid on stamp purchases.

13 **SECTION 18.** 139.32 (5m) of the statutes is amended to read:

14 139.32 (5m) Distributors, bonded direct marketers, and manufacturers shall
15 pay to the department the cost of printing and shipping those stamps.

16 **SECTION 19.** 139.32 (6) of the statutes is amended to read:

17 139.32 (6) Manufacturers, bonded direct marketers, and distributors ~~having~~
18 ~~a permit from the secretary who are authorized by the department to purchase tax~~
19 ~~stamps~~ may purchase stamps on credit. The secretary may require manufacturers,
20 bonded direct marketers, and distributors who purchase stamps on credit to file
21 under the conditions prescribed by the secretary by rule.

22 **SECTION 20.** 139.321 (1) (intro.) of the statutes is amended to read:

23 139.321 (1) (intro.) It is unlawful for any person to possess ~~in excess of 400~~
24 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32
25 (1) and 139.33 (4).

ASSEMBLY BILL 411**SECTION 21**

1 **SECTION 21.** 139.33 (3) of the statutes is amended to read:

2 139.33 (3) No person other than a member of the armed forces, as specified in
3 this subsection, a licensed distributor, or a bonded direct marketer who is authorized
4 by the department to purchase and affix tax stamps may import into this state ~~more~~
5 ~~than 400~~ cigarettes on which the excise tax imposed by s. 139.31 has not been paid
6 and the container of which does not bear proper stamps. Within 15 days, any such
7 person importing cigarettes shall file a declaration of such cigarettes imported and
8 shall remit therewith the tax on such cigarettes imposed by this section. Members
9 of the armed forces shall not be required to report or pay the tax on cigarettes in their
10 possession if such cigarettes are issued to them by the U.S. government or any of its
11 subdivisions or were purchased in any armed forces post exchange or service store
12 for their personal use or consumption. If the use tax imposed by this section is not
13 paid when due, it shall become delinquent and the person liable for it shall pay, in
14 addition, a penalty of \$25 for each 200 cigarettes. Interest on the delinquent tax and
15 penalty shall accrue at the rate of 1.5% per month or each fraction of a month from
16 the date the tax became due until paid.

17 **SECTION 22.** 139.34 (3) of the statutes is amended to read:

18 139.34 (3) No distributor or bonded direct marketer may affix stamps to
19 cigarette packages, as provided in s. 139.32, unless the distributor or bonded direct
20 marketer certifies to the department, in a manner prescribed by the department,
21 that the distributor or bonded direct marketer purchases cigarettes directly from a
22 manufacturer.

23 **SECTION 23.** 139.345 of the statutes is created to read:

24 **139.345 Direct marketing.** (1) (a) (intro.) No person may sell cigarettes to
25 consumers in this state as a direct marketer or solicit sales of cigarettes to consumers

ASSEMBLY BILL 411

1 in this state by direct marketing unless the person submits to the department the
2 person's name, trade name, address of the person's principal place of business, phone
3 number, e-mail address, and Web site address.

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

14 (d) No person may sell cigarettes as described in this section unless the person
15 certifies to the department, in the manner prescribed by the department, that the
16 person shall register with credit card and debit card companies; that the invoices and
17 all means of solicitation for all shipments of cigarette sales from the person shall bear
18 the person's name and address; and that the person shall provide the department any
19 information the department considers necessary to administer this section.

20 (2) No person may sell cigarettes to consumers in this state by direct marketing
21 unless the tax imposed under s. 77.52 or 77.53 is paid on the sale of such cigarettes.

22 (3) No person may sell cigarettes to consumers in this state, or solicit sales of
23 cigarettes to consumers in this state by direct marketing unless the person does all
24 of the following:

ASSEMBLY BILL 411**SECTION 23**

1 (a) Verifies the consumer's name and address and that the consumer is at least
2 18 years of age by any of the following methods:

3 1. The person uses a database, approved by the department, that includes
4 information based on public records.

5 2. The person receives from the consumer, at the time of purchase, a notarized
6 copy of a government issued identification.

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

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

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

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

15 3. That the consumer understands that any person who, for the purpose of
16 obtaining credit, goods, or services, intentionally uses, attempts to use, or possesses
17 with intent to use, any personal identifying information or personal identification
18 document of an individual, including a deceased individual, without the
19 authorization or consent of the individual and by representing that he or she is the
20 individual, that he or she is acting with the authorization or consent of the
21 individual, or that the information or document belongs to him or her, is guilty of a
22 Class H felony, as provided under s. 943.201.

23 (4) Any person who makes a sale of cigarettes as the result of an advertisement
24 on the Internet shall, at the time of purchase, obtain the purchaser's electronic mail

ASSEMBLY BILL 411

1 address and shall receive payment for the sale by credit card, debit card, or check
2 prior to shipping.

3 (5) The invoice for any shipment of cigarettes sold to consumers in this state
4 by direct marketing shall specify the name and address of the seller and any valid
5 permit issued under s. 139.34 that is held by the seller.

6 (6) All packages of cigarettes shipped to consumers in this state shall be clearly
7 labelled "CIGARETTES" on all sides of the outside of such packages.

8 (7) (a) No person may deliver a package of cigarettes sold by direct marketing
9 to a consumer in this state unless the person making the delivery receives a
10 government issued identification card from the person receiving the package and
11 verifies that the person receiving the package is at least 18 years of age. If the person
12 receiving the package is not the person to whom the package is addressed, the person
13 delivering the package shall have the person receiving the package sign a statement
14 that affirms that the person to whom the package is addressed is at least 18 years
15 of age.

16 (b) No person may deliver a package of cigarettes to a consumer in this state
17 unless the seller of the cigarettes provides proof to the person making the delivery
18 that the seller has complied with all requirements under this subchapter. A seller
19 shall have no course of action against any person who refuses to deliver cigarettes
20 as provided under this subdivision.

21 (8) This section does not apply to any retailer or wholesaler who sells cigarettes
22 to consumers in this state and who holds a valid seller's permit under this subchapter
23 or subch. III of ch. 77.

24 **SECTION 24.** 139.35 (1) of the statutes is amended to read:

ASSEMBLY BILL 411**SECTION 24**

1 139.35 (1) TRANSFERS. No person may give, sell or lend any stamps to another
2 and no person may accept, purchase or borrow any stamps from another. All sales
3 and transfers of stamps may be made only by the secretary to permit holding
4 manufacturers and distributors, and to bonded direct marketers who are authorized
5 by the department to purchase and affix tax stamps.

6 **SECTION 25.** 139.38 (1) of the statutes is amended to read:

7 139.38 (1) Every manufacturer located out of the state shall keep records of all
8 sales of cigarettes shipped into this state. Every manufacturer located in the state
9 shall keep records of production, sales and withdrawals of cigarettes. Every
10 distributor and direct marketer shall keep records of purchases and sales of
11 cigarettes. Every manufacturer, bonded direct marketer, and distributor ~~holding a~~
12 ~~permit from the secretary with the right~~ who is authorized by the department to
13 purchase and apply stamps shall also keep records of purchases and disposition of
14 stamps. Every jobber, multiple retailer, and vending machine operator shall keep
15 records of all purchases and disposition of cigarettes. Every warehouse operator
16 shall keep records of receipts and withdrawals of cigarettes. All such records shall
17 be accurate and complete and be kept in a manner prescribed by the secretary. These
18 records shall be preserved on the premises described in the permit or license in such
19 a manner as to ensure permanency and accessibility for inspection at reasonable
20 hours by authorized personnel of the department.

21 **SECTION 26.** 139.38 (1m) of the statutes is created to read:

22 139.38 (1m) Records of purchases and sales of cigarettes under sub. (1) that
23 are kept by direct marketers shall indicate, for each shipment of cigarettes into this
24 state in the month preceding the report under sub. (2), the invoice date and number;
25 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the

ASSEMBLY BILL 411

1 manufacturer of the cigarettes shipped and the point of origin; the purchaser's name,
2 address, and birth date; the name of the person to whom the cigarettes were shipped;
3 the address to which the cigarettes were shipped; and any other information the
4 department requires.

5 **SECTION 27.** 139.38 (2) of the statutes is amended to read:

6 139.38 (2) (a) Except as provided in par. (b), every permittee manufacturer,
7 distributor, jobber, and direct marketer shall render a true and correct invoice of
8 every sale of cigarettes ~~at wholesale~~ and every permittee shall on or before the 15th
9 day of each calendar month file a verified report of all cigarettes purchased, sold,
10 received, warehoused or withdrawn during the preceding calendar month.

11 (b) The department may allow any jobber, multiple retailer, nonbonded direct
12 marketer, or vending machine operator permittee who does not sell cigarettes, except
13 for those on which the tax under this chapter is paid, to file a quarterly report. The
14 quarterly report shall be filed on or before the 15th day of the next month following
15 the close of each calendar quarter. The report shall specify the number of cigarettes
16 purchased and sold during the preceding calendar quarter.

17 **SECTION 28.** 139.395 of the statutes is amended to read:

18 **139.395 Theft of tax moneys.** All cigarette tax moneys received by a
19 distributor, bonded direct marketer, or manufacturer for the sale of cigarettes on
20 which the tax under this subchapter has become due and has not been paid are trust
21 funds in the hands of the distributor, bonded direct marketer, or manufacturer and
22 are the property of this state. Any distributor, bonded direct marketer, or
23 manufacturer who fraudulently withholds, appropriates or otherwise uses cigarette
24 tax moneys that are the property of this state is guilty of theft under s. 943.20 (1),

ASSEMBLY BILL 411**SECTION 28**

1 whether or not the distributor, bonded direct marketer, or manufacturer has or
2 claims to have an interest in those moneys.

3 **SECTION 29.** 139.45 of the statutes is amended to read:

4 **139.45 Prosecutions by attorney general.** Upon request by the secretary
5 of revenue, the attorney general may represent this state or assist a district attorney
6 in prosecuting any case arising under this subchapter. The attorney general may
7 take any action necessary to enforce s. 139.345.

8 **SECTION 30.** 139.75 (12) of the statutes is amended to read:

9 139.75 (12) "Tobacco products" means cigars; cheroots; stogies; periques;
10 granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff;
11 snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos;
12 shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds
13 and forms of tobacco prepared in such manner as to be suitable for chewing or
14 smoking in a pipe or otherwise, or both for chewing and smoking; but "tobacco
15 products" does not include cigarettes, as defined under s. 139.30 ~~(1)~~ (1m).

16 **SECTION 31.** 254.911 (1) of the statutes is amended to read:

17 254.911 (1) "Cigarette" has the meaning given in s. 139.30 ~~(1)~~ (1m).

18 **SECTION 32.** 254.92 (2m) of the statutes is created to read:

19 254.92 (2m) No person may purchase cigarettes on behalf of, or to provide to,
20 any person who is under 18 years of age. Any person who violates this subsection
21 may be:

22 (a) Required to forfeit not more than \$500 if the person has not committed a
23 previous violation within 30 months of the violation.

24 (b) Fined not more than \$500 or imprisoned for not more than 30 days or both
25 if the person has committed a previous violation within 30 months of the violation.

