

2001 Jr2 DRAFTING REQUEST

Senate Amendment (SA-SSA1-AB1)

Received: 03/28/2002

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Senate Democratic Caucus

By/Representing: Engel

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax - cigarettes and t.p.

Extra Copies:

Submit via email: NO

Pre Topic:

SCC:.....Engel - CN4901,

Topic:

Direct marketing of cigarettes and tobacco products

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

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FE Sent For:

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#2 Direct Marketing Tobacco Products

JK

this 41
technical
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changes
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(alive)
told Dora
Amber

Duff/Wirch Motion #340 introduced under DOR in Finance, Failed 8-8 (vote attached). Some changes have been made since motion #340, and an updated fiscal bureau memo, as well as updated LRB language, LRB 5065/1.

Under current law, anyone who wants to sell tobacco products in Wisconsin must obtain a permit from the municipality they wish to sell in. Often, permits are not obtained, yet DOR has little authority to enforce.

In addition to revenue concerns, these out of state companies are coming in to sell, many times without a permit, and undercut local merchants who have to pay sales taxes. This issue has been raised several times by Ralph Tenuta, who sells cigars at his store, and gets undercut when out of state companies advertise in the Kenosha News, yet aren't paying the permit fees.

We would create a mechanism where companies that wish to market their products in Wisconsin must enter into an agreement with DOR to pay sales and use tax on all their sales in exchange for a direct marketing permit.

Direct marketing includes selling products in newspapers, magazines, radio or television broadcasts, mailings, the telephone, or the internet.

A direct marketer must apply to DOR for a permit (a \$500 fee will be submitted for permit, which expires each year) and submit a fee with the permit application based on the number of cigarettes that they sell annually.

Number of Cigarettes Sold	Fee
Less than 30,000	\$1000
30,000-600,001	\$5,000
More than 600,000	\$10,000

CN
4901

Other permit requirements on direct marketers:

- certify with DOR that all sales are credit card transactions or personal check transactions
- invoices for all shipments of cigs will bear the direct marketer's name, address, permit number
- provide DOR any information that DOR deems necessary for sales, use, cigarette or tobacco products taxes
- Age verification methods will be strict. Either the company has to use a DOR-approved database that includes information based on public records, or they have to obtain a notarized copy of the purchaser's driver's license or official Wisconsin identification card, passport, or military identification
- Cigs and tobacco products may not be shipped or delivered to a person under 18

- Violators will be fined not more than \$1000 nor less than \$500 for the first offense, and not more than \$5000 nor less than \$1000 or imprisoned not more than 180 days or 2nd and subsequent offenses
- Fines can also be levied up to \$5000 or \$50 for every 200 cigarettes for selling amounts over what is allowed by the permit
- Both DOR and SmokeFree Wisconsin were heavily involved in the drafting of this motion.

This proposal would generate \$335,000 PR-REV (\$160,000 in 01-02, \$175,000 in 02-03). In addition, it is possible that some additional tax revenues from cigarette sales via direct marketing could be generated. The proposal provides DOR with funding for administrative costs of \$126,600 in 02-03. Of this amount, \$16,000 is one-time cost, while \$110,600 represents the ongoing annual cost. In addition, 1.5 PR would be created.



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

March 27, 2002

TO: Senator Robert Wirch
Room 316 South, State Capitol

FROM: Drew B. Larson, Fiscal Analyst

SUBJECT: Direct Marketing of Cigarettes and Tobacco Products

As requested by your office, this document summarizes a proposal to create new statutory provisions and change existing statutes to permit and regulate the sale of cigarettes and other tobacco products through direct marketing activities, including over the internet.

Municipal Retail License Requirement

Under current law, no person may 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 or permit for the sale of cigarettes without first obtaining a license from the clerk of the city, village or town wherein such privilege is sought to be exercised. The proposal would provide that direct marketers who have obtained a permit from the Department of Revenue (DOR) could sell cigarettes and tobacco products in Wisconsin without obtaining a municipal retailer's license.

Under current law, any person violating the requirement to obtain a municipal license under this provision is subject to a fine of \$25 to \$100 for a first offense and a fine of \$25 to \$200 for a second or subsequent offense. If upon such second or subsequent violation, the person was personally guilty of a failure to exercise due care to prevent the violation, the person is subject to a fine of \$25 to \$300, imprisonment for up to 60 days or both.

The proposal would modify this provision by increasing the penalty for a first offense to a fine of \$500 to \$1,000 and by increasing the penalty for a second or subsequent offense to a fine of \$1,000 to \$5,000, imprisonment for up to 180 days or both. In addition, the proposal would delete the current provision that imposes additional penalties for individuals who are guilty of failing to exercise due care to avoid a second or subsequent violation.

Current law also provides that the municipality must terminate the license of any person who is convicted of being personally guilty of a failure to exercise due care to prevent the violation for a period of five years, during which the person may not act as the servant or agent of a licensed cigarette or tobacco products retailer for the performance of acts authorized by the license. The proposal would make this provision apply only to second or subsequent convictions.

Direct Marketing of Cigarettes

The proposal would create new provisions in the cigarette tax statutes (Chapter 139) regarding direct marketing of cigarettes:

“Consumer” would mean any natural person who receives cigarettes for his/her own personal use or consumption and any natural person who has title to or possession of cigarettes for other than sale or resale.

"Direct marketer" would mean any person who solicits or sells cigarettes to consumers in Wisconsin by direct marketing. "Direct marketing" would mean publishing or making accessible an offer for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers in this state, using any means by which the consumer is not physically present at the time of sale on a premise that sells cigarettes, including, but not limited to, using newspapers, magazines, radio or television broadcasts, mailings, the telephone, or the internet.

Under the current cigarette tax statutes, “distributor” means any person who acquires unstamped cigarettes from the manufacturer thereof, affixes tax stamps to the packages or other containers, stores them and sells them for resale or who acquires stamped cigarettes from another permittee for such sales. The proposal would modify this definition to also include a person who acquires unstamped cigarettes for resale from the first importer of record of the cigarettes. In addition, it provides that the definition would allow any distributor to acquire stamped cigarettes from another distributor (rather than from another permittee) for resale.

“Person” would mean any individual, sole proprietorship, partnership, LLC, corporation, or association, or any owner of a single-owner entity that is disregarded as a separate entity under state income tax provisions. Under current law, the general definition of "person" in the statutes includes all partnerships, associations and bodies politic or corporate.

Under this proposal, neither "retailer" nor "retail outlet" would be considered a direct marketer.

The proposal specifies that no person could 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 has obtained a permit from DOR to make such sales or solicitations. The person would have to file an application for a permit with DOR, in the manner prescribed by the Department, and submit the following fee with the application: (a) if the person sells no more than 30,000 cigarettes

annually to consumers in this state by direct marketing, \$1,000; (b) if the person sells more than 30,000 but less than 600,001 cigarettes annually, \$5,000; or (c) if the person sells more than 600,000 cigarettes annually, \$10,000. A permit issued under this provision would expire on December 31 of each year.

DOR could not issue a permit to a person unless the person certifies to the Department that the person will either: (a) acquire unstamped cigarettes from the manufacturer or from the first importer of record, pay the state cigarette tax, affix tax stamps to the cigarette packages or containers, store such packages or containers, and sell only such packages or containers to consumers in this state by direct marketing; or (b) purchase stamped cigarettes from a distributor and sell only such packages or containers to consumers in this state by direct marketing.

No person could be issued a direct marketer's permit unless the person certifies to DOR, in the manner prescribed by the Department, that all cigarette sales to consumers in this state will be credit-card or personal-check transactions; that the invoices for all shipments of cigarette sales from the person will bear the person's name, address and permit number; and that the person will provide DOR any information the Department considers necessary to administer this provision.

No direct marketer could purchase tax stamps or sell cigarettes in excess of the number of cigarette sales specified in his or her permit unless the person pays the applicable, higher permit fee. Any person who sells cigarettes in excess of the number of cigarette sales specified in his or her permit would have to pay a penalty to DOR of \$5,000 or an amount that is equal to \$50 for every 200 cigarettes, or fraction of 200 cigarettes, whichever is greater.

No person could sell cigarettes to consumers in this state by direct marketing unless the cigarette tax is paid on such cigarettes and tax stamps are affixed to the cigarette packages or containers. No person could sell cigarettes to consumers in this state by direct marketing unless the sales or use tax is paid on the sale of such cigarettes.

No person could sell cigarettes to consumers in this state by direct marketing unless the person certifies to DOR that they will be able to verify the identity and the age of the consumer to be at least 18 years by either: (a) using a data base, approved by DOR, that includes information based on public records; or (b) obtaining a notarized copy of the purchaser's driver's license or official Wisconsin identification card, passport, or military identification. The direct marketer would be required to keep all certified copies of the identification card on file and available for inspection by authorized employees of DOR for four years from the date of the last sale to an individual. In addition, the government-issued form of identification would be required to be checked against a government-issued database for verification of authenticity and accuracy. Alternatively, a different mechanism, if approved by DOR, could be used for verifying that the consumer is at least 18 years of age.

Any person who, without having a valid permit, sells or solicits sales of cigarettes to consumers in this state by direct marketing would have to pay a penalty to DOR 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.

No sale of cigarettes to a consumer in this state by direct marketing could exceed 10 cartons for each invoice or 20 cartons in a 30-day period for each purchaser or address. Any person who sells cigarettes that exceed these maximum amounts would have to pay a penalty to DOR of \$5,000 or an amount that is equal to \$50 for every 200 cigarettes, or fraction of 200 cigarettes, sold above the maximum amounts, whichever is greater. Any person who purchases cigarettes that exceed the maximum amounts would have to pay a penalty to DOR of \$25 per carton. In addition, any person who purchases cigarettes that exceed the maximum amounts would have to apply for a wholesale cigarette permit with DOR.

No cigarettes could be shipped to a person who is under 18 years of age. Finally, the current 1.6% distributor's discount on stamp purchases and other cigarette tax payment provisions would apply to direct marketers.

Direct Marketing of Tobacco Products

The proposal would create new provisions in Chapter 139 regarding direct marketing of tobacco products:

Currently, "consumer" means any person who has title to or possession of tobacco products in storage for use or other consumption in this state. The proposal would alter this definition to mean any natural person who receives tobacco products for his or her own personal use or consumption or any natural person who has title to or possession of tobacco products for other than sale or resale.

"Direct marketer," "direct marketing" and "person," "retailer," and "retail outlet" would be defined as under the cigarette tax provisions with references corrected to apply to tobacco products.

Under the current tobacco products tax statutes, the definition of "distributor" means, among other things, any person 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. The proposal would change this definition to specify that "distributor" would mean, among other things, any person in this state engaged in the business of selling tobacco products who brings, or causes to be brought, into this state from outside the state any tobacco products for sale.

The current definition of "distributor" also includes any person 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. The proposal would modify this definition to read any person outside this state engaged in the business of selling tobacco products who ships or transports tobacco products to retailers in this state to be sold by those retailers or ships tobacco products to consumers in this state.

No person could 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 DOR to make such sales or solicitations. The person would have to file an application for a permit with DOR, in the manner prescribed by the Department, and submit a \$500 fee with the application.

No person could be issued a direct marketing permit unless the person holds a valid tobacco products distributor's permit. The provisions requiring denial of a cigarette permit by DOR to persons who have been convicted of certain crimes would also apply to tobacco products direct marketing and wholesale permits. A direct marketing permit issued under this provision would expire on December 31 of each year.

No person could be issued a permit under these provisions unless the person certifies to DOR, in the manner prescribed by the Department, that all tobacco product sales to consumers in this state will be credit-card or personal-check transactions; that the invoice for all shipments of tobacco product sales from the person will bear the person's name, address, and permit number, and that the person will provide DOR any information the Department considers necessary to administer these provisions.

No person could sell tobacco products by direct marketing to consumers in this state unless the tobacco products tax and sales and use tax have been paid with regard to such products.

No person could sell tobacco products to consumers in this state by direct marketing unless the person certifies to DOR that they will be able to verify the identity and the age of the consumer to be at least 18 years by either: (a) using a data base, approved by DOR, that includes information based on public records; or (b) obtaining a notarized copy of the purchaser's driver's license or official Wisconsin identification card, passport, or military identification. The direct marketer would be required to keep all certified copies of the identification card on file and available for inspection by authorized employees of DOR for four years from the date of the last sale to an individual. In addition, the government-issued form of identification would be required to be checked against a government-issued database for verification of authenticity and accuracy. Alternatively, a different mechanism, if approved by DOR, could be used for verifying that the consumer is at least 18 years of age.

Any person who, without having a valid direct marketing permit, sells or solicits sales of tobacco products to consumers in this state by direct marketing would have to pay a penalty to DOR of \$5,000 or an amount that is equal to 50% of the tax due on the tobacco products the person sold, without having a valid permit, to consumers in this state by direct marketing, whichever is greater.

No tobacco products could be shipped to a person who is under 18 years of age.

Provisions Regarding Salespersons

Current law provides that no person may sell or take orders for cigarettes or tobacco products for resale in Wisconsin for a manufacturer or permittee without first obtaining a salesperson's permit from DOR. Further, under current law no manufacturer or permittee can authorize a person to sell or take orders for cigarettes or tobacco products without that person having secured a salesperson's permit. The proposal would modify these requirements to provide that: (a) no person in this state may solicit sales of cigarettes or tobacco products unless the person they represent, whether in state or outside this state, holds a permit with DOR; and (b) soliciting sales of cigarettes or tobacco products would be covered in addition to actual sales.

Required Payment of Tobacco Products Tax

This proposal would create a provision specifying that no person may possess taxable tobacco products in this state unless the tobacco products tax is paid. In addition, it would specify that no person other than a distributor with a valid permit from DOR could import into Wisconsin taxable tobacco products for which the tobacco products tax has not been paid.

Modifications to Chapter 134 (Miscellaneous Trade Regulations)

Under current law, Chapter 134 prohibits the sale of cigarettes and tobacco products to minors by retailers, manufacturers, distributors, jobbers and subjobbers. The proposal would also apply these provisions to direct marketers of cigarettes and tobacco products.

In addition, this proposal specifies that 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 would be a defense to any prosecution for a violation of the prohibition against selling or giving cigarettes or tobacco products to a person under age 18: (a) that the direct marketer used a mechanism, approved by DOR, 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 a government-issued identification; (c) that the name and birthdate of the purchaser, as indicated by the purchaser, matched the name and birthdate on the identification presented to the direct marketer; and (d) that the sale was made in good faith, in reasonable reliance on the mechanism approved by DOR and the representation and identification presented by the purchaser, and in the belief that the purchaser had attained the age of 18.

Cigarette Tax Meter Machines

Under current law, in lieu of tax stamps, the Secretary of DOR may allow impressions applied by the use of meter machines to signify that the cigarette tax has been paid. The proposal would repeal this provision.

Penalties for Illegal Possession of Cigarettes

Under current law, it is unlawful for any person to possess in excess of 400 cigarettes unless the required state tax stamps are properly affixed. This provision does not apply to cigarette manufacturers, distributors or warehouse operators possessing valid permits issued by DOR. The proposal would delete the 400-cigarette threshold in this provision so that possession of any number of unstamped cigarettes would be illegal. In addition, it specifies that this provision would not apply to direct marketers.

The proposal provides that the following penalties could be imposed for possession of unlawful cigarettes. If the violator is a consumer, as defined in the proposal: (a) payment of any use tax due but not paid; (b) payment of interest of 1.5% per month (or fraction thereof) on the delinquent tax for the period starting on the date the tax became due until the tax was paid; and (c) a penalty of \$25 for each 200 cigarettes [\$25 per carton]. For all other persons, the violations would be subject to the following penalties: (a) for possession of 6,000 or fewer cigarettes [30 or fewer cartons], a fine of not more than \$1,000, or imprisonment for not more than one year, or both; (b) for more than 6,000 but 36,000 or fewer cigarettes, a fine of not more than \$5,000, or imprisonment for not more than two years, or both; and (c) for more than 36,000 cigarettes, a fine of not less than \$10,000 nor more than \$50,000, or imprisonment for not more than five years, or both.

Under current law, in general, no person other than a licensed distributor may import into this state more than 400 cigarettes on which the state cigarette tax has not been paid and the container of which does not bear proper tax stamps. The proposal would delete the 400-cigarette threshold in this provision so that importing any number of untaxed cigarettes would be illegal. In addition, it specifies that this provision would not apply to direct marketers.

Permit Requirement for Cigarette Manufacturers and Distributors

Under current law, no person may manufacture cigarettes in this state or sell cigarettes in this state as a distributor, jobber, vending machine operator 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 DOR. This provision applies to all officers, directors, agents and stockholders holding 5% or more of the stock of any corporation applying for a permit. The proposal would apply the permit requirement to direct marketers. In addition, the provision regarding stockholders would be repealed.

Under current law, subject to nondiscrimination provisions, no permit may be granted to any person to whom any of the following applies: (a) the person has been convicted of a misdemeanor not involving Chapters 340 to 349 (relating to motor vehicles) at least three times; (b) the person has been convicted of a felony, unless pardoned; (c) the person is addicted to the use of a controlled substance or controlled substance analog; (d) the person has income which comes principally from gambling or has been convicted of two or more gambling offenses; (e) the person has been guilty of crimes relating to prostitution; (f) the person has been guilty of crimes relating to loaning money

or anything of value to persons holding licenses or permits pursuant to the provisions regarding the regulation of alcohol beverages; or (g) the person does not hold a sales tax seller's permit, if the person is a retailer.

The proposal would repeal items (a) through (f) and, instead, provide that no permit could be granted to any person who: (a) has an arrest record or a conviction record (subject to nondiscrimination provisions); (b) has been convicted of a felony, or as a repeat or habitual offender, unless pardoned (also subject to nondiscrimination provisions) or (c) has not submitted proof that the person holds a sales tax seller's permit or that DOR will issue a seller's permit to the person. The proposal would also specify that these provisions apply to all partners of a partnership, all members of an LLC and all officers of a corporation. In addition, the proposal would provide that, subject to nondiscrimination provisions, if a business entity has been convicted of a crime, the entity could not be issued a permit unless the entity has terminated its relationship with the individuals whose actions directly contributed to the conviction.

Required Records for Cigarette Distributors and Direct Marketers

Under current law, cigarette distributors must keep records of purchases and sales of cigarettes and of purchases and disposition of cigarette tax stamps. In general, cigarette permittees must render a true and correct invoice of every sale of cigarettes at wholesale and, on or before the 15th day of each calendar month, file a verified report of all cigarettes purchased, sold, received, warehoused or withdrawn during the preceding calendar month. However, certain permittees may be allowed to file the reports quarterly rather than monthly.

The proposal would require cigarette direct marketers to keep the same records that are currently required of distributors and report on a monthly basis. In addition, it specifies that records of purchases and sales of cigarettes that are kept by direct marketers would have to indicate, for each shipment of cigarettes into this state in the month preceding the report, the invoice date and number; the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the manufacturer of the cigarettes shipped and the manufacturer's origin; the purchaser's name, address, and birth date; the name of the person to whom the cigarettes were shipped; the address to which the cigarettes were shipped; and any other information DOR requires.

For all permittees, the proposal would require that the monthly or quarterly report would have to cover all purchases and/or sales of cigarettes.

Penalties for Failure to Keep Required Records or to Allow Inspection

Under current law, any cigarette permittee who fails to keep the records required under the cigarette or tobacco products tax statutes may be fined not less than \$100 nor more than \$500 or imprisoned not more than six months or both. The proposal would, instead, specify that the penalty for a first offense would be a fine of \$500 to \$1,000. For a second or subsequent offense, the penalty would be a fine of \$1,000 to \$5,000, imprisonment for up to 180 days or both.

Currently, any person who refuses to permit any examination or inspection of its premises or records authorized under the cigarette or tobacco products tax statutes may be fined not more than \$500 or imprisoned not more than 90 days or both. The proposal would increase this penalty to a fine of \$500 to \$1,000, imprisonment for up to 180 days or both.

Other Penalties

This proposal would create a new provision specifying that any person who manufactures or sells cigarettes in this state without holding the proper permit issued under the cigarette tax statutes could be fined not less than \$1,000 nor more than \$10,000 or imprisoned not less than six months nor more than two years or both.

Under current law, in addition to the penalties imposed for violation of the cigarette or tobacco products tax statutes or any of the rules of DOR, the permit of any person convicted must be automatically revoked and he or she may not be granted another permit for a period of two years following the revocation. Under the proposal, revocation of the permit would only occur after a second conviction and would be for a period of five years, during which the person could not act as the employee or agent of a cigarette permittee to perform acts authorized by any permit issued under the cigarette tax provisions.

Assistance by Attorney General in Prosecutions

Under current law, upon request by the Secretary of DOR, the Attorney General may represent this state or assist a district attorney in prosecuting any case arising under the cigarette tax statutes. This proposal would extend this authority to violations of Chapter 134 (Miscellaneous Trade Regulations) that involve the sale of cigarettes and tobacco products.

Administrative Appropriations

Under the proposal, two annual PR appropriations would be created in DOR, one for enforcing and administering the new provisions regarding cigarette direct marketing permits and one for enforcing and administering the new provisions regarding tobacco products direct marketing permits. The appropriations would be funded with monies received from permits issued and penalties assessed on cigarette and tobacco products direct marketers. This proposal would provide expenditure authority of \$126,600 PR in 2002-03 for DOR's administrative costs. In addition, 1.5 PR FTE positions would be created in that year.

Under current law, all cigarettes acquired, owned, imported, possessed, kept, stored, made, sold, distributed or transported in violation of the cigarette tax statutes are subject to seizure by DOR or any peace officer. If cigarettes which do not bear the proper tax stamps or on which the tax has not been paid are seized, they may be given to law enforcement officers to use in criminal investigations or sold to qualified buyers by DOR. If the cigarettes are sold, after deducting the

costs of the sale and the keeping of the property, the proceeds of the sale are paid into the state treasury. This proposal would specify that proceeds from the sale of cigarettes seized from direct marketers who violate the cigarette tax statutes would be deposited in the new DOR appropriation for administration of cigarette direct marketing permits.

Fiscal Effect

DOR estimates that adoption of this proposal would result in additional revenues from permit fees paid by direct marketers of cigarettes and tobacco products of approximately \$160,000 in state fiscal year 2001-02 for 103 anticipated permits and \$175,000 in state fiscal year 2002-03 for 110 anticipated permits. These revenues would be credited to the two appropriations created for enforcing the cigarette and tobacco products direct marketing provisions. In addition, it is possible that some additional tax revenues from cigarette sales via direct marketing could be generated. This could occur if the new provisions result in taxes being collected on internet sales that are not now taxed or if the new provisions lead to increased consumption of cigarettes. At present, the extent of the potential revenue gain is unknown.

This proposal would provide DOR with funding for administrative costs of \$126,600 in 2002-03. Of this amount, \$16,000 is a one-time cost, while \$110,600 represents the ongoing annual cost. In addition, 1.5 PR positions would be created.

DBL/bh

Representative Duff
Senator Wirch

GENERAL FUND TAXES--EXCISE TAXES AND REGULATION
OF ALCOHOL AND TOBACCO

Direct Marketing of Cigarettes and Tobacco Products

Motion:

Move to create new statutory provisions and amend existing statutes to permit and regulate the sale of cigarettes and other tobacco products through direct marketing activities, including over the internet, as outlined below.

Municipal Retail License Requirement

Under current law, no person may 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 or permit for the sale of cigarettes without first obtaining a license from the clerk of the city, village or town wherein such privilege is sought to be exercised. The motion would provide that direct marketers who have obtained a permit from the Department of Revenue (DOR) could sell cigarettes and tobacco products in Wisconsin without obtaining a municipal retailer's license.

Under current law, any person violating the requirement to obtain a municipal license under this provision is subject to a fine of \$25 to \$100 for a first offense and a fine of \$25 to \$200 for a second or subsequent offense. If upon such second or subsequent violation, the person was personally guilty of a failure to exercise due care to prevent the violation, the person is subject to a fine of \$25 to \$300, imprisonment for up to 60 days or both.

The motion would modify this provision by increasing the penalty for a first offense to a fine of \$500 to \$1,000 and increasing the penalty for a second or subsequent offense to a fine of \$1,000 to \$5,000, imprisonment for up to 180 days or both. The motion would delete the current provision that imposes additional penalties for individuals who are guilty of failing to exercise due care to avoid a second or subsequent violation.

Current law also provides that the municipality must terminate the license of any person who is convicted of being personally guilty of a failure to exercise due care to prevent the violation for a period of five years, during which the person may not act as the servant or agent of a licensed cigarette or tobacco products retailer for the performance of acts authorized by the license. The

motion would make this provision apply only to second or subsequent convictions.

Direct Marketing of Cigarettes

The motion would create new provisions in the cigarette tax statutes (Chapter 139) regarding direct marketing of cigarettes:

“Consumer” would mean any natural person who receives cigarettes for his/her own personal use or consumption and any natural person who has title to or possession of cigarettes for other than sale or resale.

“Direct marketer” would mean any person who solicits or sells cigarettes to consumers in Wisconsin by direct marketing. “Direct marketing” would mean publishing or making accessible an offer for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers in this state, using any means by which the consumer is not physically present at the time of sale on a premise that sells cigarettes, including, but not limited to, using newspapers, magazines, radio or television broadcasts, mailings, the telephone, or the internet.

Under the current cigarette tax statutes, “distributor” means any person who acquires unstamped cigarettes from the manufacturer thereof, affixes tax stamps to the packages or other containers, stores them and sells them for resale or who acquires stamped cigarettes from another permittee for such sales. The motion would modify this definition to also include a person who acquires cigarettes for resale from the first importer of record of the cigarettes. In addition, it provides that the definition would include any person who may acquire stamped cigarettes from another distributor (rather than from another permittee) for resale.

“Person” would mean any individual, sole proprietorship, partnership, LLC, corporation, or association, or any owner of a single-owner entity that is disregarded as a separate entity under state income tax provisions. Under current law, the general definition of “person” in the statutes includes all partnerships, associations and bodies politic or corporate.

Under the motion, no person could 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 has obtained a permit from DOR to make such sales or solicitations. The person would have to file an application for a permit with DOR, in the manner prescribed by the Department, and submit the following fee with the application: (a) if the person sells no more than 30,000 cigarettes annually to consumers in this state by direct marketing, \$1,000; (b) if the person sells more than 30,000 but less than 600,001 cigarettes annually, \$5,000; or (c) if the person sells more than 600,000 cigarettes annually, \$10,000. A permit issued under this provision would expire on December 31 of each year.

DOR could not issue a permit to a person unless the person certifies to the Department that the person will acquire unstamped cigarettes from the manufacturer or from the first importer of record, pay the state cigarette tax, affix tax stamps to the cigarette packages or containers, store

such packages or containers, and sell only such packages or containers to consumers in this state by direct marketing; or purchase cigarettes, to the packages or containers of which stamps have been affixed, store such packages or containers, and sell only such packages or containers to consumers in this state by direct marketing.

No person could be issued a direct marketer's permit unless the person certifies to DOR, in the manner prescribed by the Department, that all cigarette sales to consumers in this state will be credit card transactions; that the invoices for all shipments of cigarette sales from the person will bear the person's name, address and permit number; and that the person will provide DOR any information the Department considers necessary to administer this provision.

No direct marketer could purchase tax stamps or sell cigarettes in excess of the number of cigarette sales specified in his or her permit unless the person pays the applicable, higher permit fee. Any person who sells cigarettes in excess of the number of cigarette sales specified in his or her permit would have to pay a penalty to DOR of \$5,000 or an amount that is equal to \$50 for every 200 cigarettes, or fraction of 200 cigarettes, whichever is greater.

No person could sell cigarettes to consumers in this state by direct marketing unless the cigarette tax is paid on such cigarettes and tax stamps are affixed to the cigarette packages or containers. No person could sell cigarettes to consumers in this state by direct marketing unless the sales or use tax is paid on the sale of such cigarettes.

No person could sell cigarettes to consumers in this state by direct marketing unless the person first obtains a notarized copy of the purchaser's driver's license or official Wisconsin identification card, verifying that the purchaser is at least 18 years of age. The direct marketer would be required to keep all certified copies of the driver's license or identification card on file and available for inspection by authorized employees of DOR for four years from the date of the last sale to an individual. In addition, the government-issued form of identification would be required to be checked against a government-issued database for verification of authenticity and accuracy.

Any person who, without having a valid permit, sells or solicits sales of cigarettes to consumers in this state by direct marketing would have to pay a penalty to DOR 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.

No sale of cigarettes to a consumer in this state by direct marketing could exceed 10 cartons for each invoice or 20 cartons in a 30-day period for each purchaser or address. Any person who sells or purchases cigarettes that exceed these maximum amounts would have to pay a penalty to DOR of \$5,000 or an amount that is equal to \$50 for every 200 cigarettes, or fraction of 200 cigarettes, sold above the maximum amounts, whichever is greater. In addition, any person who purchases cigarettes that exceed the maximum amounts would have to apply for a cigarette distributor's permit.

No cigarettes could be shipped or delivered to a person who is under 18 years of age. Every

package used to ship cigarettes that are sold under these provisions and are to be delivered to a person in this state would have to be clearly labeled to indicate both that the package contains cigarettes and that the package may not be delivered to a person who is under 18 years of age.

The current 1.6% distributor's discount and other cigarette tax payment provisions would apply to direct marketers.

Direct Marketing of Tobacco Products

The motion would create new provisions in Chapter 139 regarding direct marketing of tobacco products:

Currently, "consumer" means any person who has title to or possession of tobacco products in storage for use or other consumption in this state. The motion would alter this definition to mean any natural person who receives tobacco products for his or her own personal use or consumption or any natural person who has title to or possession of tobacco products for other than sale or resale.

"Direct marketer," "direct marketing" and "person" would be defined as under the cigarette tax provisions.

Under the current tobacco products tax statutes, the definition of "distributor" means, among other things, any person 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. The motion would change this definition to specify that "distributor" would mean, among other things, any person in this state engaged in the business of selling tobacco products who brings, or causes to be brought, into this state from outside the state any tobacco products for sale.

The current definition of "distributor" also includes any person 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. The motion would modify this definition to read any person outside this state engaged in the business of selling tobacco products who ships or transports tobacco products to retailers in this state to be sold by those retailers.

Under the motion, no person could 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 DOR to make such sales or solicitations. The person would have to file an application for a permit with DOR, in the manner prescribed by the Department, and submit a \$500 fee with the application.

No person could be issued a direct marketing permit unless the person holds a valid tobacco products distributor's permit. The provisions requiring denial of a cigarette distributor's permit to persons who have been convicted of certain crimes would also apply to tobacco products direct marketing permits. A permit issued under this provision would expire on December 31 of each year.

No person could be issued a permit under these provisions unless the person certifies to DOR, in the manner prescribed by the Department, that all tobacco product sales to consumers in this state will be credit card transactions; that the invoice for all shipments of tobacco product sales from the person will bear the person's name and address and the number of the direct marketing permit; and that the person will provide DOR any information the Department considers necessary to administer these provisions.

No person could sell tobacco products over the internet to consumers in this state unless the tobacco products tax and sales and use tax have been paid with regard to such products.

No person could sell tobacco products to consumers in this state by direct marketing unless the person first obtains a notarized copy of the purchaser's driver's license or official Wisconsin identification card, verifying that the purchaser is at least 18 years of age. The direct marketer would be required to keep all certified copies of the driver's license or identification card on file and available for inspection by authorized employees of the department for four years from the date of the last sale to an individual. In addition, the government-issued form of identification would be required to be checked against a government-issued database for verification of authenticity and accuracy.

Any person who, without having a valid direct marketing permit, sells or solicits sales of tobacco products to consumers in this state by direct marketing would have to pay a penalty to DOR of \$5,000 or an amount that is equal to 50% of the tax due on the tobacco products the person sold, without having a valid permit, to consumers in this state by direct marketing, whichever is greater.

No tobacco products could be shipped or delivered to a person who is under 18 years of age. Every package used to ship tobacco products that are sold under these provisions and are to be delivered to a person in this state would have to be clearly labeled to indicate both that the package contains tobacco products and that the package may not be delivered to a person who is under 18 years of age.

Provisions Regarding Salespersons

Current law provides that no person may sell or take orders for cigarettes or tobacco products for resale in Wisconsin for a manufacturer or permittee without first obtaining a salesperson's permit from DOR. Further, under current law no manufacturer or permittee can authorize a person to so sell or take orders for cigarettes or tobacco products without that person having secured a salesperson's permit. The motion would modify these requirements to provide that: (a) in addition to a salesperson's permit, the person would be required to obtain a business tax registration certificate from DOR; (b) the certification requirements would apply to sales activities rather than resales; and (c) soliciting sales of cigarettes or tobacco products would be covered in addition to actual sales.

Required Payment of Tobacco Products Tax

The motion would create a provision specifying that no person may possess taxable tobacco products in this state unless the tobacco products tax is paid. In addition, the motion would specify that no person other than a distributor with a valid permit from DOR could import into Wisconsin taxable tobacco products for which the tobacco products tax has not been paid.

Modifications to Chapter 134 (Miscellaneous Trade Regulations)

Under current law, Chapter 134 prohibits the sale of cigarettes and tobacco products to minors by retailers, manufacturers, distributors, jobbers and subjobbers. The motion would also apply these provisions to direct marketers of cigarettes and tobacco products.

In addition, the motion would provide that 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 would be a defense to any prosecution for a violation of the prohibition against selling or giving cigarettes or tobacco products to a person under age 18: (a) that the direct marketer used a mechanism, approved by DOR, 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 a government-issued identification; (c) that the name and birthdate of the purchaser, as indicated by the purchaser, matched the name and birthdate on the identification presented to the direct marketer; and (d) that the sale was made in good faith, in reasonable reliance on the mechanism approved by DOR and the representation and identification presented by the purchaser, and in the belief that the purchaser had attained the age of 18.

Cigarette Tax Meter Machines

Under current law, in lieu of tax stamps, the Secretary of DOR may allow impressions applied by the use of meter machines to signify that the cigarette tax has been paid. The motion would repeal this provision.

Penalties for Illegal Possession of Cigarettes

Under current law, it is unlawful for any person to possess in excess of 400 cigarettes unless the required state tax stamps are properly affixed. This provision does not apply to cigarette manufacturers, distributors or warehouse operators possessing valid permits issued by DOR. The motion would delete the 400-cigarette threshold in this provision so that possession of any number of unstamped cigarettes would be illegal. The motion would specify that this provision would not apply to direct marketers.

The motion provides that the following penalties could be imposed for possession of unlawful cigarettes. If the violator is a consumer, as defined in the motion: (a) payment of any use tax due but not paid; (b) payment of interest of 1.5% per month (or fraction thereof) on the delinquent tax for the period starting on the date the tax became due until the tax was paid; (c) a

penalty of \$25 for each 200 cigarettes [\$25 per carton]. For all other persons, the violations would be subject to the following penalties: (a) for possession of 6,000 or fewer cigarettes [30 or fewer cartons], a fine of not more than \$200, or imprisonment for not more than 6 months, or both; (b) for more than 6,000 but 36,000 or fewer cigarettes, a fine of not more than \$1,000, or imprisonment for not more than one year in the county jail, or both; (c) for more than 36,000 cigarettes, a fine of not more than \$10,000, or imprisonment for not more than 3 years, or both.

Under current law, in general, no person other than a licensed distributor may import into this state more than 400 cigarettes on which the state cigarette tax has not been paid and the container of which does not bear proper tax stamps. The motion would delete the 400-cigarette threshold in this provision so that importing any number of untaxed cigarettes would be illegal. In addition, the motion would specify that this provision would not apply to direct marketers.

Permit Requirement for Cigarette Manufacturers and Distributors

Under current law, no person may manufacture cigarettes in this state or sell cigarettes in this state as a distributor, jobber, vending machine operator 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 DOR. This provision applies to all officers, directors, agents and stockholders holding 5% or more of the stock of any corporation applying for a permit. The motion would apply the permit requirement to direct marketers. In addition, the provision regarding corporate officers, directors, agents and stockholders would be repealed.

Under current law, subject to nondiscrimination provisions, no permit may be granted to any person to whom any of the following applies: (a) the person has been convicted of a misdemeanor not involving Chapters 340 to 349 (relating to motor vehicles) at least three times; (b) the person has been convicted of a felony, unless pardoned; (c) the person is addicted to the use of a controlled substance or controlled substance analog; (d) the person has income which comes principally from gambling or has been convicted of two or more gambling offenses; (e) the person has been guilty of crimes relating to prostitution; (f) the person has been guilty of crimes relating to loaning money or anything of value to persons holding licenses or permits pursuant to the provisions regarding the regulation of alcohol beverages; or (g) the person does not hold a sales tax seller's permit, if the person is a retailer.

The motion would repeal items (a) through (f) and, instead, provide that no permit could be granted to any person who: (a) has an arrest record or a conviction record (subject to nondiscrimination provisions); (b) has been convicted of a felony, or as a repeat or habitual offender, unless pardoned (also subject to nondiscrimination provisions) or (c) has not submitted proof that the person holds a sales tax seller's permit or that DOR will issue a seller's permit to the person. The motion would also specify that these provisions apply to all partners of a partnership, all members of an LLC, all shareholders of a tax-option corporation, and all officers of a corporation. In addition, the motion would provide that, subject to nondiscrimination provisions, if a business entity has been convicted of a crime, the entity could not be issued a permit unless the

entity has terminated its relationship with the individuals whose actions directly contributed to the conviction.

Required Records for Cigarette Distributors and Direct Marketers

Under current law, cigarette distributors must keep records of purchases and sales of cigarettes and of purchases and disposition of cigarette tax stamps. In general, cigarette permittees must render a true and correct invoice of every sale of cigarettes at wholesale and, on or before the 15th day of each calendar month, file a verified report of all cigarettes purchased, sold, received, warehoused or withdrawn during the preceding calendar month. However, certain permittees file the reports monthly rather than quarterly.

The motion would require cigarette direct marketers to keep the same records that are currently required of distributors and report on a quarterly basis. In addition, the motion would specify that records of purchases and sales of cigarettes that are kept by direct marketers would have to indicate, for each shipment of cigarettes into this state in the month preceding the report, the invoice date and number; the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the manufacturer of the cigarettes shipped and the manufacturer's origin; the purchaser's name, address, and birth date; the name of the person to whom the cigarettes were shipped; the address to which the cigarettes were shipped; and any other information DOR requires.

For all permittees, the motion would require that the monthly or quarterly report would have to cover all sales of cigarettes, not just sales at wholesale.

Penalties for Failure to Keep Required Records or to Allow Inspection

Under current law, any cigarette permittee who fails to keep the records required under the cigarette or tobacco products tax statutes may be fined not less than \$100 nor more than \$500 or imprisoned not more than six months or both. The motion would, instead, specify that the penalty for a first offense would be a fine of \$500 to \$1,000. For a second or subsequent offense, the penalty would be a fine of \$1,000 to \$5,000, imprisonment for up to 180 days or both.

Currently, any person who refuses to permit any examination or inspection of its premises or records authorized under the cigarette or tobacco products tax statutes may be fined not more than \$500 or imprisoned not more than 90 days or both. The motion would increase this penalty to a fine of \$500 to \$1,000, imprisonment for up to 180 days or both.

Other Penalties

The motion would create a new provision specifying that any person who manufactures or sells cigarettes in this state without holding the proper permit issued under the cigarette tax statutes could be fined not less than \$1,000 nor more than \$10,000 or imprisoned not less than six months nor more than two years or both.

Under current law, in addition to the penalties imposed for violation of the cigarette or tobacco products tax statutes or any of the rules of DOR, the permit of any person convicted must be automatically revoked and he or she may not be granted another permit for a period of two years following the revocation. Under the motion, revocation of the permit would only occur after a second conviction and would be for a period of five years, during which the person could not act as the employee or agent of a cigarette permittee to perform acts authorized by any permit issued under the cigarette tax provisions.

Assistance by Attorney General in Prosecutions

Under current law, upon request by the Secretary of DOR, the Attorney General may represent this state or assist a district attorney in prosecuting any case arising under the cigarette tax statutes. The motion would extend this authority to violations of Chapter 134 (Miscellaneous Trade Regulations) that involve the sale of cigarettes and tobacco products.

Administrative Appropriations

The motion would create two annual PR appropriations in DOR, one for enforcing and administering the new provisions regarding cigarette direct marketing permits and one for enforcing and administering the new provisions regarding tobacco products direct marketing permits. The appropriations would be funded with monies received from permits issued and penalties assessed on cigarette and tobacco products direct marketers. The motion would provide expenditure authority of \$126,600 PR in 2002-03 for DOR's administrative costs. In addition, 1.5 PR FTE positions would be created in that year.

Under current law, all cigarettes acquired, owned, imported, possessed, kept, stored, made, sold, distributed or transported in violation of the cigarette tax statutes are subject to seizure by DOR or any peace officer. If cigarettes which do not bear the proper tax stamps or on which the tax has not been paid are seized, they may be given to law enforcement officers to use in criminal investigations or sold to qualified buyers by DOR. If the cigarettes are sold, after deducting the costs of the sale and the keeping of the property, the proceeds of the sale are paid into the state treasury. The motion would specify that proceeds from the sale of cigarettes seized from direct marketers who violate the cigarette tax statutes would be deposited in the new DOR appropriation for administration of cigarette direct marketing permits.

Note:

DOR estimates that adoption of the provisions incorporated in the motion would result in additional revenues from permit fees paid by direct marketers of cigarettes and tobacco products of approximately \$160,000 in state fiscal year 2001-02 for 103 anticipated permits and \$175,000 in state fiscal year 2002-03 for 110 anticipated permits. These revenues would be credited to the two

appropriations created in DOR for enforcing the cigarette and tobacco products direct marketing provisions. DOR does not believe that any additional revenues from the cigarette excise tax or from the tobacco products tax would result from adoption of this proposal. The motion would provide DWD with administrative costs of \$126,600 in 2002-03. Of this amount, \$16,000 is a one-time cost, while \$110,600 represents the ongoing annual cost. In addition, 1.5 PR positions would be created.

[Change to Bill: \$335,000 PR-REV, \$126,600 PR and 1.5 PR positions]

2001

Date (time) needed SOON

LRB b 2853 / 1

CAUCUS BUDGET AMENDMENT
[CAUCUS AMDTS. ONLY]

JK : gjs :

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See form **AMENDMENTS — COMPONENTS & ITEMS.**

CAUCUS AMENDMENT
TO SENATE SUBSTITUTE AMENDMENT 1
TO 2001 SPECIAL SESSION ASSEMBLY BILL 1

D-N

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

3-28-02

#. Page 12, line 20: after that line insert: INSERT A

#. Page 19, line 20: after that line insert: INSERT B

#. Page 167, line 16: after that line insert: INSERT C

#. Page 168, line 9: after that line insert: INSERT D

#. Page 168, line 10: delete lines 10 to 13 and substitute: INSERT E

#. Page 168, line 14: ~~after~~ ^{before} that line insert: INSERT F

* Page 362, line 18: after that line INSERT G

2001 BILL

1 **AN ACT** *to repeal* 139.32 (4), 139.34 (1) (b) and 139.34 (1) (c) 1. to 6.; *to amend*
2 134.65 (1), 134.65 (2) (a), 134.65 (5), 134.66 (2) (a), 134.66 (2) (am), 134.66 (2)
3 (d), 134.66 (2) (e), 139.30 (3), 139.30 (10), 139.32 (1), 139.32 (5), 139.32 (5m),
4 139.32 (6), 139.321 (1) (intro.), 139.321 (1) (a) 1., 139.33 (3), 139.34 (1) (a),
5 139.34 (1) (c) (intro.), 139.34 (4), 139.34 (6), 139.34 (8), 139.35 (1), 139.37 (1) (a),
6 139.38 (1), 139.38 (2), 139.395, 139.40 (2), 139.44 (3), 139.44 (4), 139.44 (7),
7 139.44 (8) (a), (b) and (c), 139.45, 139.75 (2), 139.75 (4) (a), 139.75 (4) (c), 139.75
8 (7), 139.75 (8), 139.79 (title), 139.79 (1), 139.79 (2), 139.81 (1) and 139.81 (2);
9 and *to create* 20.566 (1) (gc), 134.65 (1r), 134.66 (1) (am), 134.66 (3m), 139.30
10 (1m), 139.30 (2n), 139.30 (2p), 139.30 (8s), 139.34 (1) (c) 1m, 139.34 (1) (c) 2m.,
11 139.34 (1) (c) 3m., 139.34 (1) (cm), 139.345, 139.38 (1m), 139.44 (6m), 139.75
12 (3g), 139.75 (3r), 139.75 (4) (cm), 139.75 (5s), 139.76 (3), 139.78 (1m) and

BILL

1 139.795 of the statutes; **relating to:** selling cigarettes and tobacco products by
2 direct marketing, making an appropriation, 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). Also, a person may not sell tobacco products in this state as a distributor or subjobber 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. A "subjobber" is any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and who sells such products to any person other than the ultimate consumer.

This bill prohibits a direct marketer from selling cigarettes or tobacco products to consumers in this state without having the appropriate permit from DOR. Under the bill, "direct marketer" is defined as any person who solicits or sells cigarettes or tobacco products to consumers in this state by direct marketing. The bill defines "direct marketing" as publishing or making accessible an offer for the sale of cigarettes or tobacco products to consumers in this state, or selling cigarettes or tobacco products to consumers in this state, using any means by which the consumer is not physically present at the time of sale on a premise that sells cigarettes or tobacco products, including using newspapers, magazines, radio or television broadcasts, mailings, the telephone, or the Internet.

A direct marketer who sells cigarettes to consumers in this state must apply to DOR for a permit and submit a fee with the permit application based on the number of cigarettes that the direct marketer sells annually to consumers in this state. If the direct marketer sells no more than 30,000 cigarettes annually to consumers in this state, the fee is \$1,000. If the direct marketer sells more than 30,000 but less than 600,001 cigarettes annually to consumers in this state, the fee is \$5,000. If the direct marketer sells more than 600,000 cigarettes annually to consumers in this state, the fee is \$10,000. A direct marketer who sells tobacco products to consumers in this state must apply to DOR for a permit and submit a \$500 fee with the application. Permits issued to direct marketers expire each year on December 31.

Under the bill, DOR will not issue a permit to a direct marketer unless the direct marketer certifies to DOR that all sales of cigarettes or tobacco products to consumers in this state will be credit card transactions; that the invoices for all shipments of cigarettes or tobacco products will bear the direct marketer's name, address, and permit number; and that the direct marketer will provide DOR any information that DOR considers necessary for cigarette and tobacco products tax and permit purposes. The direct marketer may not sell any cigarettes or tobacco products unless the sales tax, use tax, cigarette tax, or tobacco products tax, as appropriate, has been paid on the sale of the cigarettes or tobacco products. In addition, a direct marketer may not sell cigarettes or tobacco products in this state unless the direct

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marketer has a mechanism, approved by DOR, for verifying the age of the purchaser, and the direct marketer receives from the purchaser, at the time of purchase, a copy or facsimile of a government issued identification and the name specified on the identification matches the name of the purchaser.

Under the bill, cigarettes and tobacco products may not be shipped to a person who is under 18 years of age and may not be shipped to a location where the consumer's age and identity cannot be verified.

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. The city, village, or town may charge not less than \$5 annually nor more than \$100 annually for such a license. Under the bill, no city, village, or town may issue such a license to any person who has an arrest or conviction record related to selling cigarettes or tobacco products or who has not submitted proof to the city, village, or town that he or she holds a valid retailer's permit issued by DOR.

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:

1 SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated.

INSERT
A

2001-02 2002-03

4	20.566	Revenue, department of				
5	(1)	COLLECTION OF TAXES				
6	(gc)	Administration of cigarette				
7		direct marketing permits	PR	A	-0-	126,600

8 SECTION 2. 20.566 (1) (gc) of the statutes is created to read:
9 20.566 (1) (gc) ^{52yl} Administration of cigarette and tobacco product direct
10 marketing permits. From the moneys received from permits issued and penalties
11 assessed under ss. 139.345, 139.40 (2), and 139.795, the amounts in the schedule for

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B



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1 enforcing and administering cigarette and tobacco product direct marketing permits
2 and penalties under ss. 139.345, 139.40 (2), and 139.795. ” ” **END OF INSERT B**

3 **SECTION 3.** 134.65 (1) of the statutes is amended to read:

4 134.65 (1) No person, except a person who holds a valid permit under s. 139.345
5 or 139.795 and whose business premises is not physically located in this state, shall
6 in any manner, or upon any pretense, or by any device, directly or indirectly sell,
7 expose for sale, possess with intent to sell, exchange, barter, dispose of or give away
8 any cigarettes or tobacco products to any person not holding a license as herein
9 provided or a permit under ss. 139.30 to 139.41 or 139.79 without first obtaining a
10 license from the clerk of the city, village or town wherein such privilege is sought to
11 be exercised.

12 **SECTION 4.** 134.65 (1r) of the statutes is created to read:

13 134.65 (1r) (a) No license under sub. (1) may be issued to any person to whom
14 any of the following applies:

- 15 1. Subject to ss. 111.321, 111.322, and 111.335, the person has an arrest record
- 16 or a conviction record.
- 17 2. Subject to ss. 111.321, 111.322, and 111.335, the person has been convicted
- 18 of a felony, or as a repeat or habitual offender, unless pardoned.
- 19 3. The person has not submitted proof as provided under s. 77.61 (11).

20 (b) The requirements under par. (a) apply to all partners of a partnership, all
21 members of limited liability company, all agents of a limited liability company or
22 corporation, and all officers of a corporation. Subject to ss. 111.321, 111.322, and
23 111.335, if a business entity has been convicted of a crime, the entity may not be
24 issued a license under sub. (1) unless the entity has terminated its relationship with
25 the individuals whose actions directly contributed to the conviction.

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303d

1 SECTION 5. 134.65 (2) (a) of the statutes is amended to read:

2 134.65 (2) (a) ~~Except~~ Subject to sub. (1r), and except as provided in par. (b),
3 upon filing of a proper written application a license shall be issued on July 1 of each
4 year or when applied for and continue in force until the following June 30 unless
5 sooner revoked. The city, village or town may charge a fee for the license of not less
6 than \$5 nor more than \$100 per year which shall be paid to the city, village or town
7 treasurer before the license is issued.

8 SECTION 6. 303e 134.65 (5) of the statutes is amended to read:

9 134.65 (5) Any person violating this section shall be fined not more than \$100
10 \$1,000 nor less than ~~\$25~~ \$500 for the first offense and shall be fined not more than
11 ~~\$200~~ \$5,000 nor less than ~~\$25~~ \$1,000 or imprisoned not exceeding 180 days or both
12 ~~for the 2nd or subsequent offense. If upon such 2nd or subsequent violation, the~~
13 ~~person so violating this section was personally guilty of a failure to exercise due care~~
14 ~~to prevent violation thereof, the person shall be fined not more than \$300 nor less~~
15 ~~than \$25 or imprisoned not exceeding 60 days or both. Conviction on a 2nd or~~
16 ~~subsequent offense shall immediately terminate the license of the person convicted~~
17 ~~of being personally guilty of such failure to exercise due care and the person shall not~~
18 ~~be entitled to another license hereunder for a period of 5 years thereafter, nor shall~~
19 ~~the person in that period act as the servant or agent of a person licensed hereunder~~
20 ~~for the performance of the acts authorized by such license.~~

21 SECTION 7. 303f 134.66 (1) (am) of the statutes is created to read:

22 134.66 (1) (am) "Direct marketer" has the meaning given in s. 139.30 (2n).

23 SECTION 8. 303g 134.66 (2) (a) of the statutes is amended to read:

24 134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or
25 subjobber, no agent, employee or independent contractor of a retailer, direct

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1 marketer, manufacturer, distributor, jobber or subjobber and no agent or employeè
2 of an independent contractor may sell or provide for nominal or no consideration
3 cigarettes or tobacco products to any person under the age of 18, except as provided
4 in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph
5 for the purchase of cigarettes or tobacco products from his or her vending machine
6 by a person under the age of 18 if the vending machine operator was unaware of the
7 purchase.

8 ^{303h} SECTION 9. 134.66 (2) (am) of the statutes is amended to read:

9 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,
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 provide for nominal or no consideration cigarettes
13 or tobacco products to any person except in a place where no person younger than 18
14 years of age is present or permitted to enter unless the person who is younger than
15 18 years of age is accompanied by his or her parent or guardian or by his or her spouse
16 who has attained the age of 18 years.

17 ³⁰³ⁱ SECTION 10. 134.66 (2) (d) of the statutes is amended to read:

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

21 ^{303j} SECTION 11. 134.66 (2) (e) of the statutes is amended to read:

22 134.66 (2) (e) No retailer or direct marketer may sell cigarettes in a form other
23 than as a package or container on which a stamp is affixed under s. 139.32 (1).

24 ^{303k} SECTION 12. 134.66 (3m) of the statutes is created to read:

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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 a government issued identification.

(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.

^{315bb}
SECTION 13. 139.30 (1m) of the statutes is created to read:

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

^{315bc}
SECTION 14. 139.30 (2n) of the statutes is created to read:

139.30 (2n) "Direct marketer" means any person who solicits or sells cigarettes to consumers in this state by direct marketing.

^{315bd}
SECTION 15. 139.30 (2p) of the statutes is created to read:

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

^{315be}
SECTION 16. 139.30 (3) of the statutes is amended to read:



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1 139.30 (3) "Distributor" means any person who acquires unstamped cigarettes
2 from the manufacturer thereof or from the first importer of record thereof, affixes
3 stamps to the packages or other containers, stores them and sells them to other
4 permittees or to retailers for resale ~~or~~ and who acquires may acquire stamped
5 cigarettes from another ~~permittee~~ distributor for such sales.

6 SECTION ^{315 bf} 17. 139.30 (8s) of the statutes is created to read:

7 139.30 (8s) "Person" means any individual, sole proprietorship, partnership,
8 limited liability company, corporation, or association, or any owner of a single-owner
9 entity that is disregarded as a separate entity under ch. 71.

10 SECTION ^{315 bog} 18. 139.30 (10) of the statutes is amended to read:

11 139.30 (10) "Retailer" means any person who sells, exposes for sale or possesses
12 with intent to sell to consumers any cigarettes by any means in which the consumer
13 is physically present at the time of sale on a premises that sells cigarettes.

14 SECTION ^{315 bh} 19. 139.32 (1) of the statutes is amended to read:

15 139.32 (1) The tax imposed by s. 139.31 (1) shall be paid. To evidence the
16 payment, the department shall provide stamps. A person who has paid the tax shall
17 affix stamps of the proper denomination to each package in which cigarettes are
18 packed, prior to the first sale within this state. First sale does not include a sale by
19 a manufacturer to a distributor or to a direct marketer or by a distributor to a
20 permittee who has obtained department approval as provided for in s. 139.321 (1) (a)
21 2. The tax shall be paid only once on each package or container.

22 SECTION ^{315 bi} 20. 139.32 (4) of the statutes is repealed.

23 SECTION ^{315 bj} 21. 139.32 (5) of the statutes is amended to read:

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1 139.32 (5) Manufacturers, direct marketers, and distributors having a permit
2 from the secretary shall receive a discount of 1.6% of the tax paid on stamp
3 purchases.

4 SECTION ^{315 bk}22. 139.32 (5m) of the statutes is amended to read:

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

7 SECTION ^{315 bl}23. 139.32 (6) of the statutes is amended to read:

8 139.32 (6) Manufacturers, direct marketers, and distributors having a permit
9 from the secretary may purchase stamps on credit. The secretary may require
10 manufacturers, direct marketers, and distributors who purchase stamps on credit
11 to file under the conditions prescribed by the secretary by rule.

12 SECTION ^{315 bm}24. 139.321 (1) (intro.) of the statutes is amended to read:

13 139.321 (1) (intro.) It is unlawful for any person to possess ~~in excess of 400~~
14 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32
15 (1) and 139.33 (4).

16 SECTION ^{315 bn}25. 139.321 (1) (a) 1. of the statutes is amended to read:

17 139.321 (1) (a) 1. Manufacturers, direct marketers, distributors or warehouse
18 operators possessing valid permits issued by the secretary.

19 SECTION ^{315 bp}26. 139.33 (3) of the statutes is amended to read:

20 139.33 (3) No person other than a member of the armed forces, as specified in
21 this subsection, a licensed distributor, or a licensed direct marketer may import into
22 this state ~~more than 400~~ cigarettes on which the excise tax imposed by s. 139.31 has
23 not been paid and the container of which does not bear proper stamps. Within 15
24 days, any such person importing cigarettes shall file a declaration of such cigarettes
25 imported and shall remit therewith the tax on such cigarettes imposed by this

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1 section. Members of the armed forces shall not be required to report or pay the tax
2 on cigarettes in their possession if such cigarettes are issued to them by the U.S.
3 government or any of its subdivisions or were purchased in any armed forces post
4 exchange or service store. If the use tax imposed by this section is not paid when due,
5 it shall become delinquent and the person liable for it shall pay, in addition, a penalty
6 of \$25 for each 200 cigarettes. Interest on the delinquent tax and penalty shall accrue
7 at the rate of 1.5% per month or each fraction of a month from the date the tax became
8 due until paid. *315bq*

9 SECTION ~~27~~. *315br* 139.34 (1) (a) of the statutes is amended to read:

10 139.34 (1) (a) No person may manufacture cigarettes in this state or sell
11 cigarettes in this state as a distributor, jobber, vending machine operator, direct
12 marketer, or multiple retailer and no person may operate a warehouse in this state
13 for the storage of cigarettes for another person without first filing an application for
14 and obtaining the proper permit to perform such operations from the department.

15 SECTION ~~28~~. *315bs* 139.34 (1) (b) of the statutes is repealed.

16 SECTION ~~29~~. *315bt* 139.34 (1) (c) (intro.) of the statutes is amended to read:

17 139.34 (1) (c) (intro.) ~~Subject to ss. 111.321, 111.322 and 111.335, no~~ No permit
18 under this section may be granted to any person to whom any of the following applies:

19 SECTION ~~30~~. *315bu* 139.34 (1) (c) 1. to 6. of the statutes are repealed.

20 SECTION ~~31~~. *315bv* 139.34 (1) (c) 1m. of the statutes is created to read:

21 139.34 (1) (c) 1m. Subject to ss. 111.321, 111.322, and 111.335, the person has
22 an arrest record or a conviction record.

23 SECTION ~~32~~. *315bv* 139.34 (1) (c) 2m. of the statutes is created to read:

24 139.34 (1) (c) 2m. Subject to ss. 111.321, 111.322, and 111.335, the person has
25 been convicted of a felony, or as a repeat or habitual offender, unless pardoned.

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1 SECTION 33. 139.34 (1) (c) 3m. of the statutes is created to read:

2 139.34 (1) (c) 3m. The person has not submitted proof as provided under s.
3 77.61 (11).

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

5 139.34 (1) (cm) The requirements under par. (c) apply to all partners of a
6 partnership, all members of limited liability company, all agents of a limited liability
7 company or corporation, and all officers of a corporation. Subject to ss. 111.321,
8 111.322, and 111.335, if a business entity has been convicted of a crime, the entity
9 may not be issued a permit under this subsection unless the entity has terminated
10 its relationship with the individuals whose actions directly contributed to the
11 conviction.

12 SECTION 35. 139.34 (4) of the statutes is amended to read:

13 139.34 (4) A separate permit shall be required of and issued to each class of
14 permittee and the holder of any permit shall perform only the operations thereby
15 authorized. Such permit shall not be transferable from one person to another or from
16 one premises to another. A separate permit shall be required for each place where
17 cigarettes are stamped or where cigarettes are stored for sale at wholesale or,
18 through vending machines or multiple retail outlets, or by direct marketing.

19 SECTION 36. 139.34 (6) of the statutes is amended to read:

20 139.34 (6) A vending machine operator or a multiple retailer may acquire
21 unstamped cigarettes ~~from the manufacturers thereof~~ and affix the stamps to
22 packages or other containers only if the vending machine operator or multiple
23 retailer also holds a permit as a distributor or direct marketer.

24 SECTION 37. 139.34 (8) of the statutes is amended to read:

315 cb

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SECTION 37

1 139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on
2 the premises described in the permit. The warehouse permit shall not authorize the
3 holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a
4 manufacturer, direct marketer, or distributor may be delivered only to a person
5 holding a permit as a manufacturer, direct marketer, or distributor.

6 SECTION 38. ^{315cc} 139.345 of the statutes is created to read:

7 **139.345 Direct marketing. (1) (a) (intro.)** No person may sell cigarettes to
8 consumers in this state as a direct marketer or solicit sales of cigarettes to consumers
9 in this state by direct marketing unless the person has obtained a permit from the
10 department to make such sales or solicitations. The person shall file an application
11 for a permit under this subsection with the department, in the manner prescribed
12 by the department, and shall submit the following fee with the application:

13 1. If the person sells no more than 30,000 cigarettes annually to consumers in
14 this state by direct marketing, \$1,000.

15 2. If the person sells more than 30,000 but less than 600,001 cigarettes
16 annually to consumers in this state by direct marketing, \$5,000.

17 3. If the person sells more than 600,000 cigarettes annually to consumers in
18 this state by direct marketing, \$10,000. *stamped cigarettes from a licensed wholesaler or distributor or*

19 (b) A permit issued under par. (a) expires on December 31 of each year.

20 (c) The department may not issue a permit to a person under par. (a) unless the
21 person certifies to the department that the person shall acquire unstamped
22 cigarettes from the manufacturer thereof or from the first importer of record thereof,
23 pay the tax imposed under this subchapter *on all unstamped cigarettes and* affix stamps to the cigarette packages
24 or containers as provided under s. 139.32 (1), store such packages or containers, and
25 sell only such packages or containers to consumers in this state by direct marketing;

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1 or purchase cigarettes from a distributor, to the packages or containers of which
2 stamps have been affixed as provided under s. 139.32 (1), and sell only such packages
3 or containers to consumers in this state by direct marketing.

4 (d) No person may be issued a permit under this subsection unless the person
5 certifies to the department, in the manner prescribed by the department, that all
6 cigarette sales to consumers in this state shall be credit card or personal check
7 transactions; that the invoices for all shipments of cigarette sales from the person
8 shall bear the person's name and address and ^{the number of the permit} permit ultimately issued under this
9 subsection; and that the person shall provide the department any information the
10 department considers necessary to administer this section.

11 (2) (a) No person may purchase tax stamps in excess of the number of cigarette
12 sales specified in his or her permit under sub. (1) (a) unless the person pays the
13 permit fee under sub. (1) (a) that is applicable to the excess amount.

14 (b) No person may sell cigarettes in excess of the number of cigarette sales
15 specified in his or her permit under sub. (1) (a) unless the person pays the permit fee
16 under sub. (1) (a) that is applicable to the excess sales. Any person who sells
17 cigarettes in excess of the number of cigarette sales specified in his or her permit
18 shall pay a penalty to the department of \$5,000 or an amount that is equal to \$50 for
19 every 200 cigarettes, or fraction of 200 cigarettes, whichever is greater.

20 (3) (a) No person may sell cigarettes to consumers in this state by direct
21 marketing unless the tax imposed under s. 139.31 (1) is paid on such cigarettes and
22 stamps are affixed to the cigarette packages or containers as provided under s.
23 139.32.

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

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SECTION 38

1 **(4)** No person may sell cigarettes to a consumer in this state by direct
2 marketing unless the person verifies the consumer's identity and that the consumer
3 is at least 18 years of age by any of the following methods:

4 (a) The person uses a database, approved by the department, that includes
5 information based on public records to verify the consumer's age and identity.

6 (b) The person receives from the consumer, at the time of purchase, a notarized
7 copy of a government issued identification, the name specified on the identification
8 matches the name of the consumer, and the birth date on the identification verifies
9 that the purchaser is at least 18 years of age. In this paragraph, "government issued
10 identification" includes a valid driver's license, state identification card, passport, or
11 military identification.

12 (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),
13 for verifying the age and identity of a consumer that is approved by the department.

14 **(5)** Any person who, without having a valid permit under sub. (1), sells or
15 solicits sales of cigarettes to consumers in this state by direct marketing shall pay
16 a penalty to the department of \$5,000 or an amount that is equal to \$50 for every 200
17 cigarettes, or fraction of 200 cigarettes, sold to consumers in this state by direct
18 marketing, whichever is greater.

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

22 (b) Any person who sells cigarettes that exceed the maximum amounts under
23 par. (a) shall pay a penalty to the department of \$5,000 or an amount that is equal
24 to \$50 for every 200 cigarettes, or major fraction of 200 cigarettes, sold above the
25 maximum amounts, whichever is greater.

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1 (c) Any person who purchases cigarettes that exceed the maximum amounts
2 under par. (a) shall apply for a permit under s. 139.34 and shall pay a penalty to the
3 department of \$25 for every 200 cigarettes, or fraction of 200 cigarettes, purchased
4 above the maximum amounts.

5 (7) No cigarettes may be shipped to a person who is under 18 years of age and
6 no cigarettes may be shipped to a post-office box ~~or to any location where the age and~~
7 ~~identity of the consumer cannot be verified.~~

8 (8) All revenue collected from permits and penalties under this section shall
9 be credited to the appropriation account under s. 20.566 (1) (gc) to enforce and
10 administer this section.

11 SECTION ~~39~~ ^{315 cd} 139.35 (1) of the statutes is amended to read:

12 139.35 (1) TRANSFERS. No person may give, sell or lend any stamps to another
13 and no person may accept, purchase or borrow any stamps from another. All sales
14 and transfers of stamps may be made only by the secretary to permit holding
15 manufacturers, ~~direct marketers,~~ and distributors.

16 SECTION ~~40~~ ^{315 ce} 139.37 (1) (a) of the statutes is amended to read:

17 139.37 (1) (a) No person shall sell cigarettes or ~~take orders for cigarettes for~~
18 ~~resale~~ solicit cigarette sales in this state ~~for any manufacturer or permittee without~~
19 ~~first obtaining a~~ unless the person has filed an application for and obtained a valid
20 certificate under s. 73.03 (50) and a salesperson's permit from the department of
21 revenue. No manufacturer or permittee shall authorize any person to sell cigarettes
22 or take orders for cigarettes ~~solicit cigarette sales~~ in this state ~~without first having~~
23 ~~such person secure~~ unless the person has filed an application for and obtained a valid
24 certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize
25 another person to sell cigarettes or solicit cigarette sales in this state unless the

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1 person has filed an application for and obtained a valid certificate under s. 73.03 (50)
2 and a valid permit under s. 139.34. The department shall issue the required number
3 of permits to ~~manufacturers and permittees~~ who hold a valid certificate issued under
4 s. 73.03 (50). Each application for a permit shall disclose the name and address of
5 the employer and such permit shall remain effective only while the salesperson
6 represents such named employer. If such salesperson is thereafter employed by
7 another ~~manufacturer or permittee~~ person, the salesperson shall obtain a new
8 salesperson's permit. Each ~~manufacturer and permittee~~ shall notify the department
9 within 10 days after the resignation or dismissal of any such salesperson holding a
10 permit.

315 cf

SECTION 41. 139.38 (1) of the statutes is amended to read:

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

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1 SECTION ^{315cg}42. 139.38 (1m) of the statutes is created to read:

2 139.38 (1m) Records of purchases and sales of cigarettes under sub. (1) that
3 are kept by direct marketers shall indicate, for each shipment of cigarettes into this
4 state in the month preceding the report under sub. (2), the invoice date and number;
5 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the
6 manufacturer of the cigarettes shipped and the manufacturer's origin; the
7 purchaser's name, address, and birth date; the name of the person to whom the
8 cigarettes were shipped; the address to which the cigarettes were shipped; and any
9 other information the department requires.

10 SECTION ^{315ch}43. 139.38 (2) of the statutes is amended to read:

11 139.38 (2) (a) Except as provided in par. (b), every permittee manufacturer,
12 distributor, jobber, and direct marketer shall render a true and correct invoice of
13 every sale of cigarettes at wholesale and every permittee shall on or before the 15th
14 day of each calendar month file a verified report of all cigarettes purchased, sold,
15 received, warehoused or withdrawn during the preceding calendar month.

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

22 SECTION ^{315ci}44. 139.395 of the statutes is amended to read:

23 **139.395 Theft of tax moneys.** All cigarette tax moneys received by a
24 distributor, direct marketer, or manufacturer for the sale of cigarettes on which the
25 tax under this subchapter has become due and has not been paid are trust funds in

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SECTION 44

1 the hands of the distributor, direct marketer, or manufacturer and are the property
2 of this state. Any distributor, direct marketer, or manufacturer who fraudulently
3 withholds, appropriates or otherwise uses cigarette tax moneys that are the property
4 of this state is guilty of theft under s. 943.20 (1), whether or not the distributor, direct
5 marketer, or manufacturer has or claims to have an interest in those moneys.

6 SECTION ^{315c}45. 139.40 (2) of the statutes is amended to read:

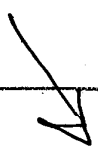
7 139.40 (2) If cigarettes which do not bear the proper tax stamps or on which
8 the tax has not been paid Cigarettes that are so seized they as provided under sub.
9 (1) may be given to law enforcement officers to use in criminal investigations or sold
10 to qualified buyers by the secretary, without notice. If the cigarettes are sold, after
11 deducting the costs of the sale and ~~the keeping of~~ storing the property, the proceeds
12 of the sale shall be paid into the state treasury, except that proceeds from the sale
13 of cigarettes seized from a direct marketer and obtained through the administration
14 of this subsection shall be credited to the appropriation account under s. 20.566 (1)
15 (gc). If the secretary finds that such cigarettes may deteriorate or become unfit for
16 use in criminal investigations or for sale or that those uses would otherwise be
17 impractical, the secretary may order them destroyed or give them to a charitable or
18 penal institution for free distribution to patients or inmates. // END OF INSERT C

19 → SECTION ^{318b}46. 139.44 (3) of the statutes is amended to read:

20 139.44 (3) Any permittee who fails to keep the records required by ss. 139.30
21 to 139.42 or 139.77 to 139.82 shall be fined not less than \$100 \$500 nor more than
22 \$500 \$1,000 for the first offense and shall be fined not less than \$1,000 nor more than
23 \$5,000 or imprisoned not more than 6 months 180 days or both for the 2nd or
24 subsequent offense.

25 SECTION ^{318c}47. 139.44 (4) of the statutes is amended to read:

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Any person who manufactures or sells cigarettes in this state without holding the proper permit issued under this subchapter shall be fined not less than \$1,000 nor more than \$10,000 or imprisoned not less than 6 months nor more than 2 years or both.

ATTN: LPS
The text of 139.44 (6m) as written out here is meant to be identical to the text shown in Section 48 of the underlying draft prior to the drafter's markup in green that now appears on it. (here)

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

FIX COMPONENT

5 SECTION 48. 139.44 (6m) of the statutes is ~~created~~ ^{318dn} ~~to~~ read: ^{was created by 2001 Wisconsin Act... (this act),} ~~amended~~

6 139.44 (6m) Any person who manufactures or sells cigarettes in this state
7 without holding the proper permit issued under this subchapter shall be fined not
8 less than \$1,000 nor more than \$10,000 or imprisoned not less than 6 months nor
9 more than 2 years or both. is guilty of a Class III felony

10 SECTION 49. 139.44 (7) of the statutes is amended to read: I

11 139.44 (7) In addition to the penalties imposed for violation of ss. 139.30 to
12 139.41 or 139.75 to 139.83 or any of the rules of the department, the permit of any
13 person convicted of a 2nd or subsequent offense shall be automatically revoked and,
14 he or she shall not be granted another permit for a period of 2 5 years following such
15 revocation, and, for the 5-year period following revocation, he or she shall not act as
16 the employee or agent of a permittee under this subchapter to perform acts
17 authorized by any permit issued to the permittee under this subchapter.

18 SECTION 50. 139.44 (8) (a) ~~AND~~ (c) of the statutes are amended to read:

318z

19 139.44 (8) (a) If the number of cigarettes does not exceed 6,000, a fine of not
20 more than \$200 \$1,000 or imprisonment for not more than 6 months one year for both.

21 (b) If the number of cigarettes exceeds 6,000 but does not exceed 36,000, a fine
22 of not more than \$1,000 \$5,000 or imprisonment for not more than one year in the
23 county jail 2 years or both. the person is guilty of a Class I felony

24 (c) If the number of cigarettes exceeds 36,000, a fine of not more less than
25 \$10,000 nor more than \$50,000 or imprisonment for not more than 3 5 years or both.

the person is guilty of a Class H felony

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1 ^{319b}
 ¹¹ SECTION 51. 139.45 of the statutes is amended to read:

2 **139.45 Prosecutions by attorney general.** Upon request by the secretary
3 of revenue, the attorney general may represent this state or assist a district attorney
4 in prosecuting any case arising under this subchapter or under ss. 134.65 and 134.66.

5 ^{319c}
 SECTION 52. 139.75 (2) of the statutes is amended to read:

6 139.75 (2) "Consumer" means any individual who receives tobacco products for
7 his or her personal use or consumption or any person individual who has title to or
8 possession of tobacco products ~~in storage for use or other consumption in this state~~
9 any purpose other than for sale or resale.

10 ^{319d}
 SECTION 53. 139.75 (3g) of the statutes is created to read:

11 139.75 (3g) "Direct marketer" means any person who solicits or sells tobacco
12 products to consumers in this state by direct marketing.

13 ^{319e}
 SECTION 54. 139.75 (3r) of the statutes is created to read:

14 139.75 (3r) "Direct marketing" means publishing or making accessible an offer
15 for the sale of tobacco products to consumers in this state, or selling tobacco products
16 to consumers in this state, using any means by which the consumer is not physically
17 present at the time of sale on a premise that sells tobacco products.

18 ^{319f}
 SECTION 55. 139.75 (4) (a) of the statutes is amended to read:

19 139.75 (4) (a) Any person in this state engaged in the business of selling tobacco
20 products ~~in this state~~ who brings, or causes to be brought, into this state from outside
21 the state any tobacco products for sale;

22 ^{319g}
 SECTION 56. 139.75 (4) (c) of the statutes is amended to read:

23 139.75 (4) (c) Any person outside this state engaged in the business of selling
24 tobacco products ~~outside this state~~ who ships or transports tobacco products to
25 retailers in this state to be sold by those retailers.

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^{319h}
SECTION ~~57~~. 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.

³¹⁹ⁱ
SECTION ~~58~~. 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.

^{319j}
SECTION ~~59~~. 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.

^{319k}
SECTION ~~60~~. 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 who sells, exposes for sale, or possesses with intent to sell, to ultimate consumers~~ any tobacco products by any means in which the consumer is physically present at the time of sale on a premises that sells tobacco products.

^{319l}
SECTION ~~61~~. 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.

^{319m}
SECTION ~~62~~. 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 into this state tobacco products for which the tax imposed under s. 139.76 (1) has not been paid.

³¹⁹ⁿ
SECTION ~~63~~. 139.79 (title) of the statutes is amended to read:

139.79 (title) **Permits; distributor; direct marketer; subjobber.**

(F)
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BILL

319P

1 SECTION 64. 139.79 (1) of the statutes is amended to read:

2 139.79 (1) No person may engage in the business of a distributor, direct
3 marketer, or subjobber of tobacco products at any place of business unless that
4 person has filed an application for and obtained a permit from the department to
5 engage in that business at such place.

319P

6 SECTION 65. 139.79 (2) of the statutes is amended to read:

7 139.79 (2) Section 139.34 (1) ~~(b)~~ (c) to (f), (4) and (9) applies to the permits under
8 this section.

319P

9 SECTION 66. 139.795 of the statutes is created to read:

10 **139.795 Direct marketing.** (1) (a) (intro.) No person may sell tobacco
11 products by direct marketing to consumers in this state as a direct marketer or solicit
12 sales of tobacco products to consumers in this state by direct marketing unless the
13 person has obtained a permit from the department to make such sales or
14 solicitations. The person shall file an application for a permit under this subsection
15 with the department, in the manner prescribed by the department, and shall submit
16 a \$500 fee with the application.

17 (b) No person may be issued a permit under this subsection unless the person
18 holds a valid distributor's permit under s. 139.79. Section 139.34 (1) (c) to (f), (7), and
19 (9), as it applies to permits issued under s. 139.34, applies to permits issued under
20 this subsection.

21 (c) A permit issued under this subsection expires on December 31 of each year.

22 (d) No person may be issued a permit under this subsection unless the person
23 certifies to the department, in the manner prescribed by the department, that all
24 tobacco product sales to consumers in this state shall be credit card or personal check
25 transactions; that the invoice for all shipments of tobacco product sales from the

(F)

number of the permit

BILL

1 person shall bear the person's name and address and ^{the} permit ultimately issued under
2 this subsection; and that the person shall provide the department any information
3 the department considers necessary to administer this section.

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

7 (3) No person may sell tobacco products to a consumer in this state by direct
8 marketing unless the person verifies the consumer's identity and that the consumer
9 is at least 18 years of age by any of the following methods:

10 (a) The person uses a database, approved by the department, that includes
11 information based on public records to verify the consumer's age and identity.

12 (b) The person receives from the consumer, at the time of purchase, a notarized
13 copy of a government issued identification, the name specified on the identification
14 matches the name of the consumer, and the birth date on the identification verifies
15 that the purchaser is at least 18 years of age. In this paragraph, "government issued
16 identification" includes a valid driver's license, state identification card, passport, or
17 military identification.

18 (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),
19 for verifying the age and identity of a consumer that is approved by the department.

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

(P)

BILL

SECTION 66

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(5) No tobacco products may be shipped or delivered to a person who is under 18 years of age and no tobacco products may be shipped to a post-office box ~~or to any~~ location where the age and identity of the consumer cannot be verified.

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(6) All revenue collected from permits and penalties under this section shall be credited to the appropriation account under s. 20.566 (1) (gc) to enforce and administer this section.

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³¹⁹⁵ SECTION 67. 139.81 (1) of the statutes is amended to read:

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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 shall authorize another person to sell 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 valid permit under s. 139.79.

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Each application for a permit shall disclose the name and address of the employer and shall remain effective only while the salesperson represents the named employer. 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~~ shall notify the department within 10 days after the resignation or dismissal of any salesperson holding a permit.

24

SECTION 68. 139.81 (2) of the statutes is amended to read:

3194

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F

BILL

1 139.81 (2) Section 139.34 (1) (b) (c) to (e) applies to the permits under this
2 section. ^{no} ← END OF INSERT F

3 ~~SECTION 69 Nonstatutory provisions:~~

4 → ⁹ (1) DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS. The authorized
5 FTE positions for the department of revenue are increased by 1.5 PR positions on
6 July 1, 2002, to be funded from the appropriation under section 20.566 (1) (gc) of the
7 statutes, as created by this act, for the purpose of enforcing and administering
8 cigarette and tobacco product direct marketing permits and penalties. ←

9 ~~END~~

INSERT G

139.44

#. Page 450, line 13: delete "(8)(c)" and
~~delete~~
substitute ~~with~~ "(8)(a) to (c)".

<end>

139.44 (6m), 139.44

139.44

#. Page 439, line 14: delete "(8)(c)"
and substitute "(8)(a) to (c)".

139.44 (6m), 139.44

~~Page 439~~

b-2853/ldm

D-N

date

please review this draft carefully to ensure that it is consistent with your intent. The budget repair bill includes the recommendations made by the criminal penalties study committee for reclassifying felony penalties. Consequently, consistent with the recommendations, the penalty under s. 139.44 (8)(c) was changed to a Class I felony, for which the maximum term of imprisonment is 3 years and 6 months. In an attempt to comply with the intent both of the committee's recommendations and of the cigarettes and tobacco products direct marketing proposal, this amendment changes s. 139.44(6m) and (8)(b) to Class I felonies and s. 139.44(8)(c) to a Class H felony, for which the maximum term of imprisonment is 6 years. Please contact me if you have any questions.

JK