

2001 DRAFTING REQUEST

Bill

Received: 01/06/2001

Received By: jkreye

Wanted: Soon

Identical to LRB:

For: Administration-Budget 7-0372

By/Representing: Holden

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Alt. Drafters:

Subject: Tax - cigarettes and t.p.

Extra Copies:

Pre Topic:

DOA:.....Holden -

Topic:

Gray market cigarettes

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>
/?	jkreye 01/08/2001	hhagen 01/08/2001		_____			State
/1			martykr 01/08/2001	_____	lrb_docadmin 01/08/2001		

FE Sent For:

<END>

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1?	jkreye	11 hpm 1/8/01	km/8	Sh km/8			

FE Sent For:

<END>

## Kreye, Joseph

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**From:** Holden, Kerry  
**Sent:** Saturday, January 06, 2001 10:15 AM  
**To:** Kreye, Joseph  
**Cc:** Currier, Dawn; Miller, Steve  
**Subject:** FW: gray market drafting instructions

Attached is a request I would like drafted for inclusion in the Governor's budget. I believe Joe is the correct drafter to contact. This electronic request will be followed-up by a written submittal on Monday. This is my last known drafting request. Please call or email if you have any questions.

### **Kerry Holden**

Tax, Finance & Local Government Team  
DOA State Budget Office  
Phone: (608)266-8593  
Fax: (608)267-0372  
Email: Kerry.Holden@doa.state.wi.us

-----Original Message-----

**From:** Gates-Hendrix, Sherrie  
**Sent:** Friday, January 05, 2001 1:10 PM  
**To:** Holden, Kerry  
**Subject:** gray market drafting instructions

Hi Kerry ---

Here are the drafting instructions for gray market.



E4.doc

Talk to you soon.

S.

January 4, 2001

**Gray Market Cigarettes:  
Proposed Amendments to 1999 Senate Bill 413 as agreed to by the  
Department of Revenue and Industry Representatives**

**Description of Current Law and Problem:**

1999 SB 413 addresses the problem of "gray market" cigarettes being sold and distributed in Wisconsin. However, in a few instances greater specificity as to what cigarettes are prohibited would enhance the clarity and effectiveness of the proposed legislation.

**Recommendation For Action:**

Incorporate several industry proposed amendments to enhance specificity of targeted items.

**Administrative Impact:**

It is believed that these changes will allow the Department of Revenue to enforce the law and carry out legislative intent in a more effective manner.

**Fiscal Effect:**

None known

**Drafting Instructions:**

Amend AB 898 (1999-2000 LRB-4775/2) or SB 413 as amended during the legislative session as follows:

Section 2. 139.31 (4) (Create the following as a paragraph):

- (a) any cigarettes the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only", "U.S. Tax-Exempt", "For Use Outside U.S.", or similar wording.

Section 2. (Create the following subsection and paragraph) 139.31 (5) No person shall:

- (a) alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:
  - 1. Any statement, label, stamp, sticker, or notice described in sub. 139.31 (4).
  - 2. Any health warning that is not specified in, or does not conform with the requirements of, the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333, or
  - 3. Affix any stamps, as described under 139.32, to the package of any cigarettes described in subsection (4) of this section or altered in violation of par. (a).

Section 3. (Move) 139.321 (1) (intro.) and create s. 139.321 <sup>1m</sup> (b) using the same language. This will clarify that the prohibitions contained in the subsection do not apply to manufacturers, permittees, or common carriers as provided under 139.321 (1) (a) 1, 2, and 3.

**Effective Date/Initial Applicability:**

Upon enactment

**DOR Contact Person:**

John Nordlie  
Excise Tax Section Chief  
267-3556

**Prepared by:**

Robert G. Pultz  
Attorney  
266-8361



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-1841/1

JK:...

nmh

DOA:.....Holden - Gray market cigarettes

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

mm 1-8-01

SOON

AN ACT <sup>do not gen.</sup> ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

✓ TAXATION

✓ OTHER TAXATION

Under current law, tax stamps must be affixed to each cigarette package that is sold in this state. This bill prohibits affixing tax stamps to cigarette packages that are not intended to be sold, distributed, or used in the United States; that are not labeled as provided under federal law; that are modified by a person who is not the cigarette manufacturer; that are altered so as to remove, conceal, or obscure certain labels; and that are imported into the United States after December 31, 1999, in violation of federal law. Under the bill, a person who possesses over 400 of such cigarettes, or who sells or distributes such cigarettes, is subject to the same penalties that are applicable to the possession of cigarettes without tax stamps.

The bill also allows any person to bring a suit for damages or injunctive relief against a person who affixes stamps to cigarette packages that are not intended to be sold, distributed, or used in the United States; that are not labeled as provided under federal law; that are modified by a person who is not the cigarette manufacturer; that are altered so as to remove, conceal, or obscure certain labels; and that are imported into the United States after December 31, 1999, in violation of federal law.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**(END)**



**1999 ASSEMBLY BILL 898**

March 20, 2000 - Introduced by Representative M. LEHMAN, cosponsored by Senator ROBSON. Referred to Committee on Ways and Means.

1 **AN ACT to amend** 139.30 (7) and 139.321 (1) (intro.); and **to create** 139.31 (4),  
2 139.34 (3) and 139.39 (4m) of the statutes; **relating to:** the sale of cigarettes  
3 that are not intended for sale in the United States and providing a penalty.

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***Analysis by the Legislative Reference Bureau***

Under current law, tax stamps must be affixed to each package of cigarettes that is sold in this state. Under current law, a person who possesses over 400 cigarettes without tax stamps but not more than 6,000 cigarettes without tax stamps is subject to a fine of not more than \$200 or imprisonment for not more than six months or both. A person who possesses over 6,000 cigarettes without tax stamps but not more than 36,000 cigarettes without tax stamps is subject to a fine of not more than \$1,000 or imprisonment for not more than one year or both. A person who possesses over 36,000 cigarettes without tax stamps is subject to a fine of not more than \$10,000 or imprisonment for not more than two years or both.

This bill prohibits affixing tax stamps to cigarettes that are intended for sale outside the United States; to cigarettes that are labeled as provided under federal law as not for consumption inside the United States; and to cigarette packages that are modified by a person who is not the cigarette manufacturer or an authorized agent of the cigarette manufacturer. Under the bill, a person who possesses, sells or distributes these types of cigarettes is subject to the same penalties that are applicable to the possession of cigarettes without tax stamps.

The bill allows any person to bring a suit for damages or injunctive relief against a person who affixes tax stamps to cigarettes that are intended for sale outside the United States.



**ASSEMBLY BILL 898**

For further information see the ~~state~~ fiscal estimate, which will be printed as an appendix to this bill.

~~The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:~~

1            ~~SECTION 1.~~ <sup>+</sup> 139.30 (7) of the statutes is amended to read:

2            139.30 (7) "Manufacturer" means any person who manufactures cigarettes for  
3            the purpose of sale, including the authorized agent of a person who manufactures  
4            cigarettes for the purpose of sale.

5            ~~SECTION 2.~~ <sup>+</sup> 139.31 (4) of the statutes is created to read:

6            139.31 (4) No person may affix stamps, as described under s. 139.32, to any of  
7            the following:

8            (a) A cigarette package that is labeled as tax exempt under section 5704(b) of  
9            the Internal Revenue Code or as tax exempt under 27 CFR 290.185.

10           (b) A cigarette package that is labeled as provided under federal law as not  
11           intended for consumption in the United States.

12           (b<sup>m</sup>) A cigarette package that is not labeled as provided under federal law.

13           (c) <sup>c</sup> A cigarette package that is modified by a person who is not the cigarette  
14           manufacturer. <sup>d</sup>

15           (d) <sup>e</sup> Any cigarettes that are imported into the United States after December 31,  
16           1999, in violation of federal law.

17           ~~SECTION 3.~~ 139.321 (1) (intro.) of the statutes is amended to read:

18           139.321 (1) (intro.) It is unlawful for any person to possess in excess of 400  
19           cigarettes unless the required stamps are properly affixed as provided in ss. 139.32  
20           (1) and 139.33 (4). It is unlawful for any person to possess in excess of 400 cigarettes  
21           as described under s. 139.31 (4); or to sell or distribute cigarettes as described under

(a) a cigarette package on which a statement, label, stamp, sticker, or notice indicates that the manufacturer did not intend the cigarettes in the package to be sold, distributed, or used in the United States, including labels stating "for export only", "U.S. tax exempt", "for use outside U.S.", or similar wording.

ASSEMBLY BILL 898

1 ~~s. 139.31 (4); other than cigarettes that may be brought into the United States for~~  
2 ~~personal use and cigarettes that are sold or intended for sale by a duty-free~~  
3 ~~enterprise, as provided under federal law.~~

4 SECTION 4. 139.34 (3) of the statutes is created to read:

5 139.34 (3) No distributor may affix stamps to cigarette packages, as provided  
6 in s. 139.32, unless the distributor certifies to the department, in a manner  
7 prescribed by the department, that the distributor purchases cigarettes directly from  
8 a manufacturer.

9 SECTION 5. 139.39 (4m) of the statutes is created to read:

10 139.39 (4m) Any person may bring an action for a violation of s. 139.31 (4) for  
11 actual damages sustained as a result of the violation and for injunctive relief.  
12 Notwithstanding s. 814.04 (1), the court may order the violator to pay the prevailing  
13 party's costs and reasonable attorney fees. The trier of fact may increase recovery  
14 to an amount not exceeding 3 times the actual damages sustained as a result of the  
15 violation, if the trier of fact determines that the violation is wilful.

16

~~END~~

INSERT A

INSERT B

(5)

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1841/?ins  
JK:.....

INSERT A

1 SECTION 1. 139.31 (5) of the statutes is created to read:

2 139.31 (5) (a) No person may alter a cigarette package before the sale or  
3 distribution to the ultimate consumer so as to remove, conceal, or obscure any of the  
4 following:

5 1. Any statement, label, stamp, sticker, or notice described in sub. (4) (a).

6 2. Any health warning that is ~~not~~ specified in or ~~does not~~ <sup>that</sup> conform with the  
7 requirements under 15 USC 1333.

8 (b) No person may affix stamps, as described in s. 139.32, to any cigarette  
9 package that is altered as described in par. (a).

10 SECTION 2. 139.321 (1m) of the statutes is created to read:

11 139.321 (1m) It is unlawful for any person to possess in excess of 400 cigarettes  
12 as described under s. 139.31 (4) or (5); or to sell or distribute cigarettes as described  
13 under s. 139.31 (4) or (5); except for cigarettes that may be brought into the United  
14 States for personal use and cigarettes that are sold or intended for sale by a duty-free  
15 enterprise, as provided under federal law.

end of insert A

INSERT B

Section #. 139.44 (8) (intro.) of the statutes is amended to read:

139.44 (8) (intro.) Penalties for violation of s. 139.321 (1) shall be as follows:

or (1M)

History: 1981 c. 20; 1983 a. 63; 1985 a. 302; 1987 a. 399; 1989 a. 31; 1993 a. 16; 1997 a. 27, 283.

end of insert B



DOA:.....Holden - Gray market cigarettes

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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

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*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

Under current law, tax stamps must be affixed to each cigarette package that is sold in this state. This bill prohibits affixing tax stamps to cigarette packages that are not intended to be sold, distributed, or used in the United States; that are not labeled as provided under federal law; that are modified by a person who is not the cigarette manufacturer; that are altered so as to remove, conceal, or obscure certain labels; and that are imported into the United States after December 31, 1999, in violation of federal law. Under the bill, a person who possesses over 400 of such cigarettes, or who sells or distributes such cigarettes, is subject to the same penalties that are applicable to the possession of cigarettes without tax stamps.

The bill also allows any person to bring a suit for damages or injunctive relief against a person who affixes stamps to cigarette packages that are not intended to be sold, distributed, or used in the United States; that are not labeled as provided under federal law; that are modified by a person who is not the cigarette manufacturer; that are altered so as to remove, conceal, or obscure certain labels; and that are imported into the United States after December 31, 1999, in violation of federal law.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 139.30 (7) of the statutes is amended to read:

2           139.30 (7) “Manufacturer” means any person who manufactures cigarettes for  
3 the purpose of sale, including the authorized agent of a person who manufactures  
4 cigarettes for the purpose of sale.

5           **SECTION 2.** 139.31 (4) of the statutes is created to read:

6           139.31 (4) No person may affix stamps, as described under s. 139.32, to any of  
7 the following:

8           (a) A cigarette package on which a statement, label, stamp, sticker, or notice  
9 indicates that the manufacturer did not intend the cigarettes in the package to be  
10 sold, distributed, or used in the United States, including labels stating “for export  
11 only,” “U.S. tax exempt,” “for use outside U.S.,” or similar wording.

12           (b) A cigarette package that is labeled as provided under federal law as not  
13 intended for consumption in the United States.

14           (bcm) A cigarette package that is not labeled as provided under federal law.

15           (d) A cigarette package that is modified by a person who is not the cigarette  
16 manufacturer.

17           (e) Any cigarettes that are imported into the United States after December 31,  
18 1999, in violation of federal law.

19           **SECTION 3.** 139.31 (5) of the statutes is created to read:

1           139.31 (5) (a) No person may alter a cigarette package before the sale or  
2 distribution to the ultimate consumer so as to remove, conceal, or obscure any of the  
3 following:

4           1. Any statement, label, stamp, sticker, or notice described in sub. (4) (a).

5           2. Any health warning that is specified in or that conforms with the  
6 requirements under 15 USC 1333.

7           (b) No person may affix stamps, as described in s. 139.32, to any cigarette  
8 package that is altered as described in par. (a).

9           **SECTION 4.** 139.321 (1m) of the statutes is created to read:

10           139.321 (1m) It is unlawful for any person to possess in excess of 400 cigarettes  
11 as described under s. 139.31 (4) or (5) (b); or to sell or distribute cigarettes as  
12 described under s. 139.31 (4) or (5) (b); except for cigarettes that may be brought into  
13 the United States for personal use and cigarettes that are sold or intended for sale  
14 by a duty-free enterprise, as provided under federal law.

15           **SECTION 5.** 139.34 (3) of the statutes is created to read:

16           139.34 (3) No distributor may affix stamps to cigarette packages, as provided  
17 in s. 139.32, unless the distributor certifies to the department, in a manner  
18 prescribed by the department, that the distributor purchases cigarettes directly from  
19 a manufacturer.

20           **SECTION 6.** 139.39 (4m) of the statutes is created to read:

21           139.39 (4m) Any person may bring an action for a violation of s. 139.31 (4) or  
22 (5) for actual damages sustained as a result of the violation and for injunctive relief.  
23 Notwithstanding s. 814.04 (1), the court may order the violator to pay the prevailing  
24 party's costs and reasonable attorney fees. The trier of fact may increase recovery

1 to an amount not exceeding 3 times the actual damages sustained as a result of the  
2 violation, if the trier of fact determines that the violation is wilful.

3 **SECTION 7.** 139.44 (8) (intro.) of the statutes is amended to read:

4 139.44 (8) (intro.) Penalties for violation of s. 139.321 (1) or (1m) shall be as  
5 follows:

6 (END)