

## 2005 ASSEMBLY BILL 249

March 18, 2005 – Introduced by Representatives MOLEPSKE, HINES, LEHMAN, AINSWORTH, BLACK, BIES, BERCEAU, GUNDERSON, POPE-ROBERTS, SHERIDAN, HAHN, ALBERS, OTT, COLON and SEIDEL, cosponsored by Senators ROESSLER, HANSEN and LASSA. Referred to Committee on State Affairs.

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           (e), 139.30 (3), 139.30 (10), 139.32 (1), 139.32 (5), 139.32 (5m), 139.32 (6),  
4           139.321 (1) (intro.), 139.321 (1) (a) 1., 139.33 (3), 139.34 (1) (a), 139.34 (1) (c)  
5           (intro.), 139.34 (4), 139.34 (6), 139.34 (8), 139.35 (1), 139.37 (1) (a), 139.38 (1),  
6           139.38 (2), 139.395, 139.40 (2), 139.44 (3), 139.44 (4), 139.44 (7), 139.44 (8) (a)  
7           and (b), 139.45, 139.75 (2), 139.75 (4) (a), 139.75 (4) (c), 139.75 (7), 139.75 (8),  
8           139.79 (title), 139.79 (1), 139.79 (2), 139.81 (1) and 139.81 (2); and *to create*  
9           20.566 (1) (gc), 134.65 (1r), 134.66 (1) (am), 134.66 (3m), 139.30 (1m), 139.30  
10          (2n), 139.30 (2p), 139.30 (8s), 139.34 (1) (c) 1m., 139.34 (1) (c) 2m., 139.34 (1) (c)  
11          3m., 139.34 (1) (cm), 139.345, 139.38 (1m), 139.44 (6m), 139.75 (3g), 139.75 (3r),  
12          139.75 (4) (cm), 139.75 (5s), 139.76 (3), 139.78 (1m) and 139.795 of the statutes;  
13          **relating to:** selling cigarettes and tobacco products by direct marketing,

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1           granting rule-making authority, making an appropriation, and providing  
2           penalties.

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***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 or personal check 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



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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.

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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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.** 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.** 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.** 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 employee  
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 **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 **SECTION 10.** 134.66 (2) (e) of the statutes is amended to read:

18 134.66 **(2)** (e) No retailer or direct marketer may sell cigarettes in a form other  
19 than as a package or container on which a stamp is affixed under s. 139.32 (1).

20 **SECTION 11.** 134.66 (3m) of the statutes is created to read:

21 134.66 **(3m)** DEFENSE OF DIRECT MARKETER. Proof of any of the following facts  
22 by a direct marketer who sells cigarettes or tobacco products to a person under the  
23 age of 18 is a defense to any prosecution for a violation under sub. (2) (a):

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

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

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

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

8 **SECTION 12.** 139.30 (1m) of the statutes is created to read:

9 139.30 (1m) “Consumer” means any individual who receives cigarettes for his  
10 or her personal use or consumption or any individual who has title to or possession  
11 of cigarettes for any purpose other than for sale or resale.

12 **SECTION 13.** 139.30 (2n) of the statutes is created to read:

13 139.30 (2n) “Direct marketer” means any person who solicits or sells cigarettes  
14 to consumers in this state by direct marketing.

15 **SECTION 14.** 139.30 (2p) of the statutes is created to read:

16 139.30 (2p) “Direct marketing” means publishing or making accessible an offer  
17 for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers  
18 in this state, using any means by which the consumer is not physically present at the  
19 time of sale on a premise that sells cigarettes.

20 **SECTION 15.** 139.30 (3) of the statutes is amended to read:

21 139.30 (3) “Distributor” means any person who acquires unstamped cigarettes  
22 from the manufacturer thereof or from the first importer of record thereof, affixes  
23 stamps to the packages or other containers, stores them and sells them to other  
24 permittees or to retailers for resale ~~or~~ and who acquires may acquire stamped  
25 cigarettes from another permittee distributor for such sales.

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1           **SECTION 16.** 139.30 (8s) of the statutes is created to read:

2           139.30 **(8s)** “Person” means any individual, sole proprietorship, partnership,  
3 limited liability company, corporation, or association, or any owner of a single-owner  
4 entity that is disregarded as a separate entity under ch. 71.

5           **SECTION 17.** 139.30 (10) of the statutes is amended to read:

6           139.30 **(10)** “Retailer” means any person who sells, exposes for sale or possesses  
7 with intent to sell to consumers any cigarettes by any means in which the consumer  
8 is physically present at the time of sale on a premises that sells cigarettes.

9           **SECTION 18.** 139.32 (1) of the statutes is amended to read:

10           139.32 **(1)** The tax imposed by s. 139.31 (1) shall be paid. To evidence the  
11 payment, the department shall provide stamps. A person who has paid the tax shall  
12 affix stamps of the proper denomination to each package in which cigarettes are  
13 packed, prior to the first sale within this state. First sale does not include a sale by  
14 a manufacturer to a distributor or to a direct marketer or by a distributor to a  
15 permittee who has obtained department approval as provided for in s. 139.321 (1) (a)  
16 2. The tax shall be paid only once on each package or container.

17           **SECTION 19.** 139.32 (4) of the statutes is repealed.

18           **SECTION 20.** 139.32 (5) of the statutes is amended to read:

19           139.32 **(5)** Manufacturers, direct marketers, and distributors having a permit  
20 from the secretary shall receive a discount of 1.6% of the tax paid on stamp  
21 purchases.

22           **SECTION 21.** 139.32 (5m) of the statutes is amended to read:

23           139.32 **(5m)** Distributors, direct marketers, and manufacturers shall pay to  
24 the department the cost of printing and shipping those stamps.

25           **SECTION 22.** 139.32 (6) of the statutes is amended to read:



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1           139.32 **(6)** Manufacturers, direct marketers, and distributors having a permit  
2 from the secretary may purchase stamps on credit. The secretary may require  
3 manufacturers, direct marketers, and distributors who purchase stamps on credit  
4 to file under the conditions prescribed by the secretary by rule.

5           **SECTION 23.** 139.321 (1) (intro.) of the statutes is amended to read:

6           139.321 **(1)** (intro.) It is unlawful for any person to possess ~~in excess of 400~~  
7 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32  
8 (1) and 139.33 (4).

9           **SECTION 24.** 139.321 (1) (a) 1. of the statutes is amended to read:

10           139.321 **(1)** (a) 1. Manufacturers, direct marketers, distributors or warehouse  
11 operators possessing valid permits issued by the secretary.

12           **SECTION 25.** 139.33 (3) of the statutes is amended to read:

13           139.33 **(3)** No person other than a member of the armed forces, as specified in  
14 this subsection, a licensed distributor, or a licensed direct marketer may import into  
15 this state ~~more than 400~~ cigarettes on which the excise tax imposed by s. 139.31 has  
16 not been paid and the container of which does not bear proper stamps. Within 15  
17 days, any such person importing cigarettes shall file a declaration of such cigarettes  
18 imported and shall remit therewith the tax on such cigarettes imposed by this  
19 section. Members of the armed forces shall not be required to report or pay the tax  
20 on cigarettes in their possession if such cigarettes are issued to them by the U.S.  
21 government or any of its subdivisions or were purchased in any armed forces post  
22 exchange or service store. If the use tax imposed by this section is not paid when due,  
23 it shall become delinquent and the person liable for it shall pay, in addition, a penalty  
24 of \$25 for each 200 cigarettes. Interest on the delinquent tax and penalty shall accrue

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1 at the rate of 1.5% per month or each fraction of a month from the date the tax became  
2 due until paid.

3 **SECTION 26.** 139.34 (1) (a) of the statutes is amended to read:

4 139.34 (1) (a) No person may manufacture cigarettes in this state or sell  
5 cigarettes in this state as a distributor, jobber, vending machine operator, direct  
6 marketer, or multiple retailer and no person may operate a warehouse in this state  
7 for the storage of cigarettes for another person without first filing an application for  
8 and obtaining the proper permit to perform such operations from the department.

9 **SECTION 27.** 139.34 (1) (b) of the statutes is repealed.

10 **SECTION 28.** 139.34 (1) (c) (intro.) of the statutes is amended to read:

11 139.34 (1) (c) (intro.) ~~Subject to ss. 111.321, 111.322 and 111.335, no~~ No permit  
12 under this section may be granted to any person to whom any of the following applies:

13 **SECTION 29.** 139.34 (1) (c) 1. to 6. of the statutes are repealed.

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

15 139.34 (1) (c) 1m. Subject to ss. 111.321, 111.322, and 111.335, the person has  
16 an arrest record or a conviction record.

17 **SECTION 31.** 139.34 (1) (c) 2m. of the statutes is created to read:

18 139.34 (1) (c) 2m. Subject to ss. 111.321, 111.322, and 111.335, the person has  
19 been convicted of a felony, or as a repeat or habitual offender, unless pardoned.

20 **SECTION 32.** 139.34 (1) (c) 3m. of the statutes is created to read:

21 139.34 (1) (c) 3m. The person has not submitted proof as provided under s.  
22 77.61 (11).

23 **SECTION 33.** 139.34 (1) (cm) of the statutes is created to read:

24 139.34 (1) (cm) The requirements under par. (c) apply to all partners of a  
25 partnership, all members of limited liability company, all agents of a limited liability

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1 company or corporation, and all officers of a corporation. Subject to ss. 111.321,  
2 111.322, and 111.335, if a business entity has been convicted of a crime, the entity  
3 may not be issued a permit under this subsection unless the entity has terminated  
4 its relationship with the individuals whose actions directly contributed to the  
5 conviction.

6 **SECTION 34.** 139.34 (4) of the statutes is amended to read:

7 139.34 (4) A separate permit shall be required of and issued to each class of  
8 permittee and the holder of any permit shall perform only the operations thereby  
9 authorized. Such permit shall not be transferable from one person to another or from  
10 one premises to another. A separate permit shall be required for each place where  
11 cigarettes are stamped or where cigarettes are stored for sale at wholesale or,  
12 through vending machines or multiple retail outlets, or by direct marketing.

13 **SECTION 35.** 139.34 (6) of the statutes is amended to read:

14 139.34 (6) A vending machine operator or a multiple retailer may acquire  
15 unstamped cigarettes ~~from the manufacturers thereof~~ and affix the stamps to  
16 packages or other containers only if the vending machine operator or multiple  
17 retailer also holds a permit as a distributor or direct marketer.

18 **SECTION 36.** 139.34 (8) of the statutes is amended to read:

19 139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on  
20 the premises described in the permit. The warehouse permit shall not authorize the  
21 holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a  
22 manufacturer, direct marketer, or distributor may be delivered only to a person  
23 holding a permit as a manufacturer, direct marketer, or distributor.

24 **SECTION 37.** 139.345 of the statutes is created to read:

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

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

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

11           3. If the person sells more than 600,000 cigarettes annually to consumers in  
12 this state by direct marketing, \$10,000.

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

14           (c) The department may not issue a permit to a person under par. (a) unless the  
15 person certifies to the department that the person shall acquire stamped cigarettes  
16 from a licensed wholesaler or distributor or unstamped cigarettes from the  
17 manufacturer thereof or from the first importer of record thereof, pay the tax  
18 imposed under this subchapter on all unstamped cigarettes and affix stamps to the  
19 cigarette packages or containers as provided under s. 139.32 (1), store such packages  
20 or containers, and sell only such packages or containers to consumers in this state  
21 by direct marketing; or purchase cigarettes from a distributor, to the packages or  
22 containers of which stamps have been affixed as provided under s. 139.32 (1), and sell  
23 only such packages or containers to consumers in this state by direct marketing.

24           (d) No person may be issued a permit under this subsection unless the person  
25 certifies to the department, in the manner prescribed by the department, that all

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1 cigarette sales to consumers in this state shall be credit card or personal check  
2 transactions; that the invoices for all shipments of cigarette sales from the person  
3 shall bear the person's name and address and the permit number of the permit  
4 ultimately issued under this subsection; and that the person shall provide the  
5 department any information the department considers necessary to administer this  
6 section.

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

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

16       **(3)** (a) No person may sell cigarettes to consumers in this state by direct  
17 marketing unless the tax imposed under s. 139.31 (1) is paid on such cigarettes and  
18 stamps are affixed to the cigarette packages or containers as provided under s.  
19 139.32.

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

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

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

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

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

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

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

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

23           (c) Any person who purchases cigarettes that exceed the maximum amounts  
24 under par. (a) shall apply for a permit under s. 139.34 and shall pay a penalty to the

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1 department of \$25 for every 200 cigarettes, or fraction of 200 cigarettes, purchased  
2 above the maximum amounts.

3 (7) No cigarettes may be shipped to a person who is under 18 years of age and  
4 no cigarettes may be shipped to a post-office box.

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

8 **SECTION 38.** 139.35 (1) of the statutes is amended to read:

9 139.35 (1) TRANSFERS. No person may give, sell or lend any stamps to another  
10 and no person may accept, purchase or borrow any stamps from another. All sales  
11 and transfers of stamps may be made only by the secretary to permit holding  
12 manufacturers, direct marketers, and distributors.

13 **SECTION 39.** 139.37 (1) (a) of the statutes is amended to read:

14 139.37 (1) (a) No person shall sell cigarettes or ~~take orders for cigarettes for~~  
15 ~~resale~~ solicit cigarette sales in this state for any manufacturer or permittee without  
16 ~~first obtaining a~~ unless the person has filed an application for and obtained a valid  
17 certificate under s. 73.03 (50) and a salesperson's permit from the department of  
18 revenue. No manufacturer or permittee shall authorize any person to sell cigarettes  
19 ~~or take orders for cigarettes~~ solicit cigarette sales in this state without first having  
20 ~~such person secure~~ unless the person has filed an application for and obtained a valid  
21 certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize  
22 another person to sell cigarettes or solicit cigarette sales in this state unless the  
23 person has filed an application for and obtained a valid certificate under s. 73.03 (50)  
24 and a valid permit under s. 139.34. The department shall issue the required number  
25 of permits to ~~manufacturers and permittees~~ who hold a valid certificate issued under

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1 s. 73.03 (50). Each application for a permit shall disclose the name and address of  
2 the employer and such permit shall remain effective only while the salesperson  
3 represents such named employer. If such salesperson is thereafter employed by  
4 another ~~manufacturer or permittee~~ person, the salesperson shall obtain a new  
5 salesperson's permit. Each ~~manufacturer and permittee~~ shall notify the department  
6 within 10 days after the resignation or dismissal of any such salesperson holding a  
7 permit.

8 **SECTION 40.** 139.38 (1) of the statutes is amended to read:

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

23 **SECTION 41.** 139.38 (1m) of the statutes is created to read:

24 139.38 (1m) Records of purchases and sales of cigarettes under sub. (1) that  
25 are kept by direct marketers shall indicate, for each shipment of cigarettes into this



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1 state in the month preceding the report under sub. (2), the invoice date and number;  
2 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the  
3 manufacturer of the cigarettes shipped and the manufacturer's origin; the  
4 purchaser's name, address, and birth date; the name of the person to whom the  
5 cigarettes were shipped; the address to which the cigarettes were shipped; and any  
6 other information the department requires.

7 **SECTION 42.** 139.38 (2) of the statutes is amended to read:

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

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

19 **SECTION 43.** 139.395 of the statutes is amended to read:

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

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1 of this state is guilty of theft under s. 943.20 (1), whether or not the distributor, direct  
2 marketer, or manufacturer has or claims to have an interest in those moneys.

3 **SECTION 44.** 139.40 (2) of the statutes is amended to read:

4 139.40 (2) If cigarettes ~~which do not bear the proper tax stamps or on which~~  
5 ~~the tax has not been paid~~ Cigarettes that are so seized they as provided under sub.  
6 (1) may be given to law enforcement officers to use in criminal investigations or sold  
7 to qualified buyers by the secretary, without notice. If the cigarettes are sold, after  
8 deducting the costs of the sale and ~~the keeping of~~ storing the property, the proceeds  
9 of the sale shall be paid into the state treasury, except that proceeds from the sale  
10 of cigarettes seized from a direct marketer and obtained through the administration  
11 of this subsection shall be credited to the appropriation account under s. 20.566 (1)  
12 (gc). If the secretary finds that such cigarettes may deteriorate or become unfit for  
13 use in criminal investigations or for sale or that those uses would otherwise be  
14 impractical, the secretary may order them destroyed or give them to a charitable or  
15 penal institution for free distribution to patients or inmates.

16 **SECTION 45.** 139.44 (3) of the statutes is amended to read:

17 139.44 (3) Any permittee who fails to keep the records required by ss. 139.30  
18 to 139.42 or 139.77 to 139.82 shall be fined not less than \$100 \$500 nor more than  
19 \$500 \$1,000 for the first offense and shall be fined not less than \$1,000 nor more than  
20 \$5,000 or imprisoned not more than ~~6 months~~ 180 days or both for the 2nd or  
21 subsequent offense.

22 **SECTION 46.** 139.44 (4) of the statutes is amended to read:

23 139.44 (4) Any person who refuses to permit the examination or inspection  
24 authorized in s. 139.39 (2) or 139.83 may be fined not ~~more~~ less than \$500 nor more

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1 than \$1,000 or imprisoned not more than ~~90~~ 180 days or both. Such refusal shall be  
2 cause for immediate suspension or revocation of permit by the secretary.

3 **SECTION 47.** 139.44 (6m) of the statutes is created to read:

4 139.44 **(6m)** Any person who manufactures or sells cigarettes in this state  
5 without holding the proper permit issued under this subchapter is guilty of a Class  
6 I felony.

7 **SECTION 48.** 139.44 (7) of the statutes is amended to read:

8 139.44 **(7)** In addition to the penalties imposed for violation of ss. 139.30 to  
9 139.41 or 139.75 to 139.83 or any of the rules of the department, the permit of any  
10 person convicted of a 2nd or subsequent offense shall be automatically revoked and,  
11 he or she shall not be granted another permit for a period of ~~2~~ 5 years following such  
12 revocation, and, for the 5-year period following revocation, he or she shall not act as  
13 the employee or agent of a permittee under this subchapter to perform acts  
14 authorized by any permit issued to the permittee under this subchapter.

15 **SECTION 49.** 139.44 (8) (a) and (b) of the statutes are amended to read:

16 139.44 **(8)** (a) If the number of cigarettes does not exceed 6,000, a fine of not  
17 more than ~~\$200~~ \$1,000 or imprisonment for not more than ~~6 months~~ one year in the  
18 county jail or both.

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

22 **SECTION 50.** 139.45 of the statutes is amended to read:

23 **139.45 Prosecutions by attorney general.** Upon request by the secretary  
24 of revenue, the attorney general may represent this state or assist a district attorney  
25 in prosecuting any case arising under this subchapter or under ss. 134.65 and 134.66.

**ASSEMBLY BILL 249****SECTION 51**

1           **SECTION 51.** 139.75 (2) of the statutes is amended to read:

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

6           **SECTION 52.** 139.75 (3g) of the statutes is created to read:

7           139.75 **(3g)** “Direct marketer” means any person who solicits or sells tobacco  
8 products to consumers in this state by direct marketing.

9           **SECTION 53.** 139.75 (3r) of the statutes is created to read:

10          139.75 **(3r)** “Direct marketing” means publishing or making accessible an offer  
11 for the sale of tobacco products to consumers in this state, or selling tobacco products  
12 to consumers in this state, using any means by which the consumer is not physically  
13 present at the time of sale on a premise that sells tobacco products.

14          **SECTION 54.** 139.75 (4) (a) of the statutes is amended to read:

15          139.75 **(4)** (a) Any person in this state engaged in the business of selling tobacco  
16 products ~~in this state~~ who brings, or causes to be brought, into this state from outside  
17 the state any tobacco products for sale;

18          **SECTION 55.** 139.75 (4) (c) of the statutes is amended to read:

19          139.75 **(4)** (c) Any person outside this state engaged in the business of selling  
20 tobacco products ~~outside this state~~ who ships or transports tobacco products to  
21 retailers in this state to be sold by those retailers.

22          **SECTION 56.** 139.75 (4) (cm) of the statutes is created to read:

23          139.75 **(4)** (cm) Any person outside this state engaged in the business of selling  
24 tobacco products who ships or transports tobacco products to consumers in this state.

25          **SECTION 57.** 139.75 (5s) of the statutes is created to read:

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1           139.75 (5s) “Person” means any individual, sole proprietorship, partnership,  
2           limited liability company, corporation, or association, or any owner of a single-owner  
3           entity that is disregarded as a separate entity under ch. 71.

4           **SECTION 58.** 139.75 (7) of the statutes is amended to read:

5           139.75 (7) “Retail outlet” means each place of business from which tobacco  
6           products are sold to consumers by a retailer.

7           **SECTION 59.** 139.75 (8) of the statutes is amended to read:

8           139.75 (8) “Retailer” means any person ~~engaged in the business of selling~~  
9           ~~tobacco products~~ who sells, exposes for sale, or possesses with intent to sell, to  
10          ultimate consumers any tobacco products by any means in which the consumer is  
11          physically present at the time of sale on a premises that sells tobacco products.

12          **SECTION 60.** 139.76 (3) of the statutes is created to read:

13          139.76 (3) Except as provided in sub. (2), no person may possess tobacco  
14          products in this state unless the tax imposed under sub. (1) is paid on such tobacco  
15          products.

16          **SECTION 61.** 139.78 (1m) of the statutes is created to read:

17          139.78 (1m) Except as provided in s. 139.76 (2), no person other than a  
18          distributor with a valid permit under s. 139.79 may import into this state tobacco  
19          products for which the tax imposed under s. 139.76 (1) has not been paid.

20          **SECTION 62.** 139.79 (title) of the statutes is amended to read:

21          **139.79 (title) Permits; distributor; direct marketer; subjobber.**

22          **SECTION 63.** 139.79 (1) of the statutes is amended to read:

23          139.79 (1) No person may engage in the business of a distributor, direct  
24          marketer, or subjobber of tobacco products at any place of business unless that

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

3 **SECTION 64.** 139.79 (2) of the statutes is amended to read:

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

6 **SECTION 65.** 139.795 of the statutes is created to read:

7 **139.795 Direct marketing. (1)** (a) No person may sell tobacco products by  
8 direct marketing to consumers in this state as a direct marketer or solicit sales of  
9 tobacco products to consumers in this state by direct marketing unless the person has  
10 obtained a permit from the department to make such sales or solicitations. The  
11 person shall file an application for a permit under this subsection with the  
12 department, in the manner prescribed by the department, and shall submit a \$500  
13 fee with the application.

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

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

19 (d) No person may be issued a permit under this subsection unless the person  
20 certifies to the department, in the manner prescribed by the department, that all  
21 tobacco product sales to consumers in this state shall be credit card or personal check  
22 transactions; that the invoice for all shipments of tobacco product sales from the  
23 person shall bear the person's name and address and the permit number of the  
24 permit ultimately issued under this subsection; and that the person shall provide the

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1 department any information the department considers necessary to administer this  
2 section.

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

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

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

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

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

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

24 **(5)** No tobacco products may be shipped or delivered to a person who is under  
25 18 years of age and no tobacco products may be shipped to a post-office box.

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

4           **SECTION 66.** 139.81 (1) of the statutes is amended to read:

5           139.81 **(1)** No person may sell ~~or take orders for~~ tobacco products for resale ~~or~~  
6 solicit sales of tobacco products in this state ~~for any manufacturer or permittee~~  
7 unless the person has filed an application for and obtained a valid certificate under  
8 s. 73.03 (50) and a salesperson's permit from the department. No ~~manufacturer or~~  
9 permittee shall authorize any person to sell ~~or take orders for~~ tobacco products ~~or~~  
10 solicit sales of tobacco products in this state unless the person has filed an application  
11 for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit.  
12 No person shall authorize another person to sell tobacco products or solicit sales of  
13 tobacco products in this state unless the person has filed an application for and  
14 obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.79.  
15 Each application for a permit shall disclose the name and address of the employer  
16 and shall remain effective only while the salesperson represents the named  
17 employer. If the salesperson is thereafter employed by another ~~manufacturer or~~  
18 permittee person the salesperson shall obtain a new salesperson's permit. Each  
19 ~~manufacturer and~~ permittee shall notify the department within 10 days after the  
20 resignation or dismissal of any salesperson holding a permit.

21           **SECTION 67.** 139.81 (2) of the statutes is amended to read:

22           139.81 **(2)** Section 139.34 (1) ~~(b)~~ (c) to (e) applies to the permits under this  
23 section.

24

(END)