

**2005 DRAFTING REQUEST**

**Bill**

Received: 12/03/2004

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Louis Molepske (608) 267-9649

By/Representing: himself

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax, Other - alcohol and tobacco

Extra Copies:

Submit via email: YES

Requester's email: Rep.Molepske@legis.state.wi.us

Carbon copy (CC:) to: joseph.kreye@legis.state.wi.us

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Direct marketing of cigarettes

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**Instructions:**

See Attached

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**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 12/04/2004	lkunkel 12/15/2004		_____			S&L
/P1	jkreye 01/27/2005	lkunkel 01/27/2005	rschluet 12/15/2004	_____	Inorthro 12/15/2004		S&L
/1			rschluet 01/27/2005	_____	mbarman 01/27/2005	mbarman 01/27/2005	

FE Sent For:

<END>

*At  
Intro.*

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*Please jacket asap!  
Thank Joe*

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*1/mk/1/27*

*[Signature]*  
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/?	jkreye	/plmk 12/14					

FE Sent For:

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 <END>  
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JK  
R

**REPRESENTATIVE LOUIS J. MOLEPSKE JR.**

**71<sup>ST</sup> ASSEMBLY DISTRICT**


PO Box 8953

Madison, Wisconsin 53708

(608) 267-9649 / Fax (608) 282-3671

**F A C S I M I L E**

To: Legislative Reference Bureau

From: Office of Representative Louis J. Molepske, Jr. 

Re: List of Legislation to Draft for the 2005-2006 Session

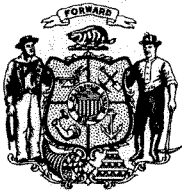
Date: December 1, 2004

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With the upcoming legislative session nearing, I would like to let you know of the bills I request be drafted on my behalf. All of the following were drafted at my request for the past legislative session and I hope to have them drafted again.

<u>Topic</u>	<u>2003-4 LRB No.</u>
Education	3507/1
Legislature	3926/P1
Criminal Law	3946/1
Tax/Cigs	4098/P1

Thank your for your time.



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1126/2

JK:lmk

PM/TK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 12-6-04

DIV

LPS: PLS PWF

GenCat

1 AN ACT ...; relating to: selling cigarettes and tobacco products by direct  
2 marketing, granting rule-making authority, making an appropriation, and  
3 providing penalties.

**Analysis by the Legislative Reference Bureau**

X

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. *or personal check*

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 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 post-office box.

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:***

2001 - 2002 LEGISLATURE  
January 2002 Special Session

LRBb2853/1  
JK:cjs:jf

SCC:.....Engel - CN4901, Direct marketing of cigarettes and tobacco products

FOR 2001-03 BUDGET -- NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT,  
TO SENATE SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 1

LPS create-action: ch 20

1 At the locations indicated, amend the substitute amendment as follows.

2 **1.** Page 12, line 20: after that line insert:

3 **20.566 Revenue, department of**

4 (1) COLLECTION OF TAXES

5 (gc) Administration of cigarette

6 direct marketing permits PR A

126,600

7 ~~**2.** Page 19, line 20: after that line insert.~~

8 **SECTION 52gb.** 20.566 (1) (gc) of the statutes is created to read:

2005-06 2006-07

126,600

1           20.566 (1) (gc) *Administration of cigarette and tobacco product direct*  
2 *marketing permits.* From the moneys received from permits issued and penalties  
3 assessed under ss. 139.345, 139.40 (2), and 139.795, the amounts in the schedule for  
4 enforcing and administering cigarette and tobacco product direct marketing permits  
5 and penalties under ss. 139.345, 139.40 (2), and 139.795." *De*

6           **3.** Page 167, line 16: after that line insert:

7           *PWE* **SECTION 303b.** 134.65 (1) of the statutes is amended to read:

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

16           **SECTION 303c.** 134.65 (1r) of the statutes is created to read:

17           134.65 (1r) (a) No license under sub. (1) may be issued to any person to whom  
18 any of the following applies:

19           1. Subject to ss. 111.321, 111.322, and 111.335, the person has an arrest record  
20 or a conviction record.

21           2. Subject to ss. 111.321, 111.322, and 111.335, the person has been convicted  
22 of a felony, or as a repeat or habitual offender, unless pardoned.

23           3. The person has not submitted proof as provided under s. 77.61 (11).

1 (b) The requirements under par. (a) apply to all partners of a partnership, all  
2 members of limited liability company, all agents of a limited liability company or  
3 corporation, and all officers of a corporation. Subject to ss. 111.321, 111.322, and  
4 111.335, if a business entity has been convicted of a crime, the entity may not be  
5 issued a license under sub. (1) unless the entity has terminated its relationship with  
6 the individuals whose actions directly contributed to the conviction.

PWF

~~303d~~ SECTION 303d. 134.65 (2) (a) of the statutes is amended to read:

8 134.65 (2) (a) ~~Except~~ Subject to sub. (1r), and except as provided in par. (b),  
9 upon filing of a proper written application a license shall be issued on July 1 of each  
10 year or when applied for and continue in force until the following June 30 unless  
11 sooner revoked. The city, village or town may charge a fee for the license of not less  
12 than \$5 nor more than \$100 per year which shall be paid to the city, village or town  
13 treasurer before the license is issued.

PWF

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

15 134.65 (5) Any person violating this section shall be fined not more than \$100  
16 \$1,000 nor less than ~~\$25~~ \$500 for the first offense and shall be fined not more than  
17 ~~\$200~~ \$5,000 nor less than ~~\$25~~ \$1,000 or imprisoned not exceeding 180 days or both  
18 for the 2nd or subsequent offense. ~~If upon such 2nd or subsequent violation, the~~  
19 ~~person so violating this section was personally guilty of a failure to exercise due care~~  
20 ~~to prevent violation thereof, the person shall be fined not more than \$300 nor less~~  
21 ~~than \$25 or imprisoned not exceeding 60 days or both.~~ Conviction on a 2nd or  
22 subsequent offense shall immediately terminate the license of the person convicted  
23 of being personally guilty of such failure to exercise due care and the person shall not  
24 be entitled to another license hereunder for a period of 5 years thereafter, nor shall

1 the person in that period act as the servant or agent of a person licensed hereunder ✓  
2 for the performance of the acts authorized by such license. ✓

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

4 134.66 (1) (am) “Direct marketer” has the meaning given in s. 139.30 (2n). ✓

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

6 PwF 134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or  
7 subjobber, no agent, employee or independent contractor of a retailer, direct  
8 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee  
9 of an independent contractor may sell or provide for nominal or no consideration  
10 cigarettes or tobacco products to any person under the age of 18, except as provided  
11 in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph  
12 for the purchase of cigarettes or tobacco products from his or her vending machine  
13 by a person under the age of 18 if the vending machine operator was unaware of the  
14 purchase.

15 ~~SECTION 303h.~~ 134.66 (2) (am) of the statutes is amended to read:

16 PwF 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,  
17 subjobber, no agent, employee or independent contractor of a retailer, direct  
18 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee  
19 of an independent contractor may provide for nominal or no consideration cigarettes  
20 or tobacco products to any person except in a place where no person younger than 18  
21 years of age is present or permitted to enter unless the person who is younger than  
22 18 years of age is accompanied by his or her parent or guardian or by his or her spouse  
23 who has attained the age of 18 years.

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

1 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber  
2 or retailer, or their employees or agents, may provide cigarettes or tobacco products  
3 for nominal or no consideration to any person under the age of 18.

4 **SECTION 303j.** 134.66 (2) (e) of the statutes is amended to read:

5 **134.66 (2) (e)** No retailer or direct marketer may sell cigarettes in a form other  
6 than as a package or container on which a stamp is affixed under s. 139.32 (1).

7 **SECTION 303k.** 134.66 (3m) of the statutes is created to read:

8 **134.66 (3m) DEFENSE OF DIRECT MARKETER.** Proof of any of the following facts  
9 by a direct marketer who sells cigarettes or tobacco products to a person under the  
10 age of 18 is a defense to any prosecution for a violation under sub. (2) (a):

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

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

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

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

20 **SECTION 315bb.** 139.30 (1m) of the statutes is created to read:

21 **139.30 (1m) "Consumer"** means any individual who receives cigarettes for his  
22 or her personal use or consumption or any individual who has title to or possession  
23 of cigarettes for any purpose other than for sale or resale.

24 **SECTION 315bc.** 139.30 (2n) of the statutes is created to read:

1 139.30 (2n) "Direct marketer" means any person who solicits or sells cigarettes  
2 to consumers in this state by direct marketing. ✓

3 SECTION 315bd. 139.30 (2p) of the statutes is created to read:

4 139.30 (2p) "Direct marketing" means publishing or making accessible an offer  
5 for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers  
6 in this state, using any means by which the consumer is not physically present at the  
7 time of sale on a premise that sells cigarettes. ✓

8 SECTION 315be. 139.30 (3) of the statutes is amended to read:

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

14 SECTION 315bf. 139.30 (8s) of the statutes is created to read:

15 139.30 (8s) "Person" means any individual, sole proprietorship, partnership,  
16 limited liability company, corporation, or association, or any owner of a single-owner  
17 entity that is disregarded as a separate entity under ch. 71. ✓

18 SECTION 315bg. 139.30 (10) of the statutes is amended to read:

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

22 SECTION 315bh. 139.32 (1) of the statutes is amended to read:

23 PWF 139.32 (1) The tax imposed by s. 139.31 (1) shall be paid. To evidence the  
24 payment, the department shall provide stamps. A person who has paid the tax shall  
25 affix stamps of the proper denomination to each package in which cigarettes are

1 packed, prior to the first sale within this state. First sale does not include a sale by  
2 a manufacturer to a distributor or to a direct marketer or by a distributor to a  
3 permittee who has obtained department approval as provided for in s. 139.321 (1) (a)

4 2. The tax shall be paid only once on each package or container.

5 **SECTION 315bi.** 139.32 (4) of the statutes is repealed ✓

6 **SECTION 315bj.** 139.32 (5) of the statutes is amended to read:

7 139.32 (5) Manufacturers, direct marketers, and distributors having a permit  
8 from the secretary shall receive a discount of 1.6% of the tax paid on stamp  
9 purchases.

10 **SECTION 315bk.** 139.32 (5m) of the statutes is amended to read:

11 139.32 (5m) Distributors, direct marketers, and manufacturers shall pay to  
12 the department the cost of printing and shipping those stamps.

13 **SECTION 315bL.** 139.32 (6) of the statutes is amended to read:

14 139.32 (6) Manufacturers, direct marketers, and distributors having a permit  
15 from the secretary may purchase stamps on credit. The secretary may require  
16 manufacturers, direct marketers, and distributors who purchase stamps on credit  
17 to file under the conditions prescribed by the secretary by rule. ✓

18 **SECTION 315bm.** 139.321 (1) (intro.) of the statutes is amended to read:

19 139.321 (1) (intro.) It is unlawful for any person to possess ~~in excess of~~ 400 ✓  
20 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32  
21 (1) and 139.33 (4).

22 **SECTION 315bn.** 139.321 (1) (a) 1. of the statutes is amended to read:

23 139.321 (1) (a) 1. Manufacturers, direct marketers, distributors or warehouse  
24 operators possessing valid permits issued by the secretary.

25 **SECTION 315bp.** 139.33 (3) of the statutes is amended to read:



1           139.33 (3) No person other than a member of the armed forces, as specified in  
2 this subsection, a licensed distributor, or a licensed direct marketer may import into  
3 this state ~~more than~~ 400 cigarettes on which the excise tax imposed by s. 139.31 has  
4 not been paid and the container of which does not bear proper stamps. Within 15  
5 days, any such person importing cigarettes shall file a declaration of such cigarettes  
6 imported and shall remit therewith the tax on such cigarettes imposed by this  
7 section. Members of the armed forces shall not be required to report or pay the tax  
8 on cigarettes in their possession if such cigarettes are issued to them by the U.S.  
9 government or any of its subdivisions or were purchased in any armed forces post  
10 exchange or service store. If the use tax imposed by this section is not paid when due,  
11 it shall become delinquent and the person liable for it shall pay, in addition, a penalty  
12 of \$25 for each 200 cigarettes. Interest on the delinquent tax and penalty shall accrue  
13 at the rate of 1.5% per month or each fraction of a month from the date the tax became  
14 due until paid.

15 **SECTION 315bq.** 139.34 (1) (a) of the statutes is amended to read:

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

21 **SECTION 315br.** 139.34 (1) (b) of the statutes is repealed.

22 **SECTION 315bs.** 139.34 (1) (c) (intro.) of the statutes is amended to read:

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

25 **SECTION 315bt.** 139.34 (1) (c) 1. to 6. of the statutes are repealed.

1           **SECTION 315bu.** 139.34 (1) (c) 1m. of the statutes is created to read:

2           139.34 (1) (c) 1m. Subject to ss. 111.321, 111.322, and 111.335, the person has  
3 an arrest record or a conviction record.

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

5           139.34 (1) (c) 2m. Subject to ss. 111.321, 111.322, and 111.335, the person has  
6 been convicted of a felony, or as a repeat or habitual offender, unless pardoned.

7           **SECTION 315bw.** 139.34 (1) (c) 3m. of the statutes is created to read:

8           139.34 (1) (c) 3m. The person has not submitted proof as provided under s.  
9 77.61 (11).

10          **SECTION 315bx.** 139.34 (1) (cm) of the statutes is created to read:

11          139.34 (1) (cm) The requirements under par. (c) apply to all partners of a  
12 partnership, all members of limited liability company, all agents of a limited liability  
13 company or corporation, and all officers of a corporation. Subject to ss. 111.321,  
14 111.322, and 111.335, if a business entity has been convicted of a crime, the entity  
15 may not be issued a permit under this subsection unless the entity has terminated  
16 its relationship with the individuals whose actions directly contributed to the  
17 conviction.

18          **SECTION 315by.** 139.34 (4) of the statutes is amended to read:

19          139.34 (4) A separate permit shall be required of and issued to each class of  
20 permittee and the holder of any permit shall perform only the operations thereby  
21 authorized. Such permit shall not be transferable from one person to another or from  
22 one premises to another. A separate permit shall be required for each place where  
23 cigarettes are stamped or where cigarettes are stored for sale at wholesale or,  
24 through vending machines or multiple retail outlets, or by direct marketing.

25          **SECTION 315bz.** 139.34 (6) of the statutes is amended to read:

1           139.34 (6) A vending machine operator or a multiple retailer may acquire  
2 unstamped cigarettes ~~from the manufacturers~~ thereof and affix the stamps to  
3 packages or other containers only if the vending machine operator or multiple  
4 retailer also holds a permit as a distributor or direct marketer.

5           **SECTION 315cb.** 139.34 (8) of the statutes is amended to read:

6           139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on  
7 the premises described in the permit. The warehouse permit shall not authorize the  
8 holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a  
9 manufacturer, direct marketer, or distributor may be delivered only to a person  
10 holding a permit as a manufacturer, direct marketer, or distributor.

11           **SECTION 315cc.** 139.345 of the statutes is created to read:

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

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

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

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

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

1 (c) The department may not issue a permit to a person under par. (a) unless the  
2 person certifies to the department that the person shall acquire stamped cigarettes  
3 from a licensed wholesaler or distributor or unstamped cigarettes from the  
4 manufacturer thereof or from the first importer of record thereof, pay the tax  
5 imposed under this subchapter on all unstamped cigarettes and affix stamps to the  
6 cigarette packages or containers as provided under s. 139.32 (1), store such packages  
7 or containers, and sell only such packages or containers to consumers in this state  
8 by direct marketing; or purchase cigarettes from a distributor, to the packages or  
9 containers of which stamps have been affixed as provided under s. 139.32 (1), and sell  
10 only such packages or containers to consumers in this state by direct marketing.

11 (d) No person may be issued a permit under this subsection unless the person  
12 certifies to the department, in the manner prescribed by the department, that all  
13 cigarette sales to consumers in this state shall be credit card or personal check  
14 transactions; that the invoices for all shipments of cigarette sales from the person  
15 shall bear the person's name and address and the permit number of the permit  
16 ultimately issued under this subsection; and that the person shall provide the  
17 department any information the department considers necessary to administer this  
18 section.

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

22 (b) No person may sell cigarettes in excess of the number of cigarette sales  
23 specified in his or her permit under sub. (1) (a) unless the person pays the permit fee  
24 under sub. (1) (a) that is applicable to the excess sales. Any person who sells  
25 cigarettes in excess of the number of cigarette sales specified in his or her permit

1 shall pay a penalty to the department of \$5,000 or an amount that is equal to \$50 for  
2 every 200 cigarettes, or fraction of 200 cigarettes, whichever is greater.

3 (3) (a) No person may sell cigarettes to consumers in this state by direct  
4 marketing unless the tax imposed under s. 139.31 (1) is paid on such cigarettes and  
5 stamps are affixed to the cigarette packages or containers as provided under s.  
6 139.32.

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

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

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

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

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

22 (5) Any person who, without having a valid permit under sub. (1), sells or  
23 solicits sales of cigarettes to consumers in this state by direct marketing shall pay  
24 a penalty to the department of \$5,000 or an amount that is equal to \$50 for every 200

1 cigarettes, or fraction of 200 cigarettes, sold to consumers in this state by direct  
2 marketing, whichever is greater. ✓

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

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

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

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

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

19 **SECTION 315cd.** 139.35 (1) of the statutes is amended to read:

20 **139.35 (1) TRANSFERS.** No person may give, sell or lend any stamps to another  
21 and no person may accept, purchase or borrow any stamps from another. All sales  
22 and transfers of stamps may be made only by the secretary to permit holding  
23 manufacturers, direct marketers, and distributors.

24 **SECTION 315ce.** 139.37 (1) (a) of the statutes is amended to read:

1           139.37 (1) (a) No person shall sell cigarettes or ~~take orders for cigarettes for~~  
2 ~~resale solicit cigarette sales~~ in this state ~~for any manufacturer or permittee without~~  
3 ~~first obtaining a~~ unless the person has filed an application for and obtained a valid  
4 certificate under s. 73.03 (50) and a salesperson's permit from the department of  
5 revenue. No manufacturer or permittee shall authorize any person to sell cigarettes  
6 ~~or take orders for cigarettes~~ solicit cigarette sales in this state ~~without first having~~  
7 ~~such person secure~~ unless the person has filed an application for and obtained a valid  
8 certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize  
9 another person to sell cigarettes or solicit cigarette sales in this state unless the  
10 person has filed an application for and obtained a valid certificate under s. 73.03 (50)  
11 and a valid permit under s. 139.34. The department shall issue the required number  
12 of permits to ~~manufacturers and~~ permittees who hold a valid certificate issued under  
13 s. 73.03 (50). Each application for a permit shall disclose the name and address of  
14 the employer and such permit shall remain effective only while the salesperson  
15 represents such named employer. If such salesperson is thereafter employed by  
16 another ~~manufacturer or permittee~~ person, the salesperson shall obtain a new  
17 salesperson's permit. Each ~~manufacturer and~~ permittee shall notify the department  
18 within 10 days after the resignation or dismissal of any such salesperson holding a  
19 permit.

20 **SECTION 315cf.** 139.38 (1) of the statutes is amended to read:

21 PwF 139.38 (1) Every manufacturer located out of the state shall keep records of all  
22 sales of cigarettes shipped into this state. Every manufacturer located in the state  
23 shall keep records of production, sales and withdrawals of cigarettes. Every  
24 distributor and direct marketer shall keep records of purchases and sales of  
25 cigarettes. Every manufacturer, direct marketer, and distributor holding a permit

1 from the secretary with the right to purchase and apply stamps shall also keep  
2 records of purchases and disposition of stamps. Every jobber, multiple retailer, and  
3 vending machine operator shall keep records of all purchases and disposition of  
4 cigarettes. Every warehouse operator shall keep records of receipts and withdrawals  
5 of cigarettes. All such records shall be accurate and complete and be kept in a  
6 manner prescribed by the secretary. These records shall be preserved on the  
7 premises described in the permit or license in such a manner as to ensure  
8 permanency and accessibility for inspection at reasonable hours by authorized  
9 personnel of the department.

10 **SECTION 315~~cg~~<sup>ch</sup>.** 139.38 (1~~m~~<sup>m</sup>) of the statutes is created to read:

11 139.38 (1~~m~~<sup>m</sup>) Records of purchases and sales of cigarettes under sub. (1) that  
12 are kept by direct marketers shall indicate, for each shipment of cigarettes into this  
13 state in the month preceding the report under sub. (2), the invoice date and number;  
14 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the  
15 manufacturer of the cigarettes shipped and the manufacturer's origin; the  
16 purchaser's name, address, and birth date; the name of the person to whom the  
17 cigarettes were shipped; the address to which the cigarettes were shipped; and any  
18 other information the department requires.

19 **SECTION 315~~ch~~<sup>ch</sup>.** 139.38 (2) of the statutes is amended to read:

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



✓

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

7 **SECTION 315ci.** 139.395<sup>✓</sup> of the statutes is amended to read:

8 **139.395 Theft of tax moneys.** All cigarette tax moneys received by a  
9 distributor, direct marketer, or manufacturer for the sale of cigarettes on which the  
10 tax under this subchapter has become due and has not been paid are trust funds in  
11 the hands of the distributor, direct marketer, or manufacturer and are the property  
12 of this state. Any distributor, direct marketer, or manufacturer who fraudulently  
13 withholds, appropriates or otherwise uses cigarette tax moneys that are the property  
14 of this state is guilty of theft under s. 943.20 (1), whether or not the distributor, direct  
15 marketer, or manufacturer has or claims to have an interest in those moneys.

16 **SECTION 315cj.** 139.40<sup>✓</sup> (2) of the statutes is amended to read:

17 **139.40 (2)** ~~If cigarettes which do not bear the proper tax stamps or on which~~  
18 ~~the tax has not been paid~~ Cigarettes that are so seized they as provided under sub.  
19 (1) may be given to law enforcement officers to use in criminal investigations or sold  
20 to qualified buyers by the secretary, without notice. If the cigarettes are sold, after  
21 deducting the costs of the sale and ~~the keeping of~~ storing the property, the proceeds  
22 of the sale shall be paid into the state treasury, except that proceeds from the sale  
23 of cigarettes seized from a direct marketer and obtained through the administration  
24 of this subsection shall be credited to the appropriation account under s. 20.566 (1)  
25 (gc). If the secretary finds that such cigarettes may deteriorate or become unfit for

1 use in criminal investigations or for sale or that those uses would otherwise be  
2 impractical, the secretary may order them destroyed or give them to a charitable or  
3 penal institution for free distribution to patients or inmates. *pe*

4 ~~4. Page 168, line 9: after that line insert:~~

5 *PWF* ~~SECTION 318b.~~ 139.44 (3) of the statutes is amended to read:

6 139.44 (3) Any permittee who fails to keep the records required by ss. 139.30  
7 to 139.42 or 139.77 to 139.82 shall be fined not less than \$100 \$500 nor more than  
8 \$500 \$1,000 for the first offense and shall be fined not less than \$1,000 nor more than  
9 \$5,000 or imprisoned not more than ~~6 months~~ 180 days or both for the 2nd or  
10 subsequent offense.

11 ~~SECTION 318c.~~ 139.44 (4) of the statutes is amended to read:

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

16 ~~SECTION 318dm.~~ 139.44 (6m) of the statutes is created to read:

17 139.44 (6m) Any person who manufactures or sells cigarettes in this state  
18 without holding the proper permit issued under this subchapter ~~shall be fined not~~  
19 ~~less than \$1,000 nor more than \$10,000 or imprisoned not less than 6 months nor~~  
20 ~~more than 2 years or both.~~ *is guilty of a class I felony*

21 ~~SECTION 318dn.~~ 139.44 (6m) of the statutes, as created by 2001 Wisconsin Act

22 ... (this act), is amended to read:

23 139.44 (6m) Any person who manufactures or sells cigarettes in this state  
24 without holding the proper permit issued under this subchapter shall be fined not

1 ~~less than \$1,000 nor more than \$10,000 or imprisoned not less than 6 months nor~~  
2 ~~more than 2 years or both is guilty of a Class I felony.~~

3 **SECTION 318e.** 139.44 (7) of the statutes is amended to read:

4 **139.44 (7)** In addition to the penalties imposed for violation of ss. 139.30 to  
5 139.41 or 139.75 to 139.83 or any of the rules of the department, the permit of any  
6 person convicted of a 2nd or subsequent offense shall be automatically revoked and,  
7 he or she shall not be granted another permit for a period of 2 5 years following such  
8 revocation, and, for the 5-year period following revocation, he or she shall not act as  
9 the employee or agent of a permittee under this subchapter to perform acts  
10 authorized by any permit issued to the permittee under this subchapter."

11 **5.** Page 168, line 10: delete lines 10 to 13 and substitute:

12 **SECTION 318z.** 139.44 (8) (a) to (c) of the statutes are amended to read:

13 **139.44 (8) (a)** If the number of cigarettes does not exceed 6,000, a fine of not  
14 more than \$200 \$1,000 or imprisonment for not more than 6 months one year in the  
15 county jail or both.

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

19 (c) If the number of cigarettes exceeds 36,000, a fine of not more than \$10,000  
20 or imprisonment for not more than 3 years or both the person is guilty of a Class H  
21 felony."

22 **6.** Page 168, line 14: before that line insert:

23 **SECTION 319b.** 139.45 of the statutes is amended to read:

1           **139.45 Prosecutions by attorney general.** Upon request by the secretary  
2 of revenue, the attorney general may represent this state or assist a district attorney  
3 in prosecuting any case arising under this subchapter or under ss. 134.65 and 134.66.

4           **SECTION 319c.** 139.75 (2) of the statutes is amended to read:

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

9           **SECTION 319d.** 139.75 (3g) of the statutes is created to read:

10           139.75 (3g) “Direct marketer” means any person who solicits or sells tobacco  
11 products to consumers in this state by direct marketing.

12           **SECTION 319e.** 139.75 (3r) of the statutes is created to read:

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

17           **SECTION 319f.** 139.75 (4) (a) of the statutes is amended to read:

18           139.75 (4) (a) Any person in this state engaged in the business of selling tobacco  
19 products ~~in this state~~ who brings, or causes to be brought, into this state from outside  
20 the state any tobacco products for sale;

21           **SECTION 319g.** 139.75 (4) (c) of the statutes is amended to read:

22           139.75 (4) (c) Any person outside this state engaged in the business of selling  
23 tobacco products ~~outside this state~~ who ships or transports tobacco products to  
24 retailers in this state to be sold by those retailers.

25           **SECTION 319h.** 139.75 (4) (cm) of the statutes is created to read:

1 139.75 (4) (cm) Any person outside this state engaged in the business of selling  
2 tobacco products who ships or transports tobacco products to consumers in this state. ✓

3 **SECTION 319i.** 139.75 (5s) of the statutes is created to read:

4 139.75 (5s) "Person" means any individual, sole proprietorship, partnership,  
5 limited liability company, corporation, or association, or any owner of a single-owner  
6 entity that is disregarded as a separate entity under ch. 71. ✓

7 **SECTION 319j.** 139.75 (7) of the statutes is amended to read:

8 139.75 (7) "Retail outlet" means each place of business from which tobacco  
9 products are sold to consumers by a retailer. ✓

10 **SECTION 319k.** 139.75 (8) of the statutes is amended to read:

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

15 **SECTION 319L.** 139.76 (3) of the statutes is created to read:

16 139.76 (3) Except as provided in sub. (2), no person may possess tobacco  
17 products in this state unless the tax imposed under sub. (1) is paid on such tobacco  
18 products. ✓

19 **SECTION 319m.** 139.78 (1m) of the statutes is created to read:

20 139.78 (1m) Except as provided in s. 139.76 (2), no person other than a  
21 distributor with a valid permit under s. 139.79 may import into this state tobacco  
22 products for which the tax imposed under s. 139.76 (1) has not been paid.

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

24 **139.79 (title) Permits; distributor; direct marketer; subjobber.**

25 **SECTION 319p.** 139.79 (1) of the statutes is amended to read:

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

5 **SECTION 319q.** 139.79 (2) of the statutes is amended to read:

6 **139.79 (2)** Section 139.34 (1) ~~(b)~~ (c) to (f), (4) and (9) applies to the permits under  
7 this section.

8 **SECTION 319r.** 139.795 of the statutes is created to read:

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

16 (b) No person may be issued a permit under this subsection unless the person  
17 holds a valid distributor's permit under s. 139.79. Section 139.34 (1) (c) to (f), (7), and (4)  
18 (9), as it applies to permits issued under s. 139.34, applies to permits issued under  
19 this subsection.

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

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

1 permit ultimately issued under this subsection; and that the person shall provide the  
2 department any information the department considers necessary to administer this  
3 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<sup>percent</sup>% 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.

1 (5) No tobacco products may be shipped or delivered to a person who is under  
2 18 years of age and no tobacco products may be shipped to a post-office box.

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

6 **SECTION 319s.** 139.81 (1) of the statutes is amended to read:

7 139.81 (1) No person may sell or take orders for tobacco products for resale or  
8 solicit sales of tobacco products in this state for any manufacturer or permittee  
9 unless the person has filed an application for and obtained a valid certificate under  
10 s. 73.03 (50) and a salesperson's permit from the department. No manufacturer or  
11 permittee shall authorize any person to sell or take orders for tobacco products or  
12 solicit sales of tobacco products in this state unless the person has filed an application  
13 for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit.  
14 No person shall authorize another person to sell tobacco products or solicit sales of  
15 tobacco products in this state unless the person has filed an application for and  
16 obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.79.

17 Each application for a permit shall disclose the name and address of the employer  
18 and shall remain effective only while the salesperson represents the named  
19 employer. If the salesperson is thereafter employed by another manufacturer or  
20 permittee person the salesperson shall obtain a new salesperson's permit. Each  
21 manufacturer and permittee shall notify the department within 10 days after the  
22 resignation or dismissal of any salesperson holding a permit.

23 **SECTION 319t.** 139.81 (2) of the statutes is amended to read:

24 139.81 (2) Section 139.34 (1) (b) (c) to (e) applies to the permits under this  
25 section.



1 **7.** Page 362, line 18: after that line insert:

2 “(1q) DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS. The authorized  
3 FTE positions for the department of revenue are increased by 1.5 PR positions on  
4 July 1, 2002, to be funded from the appropriation under section 20.566 (1) (gc) of the  
5 statutes, as created by this act, for the purpose of enforcing and administering  
6 cigarette and tobacco product direct marketing permits and penalties.”

7 **8.** Page 439, line 14: delete “139.44 (8) (c)” and substitute “139.44 (6m), 139.44  
8 (8) (a) to (c)”.

9 **9.** Page 450, line 13: delete “139.44 (8) (c)” and substitute “139.44 (6m), 139.44  
10 (8) (a) to (c)”.

11 (END)

d-n

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-11267 dn  
JK:mk

(date)

Representative Molepske:

Please review this draft carefully to ensure that it is consistent with your intent. This draft is based on a Senate Democratic Caucus Amendment that was adopted as part of Senate Amendment 2 to Senate Substitute Amendment 1 to January 2002 Special Session Assembly Bill 1.

Please note that "minimum markup" under s. 100.30 (2)(am) 1. applies to the sale of all cigarettes and tobacco products, including sales made by direct marketers.

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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1126/P1dn  
JK:lmk:rs

December 15, 2004

Representative Molepske:

Please review this draft carefully to ensure that it is consistent with your intent. This draft is based on a Senate Democratic Caucus Amendment that was adopted as part of Senate Amendment 2 to Senate Substitute Amendment 1 to January 2002 Special Session Assembly Bill 1.

Please note that "minimum markup" under s. 100.30 (2) (am) 1. applies to the sale of all cigarettes and tobacco products, including sales made by direct marketers.

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