



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1598/4
JK:kjf/lk/cjs/wlj:jf

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stays

DOA:.....Koskinen, BB0401 - Direct marketing of cigarettes and tobacco products

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

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Do Not Gen

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

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

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 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 ~~more than~~ ^{less} 600,000 cigarettes annually to consumers in this state, the fee is \$500. If the direct marketer sells ~~more than~~ ^{more} 600,000 cigarettes annually to consumers in this state, the fee is \$1,000. A direct marketer who sells tobacco products to consumers in this state must apply to DOR for a permit and submit a \$500 fee with the application. Permits issued to direct marketers expire each year on December 31.

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

1 SECTION 1. 77.61 (11) of the statutes is amended to read:

1 77.61 (11) Any city, village or town clerk or other official whose duty it is to issue
2 licenses or permits to engage in a business involving the sale at retail of tangible
3 personal property subject to tax under this subchapter, or the furnishing of services
4 so subject to tax, shall, before issuing such license or permit, require proof that the
5 person to whom such license or permit is to be issued is the holder of a seller's permit
6 ~~as required by~~ or is registered to collect, report, and remit use tax under this
7 subchapter or has been informed by an employee of the department that the
8 department will issue a seller's permit to that person or register that person to
9 collect, report, and remit use tax.

 ***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

10 **SECTION 2.** 134.65 (1) of the statutes is amended to read:

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

19 **SECTION 3.** 134.65 (1n) of the statutes is created to read:

20 134.65 (1n) (a) The department of revenue shall prepare an application form
21 for licenses issued under this section. In addition to the information required under
22 sub. (1m), the form shall require all of the following information:

1 1. The applicant's history relevant to the applicant's fitness to hold a license
2 under this section.

3 2. The kind of license for which the applicant is applying.

4 3. The premises where cigarettes or tobacco products will be sold or stored.

5 4. If the applicant is a corporation, the identity of the corporate officers and
6 agent.

7 5. If the applicant is a limited liability company, the identity of the company
8 members or managers and agent.

9 6. The applicant's trade name, if any.

10 7. Any other information required by the department.

11 (b) The department of revenue shall provide 1 copy of each application prepared
12 under this subsection to each city, village, and town.

13 (c) Each applicant for a license under this section shall use the application form
14 prepared under this subsection.

15 (d) 1. Each application for a license under this section shall be sworn to by the
16 applicant and the applicant shall submit the application with the clerk of the city,
17 village, or town where the intended place of sale is located.

18 2. Within 10 days of any change in any fact set forth in an application, the
19 applicant or license holder shall file a written description of the change with the clerk
20 of the city, village, or town where the application was submitted.

21 3. Any person may inspect applications submitted under this paragraph. The
22 clerk of each city, village, or town where such applications are submitted shall retain
23 all applications submitted under this paragraph, but may destroy all applications
24 that have been retained for 5 years or longer.

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

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

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

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

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

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

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

15 134.65 (2) (a) ~~Except Subject to sub. (1r), and except~~ as provided in par. (b),
16 upon filing of a proper written application a license shall be issued on July 1 of each
17 year or when applied for and continue in force until the following June 30 unless
18 sooner revoked. The city, village or town may charge a fee for the license of not less
19 than \$5 nor more than \$100 per year which shall be paid to the city, village or town
20 treasurer before the license is issued.

21 **SECTION 6.** 134.65 (5) of the statutes is amended to read:

22 134.65 (5) Any person violating this section shall be fined not more than \$100
23 ~~\$1,000~~ nor less than ~~\$25~~ \$500 for the first offense and not more than ~~\$200~~ \$5,000 nor
24 less than ~~\$25~~ \$1,000 or imprisoned not exceeding 180 days or both for the 2nd or
25 subsequent offense. ~~If upon such 2nd or subsequent violation, the person so violating~~

Upon conviction of

the court

1 ~~this section was personally guilty of a failure to exercise due care to prevent violation~~
 2 ~~thereof, the person shall be fined not more than \$300 nor less than \$25 or imprisoned~~
 3 ~~not exceeding 60 days or both. Conviction on a 2nd or subsequent offense shall~~
 4 immediately terminate the license of the person convicted of being personally guilty
 5 of such failure to exercise due care and the person shall not be entitled to another
 6 license hereunder for a period of 5 years thereafter, nor shall the person in that period
 7 act as the servant or agent of a person licensed hereunder for the performance of the
 8 acts authorized by such license.

9 SECTION 7. 134.66 (1) (a) of the statutes is amended to read:

10 134.66 (1) (a) "Cigarette" has the meaning given in s. 139.30 (1) (1m).

11 SECTION 8. 134.66 (1) (am) of the statutes is created to read:

12 134.66 (1) (am) "Direct marketer" has the meaning given in s. 139.30 (2n).

13 SECTION 9. 134.66 (2) (a) of the statutes is amended to read:

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

23 SECTION 10. 134.66 (2) (am) of the statutes is amended to read:

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

1 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
2 of an independent contractor may provide for nominal or no consideration cigarettes
3 or tobacco products to any person except in a place where no person younger than 18
4 years of age is present or permitted to enter unless the person who is younger than
5 18 years of age is accompanied by his or her parent or guardian or by his or her spouse
6 who has attained the age of 18 years.

7 **SECTION 11.** 134.66 (2) (d) of the statutes is amended to read:

8 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber
9 or retailer, or their employees or agents, may provide cigarettes or tobacco products
10 for nominal or no consideration to any person under the age of 18.

11 **SECTION 12.** 134.66 (2) (e) of the statutes is amended to read:

12 134.66 (2) (e) No retailer or direct marketer may sell cigarettes in a form other
13 than as a package or container on which a stamp is affixed under s. 139.32 (1).

14 **SECTION 13.** 134.66 (3m) of the statutes is created to read:

15 134.66 (3m) DEFENSE OF DIRECT MARKETER. Proof of all of the following facts by
16 a direct marketer who sells cigarettes or tobacco products to a person under the age
17 of 18 is a defense to any prosecution for a violation under sub. (2) (a):

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

20 (b) That the purchaser falsely represented that he or she had attained the age
21 of 18 and presented a copy or facsimile of ~~a~~ ^{an} government issued identification ^{card}

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

SECTION 13

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

4 **SECTION 14.** 139.30 (1) of the statutes is renumbered 139.30 (1m).

5 **SECTION 15.** 139.30 (1d) of the statutes is created to read:

6 139.30 (1d) "Bonded direct marketer" means any person who acquires
7 unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages
8 or other containers, stores them and sells them by direct marketing to consumers for
9 their own personal use and who may also acquire stamped cigarettes from
10 manufacturers or distributors for such sales.

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

12 139.30 (1s) "Consumer" means any individual who receives cigarettes for his
13 or her personal use or consumption or any individual who has title to or possession
14 of cigarettes for any purpose other than for sale or resale.

15 **SECTION 17.** 139.30 (2n) of the statutes is created to read:

16 139.30 (2n) "Direct marketer" means a bonded direct marketer or a direct
17 marketer ~~permitter~~.

nonbonded
nonbonded

18 **SECTION 18.** 139.30 ~~(2m)~~ of the statutes is created to read:

19 ^(B) 139.30 ~~(2m)~~ "Direct marketer ~~permitter~~" means any person who acquires
20 stamped cigarettes from the manufacturers or distributors, stores them and sells
21 them by direct marketing to consumers for their own personal use.

nonbonded direct marketer

22 **SECTION 19.** 139.30 (2p) of the statutes is created to read:

23 139.30 (2p) "Direct marketing" means publishing or making accessible an offer
24 for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers

more to page 9, line 15

1 in this state, using any means by which the consumer is not physically present at the
2 time of sale on a premise that sells cigarettes.

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

4 139.30 (3) "Distributor" means any person who acquires unstamped cigarettes
5 from the manufacturer thereof, affixes stamps to the packages or other containers,
6 stores them and sells them to other permittees or to retailers for resale ~~or~~ and who
7 acquires may acquire stamped cigarettes from another permittee manufacturers or
8 distributors for such sales.

*has
has the meaning given in 50
134.66(1)(c)*

9 SECTION 21. 139.30 (4n) of the statutes is created to read:

10 139.30 (4n) "~~Government issued~~ identification" ^{*card*} includes a valid driver's
11 ~~license, state identification card, passport, or military identification.~~

12 SECTION 22. 139.30 (7) of the statutes is amended to read:

13 139.30 (7) "Manufacturer" means any person who directly manufactures
14 cigarettes for the purpose of sale, including the authorized agent of a person who
15 directly manufactures cigarettes for the purpose of sale.

*INSERT ✓
P. 8, lines
13-21*

16 SECTION 23. 139.30 (8s) of the statutes is created to read:

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

20 SECTION 24. 139.32 (1) of the statutes is amended to read:

21 139.32 (1) The tax imposed by s. 139.31 (1) shall be paid. To evidence the
22 payment, the department shall provide stamps. A person who has paid the tax shall
23 affix stamps of the proper denomination to each package in which cigarettes are
24 packed, prior to the first sale within this state. First sale does not include a sale by
25 a manufacturer to a distributor or to a direct marketer or by a distributor to a

INSERT 9-19 ✓

loaded

1 permittee who has obtained department approval as provided for in s. 139.321 (1) (a)

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

3 SECTION 25. 139.32 (4) of the statutes is amended to read:

4 139.32 (4) In lieu of stamps the secretary may authorize impressions applied
5 by the use of meter machines. The secretary shall prescribe by rule the type of
6 impression and the kind of machines which may be used.

7 SECTION 26. 139.32 (5) of the statutes is amended to read:

8 139.32 (5) Manufacturers, bonded direct marketers, and distributors having
9 a permit from the secretary who are authorized to purchase tax stamps shall receive
10 a discount of 1.6% of the tax paid on stamp purchases.

11 SECTION 27. 139.32 (5m) of the statutes is amended to read:

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

14 SECTION 28. 139.32 (6) of the statutes is amended to read:

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

by the department

20 SECTION 29. 139.321 (1) (intro.) of the statutes is amended to read:

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

24 SECTION 30. 139.321 (1) (a) 1. of the statutes is amended to read:

By the department

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

3 **SECTION 31.** 139.33 (3) of the statutes is amended to read:

4 139.33 (3) No person other than a member of the armed forces, as specified in
5 this subsection, a ~~licensed~~ distributor, or a ~~licensed~~ bonded direct marketer who is
6 authorized to purchase and affix tax stamps may import into this state more than
7 400 cigarettes on which the excise tax imposed by s. 139.31 has not been paid and
8 the container of which does not bear proper stamps. Within 15 days, any such person
9 importing cigarettes shall file a declaration of such cigarettes imported and shall
10 remit therewith the tax on such cigarettes imposed by this section. Members of the
11 armed forces shall not be required to report or pay the tax on cigarettes in their
12 possession if such cigarettes are issued to them by the U.S. government or any of its
13 subdivisions or were purchased in any armed forces post exchange or service store.

14 If the use tax imposed by this section is not paid when due, it shall become delinquent
15 and the person liable for it shall pay, in addition, a penalty of \$25 for each 200
16 cigarettes. Interest on the delinquent tax and penalty shall accrue at the rate of 1.5%
17 per month or each fraction of a month from the date the tax became due until paid.

18 **SECTION 32.** 139.34 (1) (a) of the statutes is amended to read:

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

25 **SECTION 33.** 139.34 (1) (b) of the statutes is repealed.

for their personal use or consumption

1 **SECTION 34.** 139.34 (1) (c) (intro.) of the statutes is amended to read:

2 139.34 (1) (c) (intro.) ~~Subject to ss. 111.321, 111.322 and 111.335, no~~ No permit
3 under this section may be granted to any person to whom any of the following applies:

4 **SECTION 35.** 139.34 (1) (c) 1. to 6. of the statutes are repealed.

5 **SECTION 36.** 139.34 (1) (c) 1m. of the statutes is created to read:

6 139.34 (1) (c) 1m. Subject to ss. 111.321, 111.322, and 111.335, the person has
7 an arrest record or a conviction record.

8 **SECTION 37.** 139.34 (1) (c) 2m. of the statutes is created to read:

9 139.34 (1) (c) 2m. Subject to ss. 111.321, 111.322, and 111.335, the person has
10 been convicted of a felony, or as a repeat or habitual offender, unless pardoned.

11 **SECTION 38.** 139.34 (1) (c) 3m. of the statutes is created to read:

12 139.34 (1) (c) 3m. The person has not submitted proof as provided under s.
13 77.61 (11).

14 **SECTION 39.** 139.34 (1) (cm) of the statutes is created to read:

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

22 **SECTION 40.** 139.34 (3) of the statutes is amended to read:

23 139.34 (3) No distributor or bonded direct marketer may affix stamps to
24 cigarette packages, as provided in s. 139.32, unless the distributor or bonded direct
25 marketer certifies to the department, in a manner prescribed by the department,

1 that the distributor or bonded direct marketer purchases cigarettes directly from a
2 manufacturer.

3 **SECTION 41.** 139.34 (4) of the statutes is amended to read:

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

10 **SECTION 42.** 139.34 (6) of the statutes is amended to read:

11 139.34 (6) A vending machine operator or a multiple retailer may acquire
12 unstamped cigarettes from the manufacturers thereof and affix the stamps to
13 packages or other containers only if the vending machine operator or multiple
14 retailer also holds a permit as a distributor or bonded direct marketer.

15 **SECTION 43.** 139.34 (8) of the statutes is amended to read:

16 139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on
17 the premises described in the permit. The warehouse permit shall not authorize the
18 holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a
19 manufacturer, ^{bonded} direct marketer, or distributor may be delivered only to a person
20 holding a permit as a manufacturer, ~~or~~ a bonded direct marketer who is authorized
21 to purchase and affix tax stamps ~~or distributor~~ by the department

22 **SECTION 44.** 139.345 of the statutes is created to read:

23 **139.345 Direct marketing.** (1) (a) (intro.) No person may sell cigarettes to
24 consumers in this state as a direct marketer or solicit sales of cigarettes to consumers
25 in this state by direct marketing unless the person has obtained a permit from the

1 department to make such sales or solicitations. The person shall file an application
2 for a permit under this subsection with the department, in the manner prescribed
3 by the department, and shall submit the following fee with the application:

4 1. If the person sells less than 600,000 cigarettes annually to consumers in this
5 state by direct marketing, \$500.

6 2. If the person sells 600,000 or more cigarettes annually to consumers in this
7 state by direct marketing, \$1,000.

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

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

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 cigarette sales to consumers in this state shall be credit card transactions; that the
22 invoices for all shipments of cigarette sales from the person shall bear the person's
23 name and address and permit ultimately issued under this subsection; and that the
24 person shall provide the department any information the department considers
25 necessary to administer this section.

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

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

10 (3) (a) No person may sell cigarettes to consumers in this state by direct
11 marketing unless the tax imposed under s. 139.31 (1) is paid on such cigarettes and
12 stamps are affixed to the cigarette packages or containers as provided under s.
13 139.32.

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

16 (c) No person may sell cigarettes to consumers in this state by direct marketing
17 unless the cigarette brands are approved by the department and listed in the
18 directory of certified tobacco product manufacturers and brands as provided under
19 s. 895.12 (2) (b).

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

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

1 (b) The person receives from the consumer, at the time of purchase, a notarized
2 copy of a ~~government~~ ^{an} issued identification ^{card}, the name specified on the identification
3 matches the name of the consumer, and the birth date on the identification verifies
4 that the purchaser is at least 18 years of age.

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

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

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

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

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

23 (7) No cigarettes may be shipped to a person who is under 18 years of age and
24 no cigarettes may be shipped to a post-office box. Every package used to ship ~~to~~
25 ~~products~~ that are sold as provided under this section and delivered to a person in this

cigarettes

cigarettes

tobacco products

by the department

1 state shall be clearly labeled to indicate that the package contains ~~tobacco products~~
2 and may not be delivered to a person who is under 18 years of age.

3 SECTION 45. 139.35 (1) of the statutes is amended to read:

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

9 SECTION 46. 139.37 (1) (a) of the statutes is amended to read:

10 139.37 (1) (a) No person shall sell cigarettes or ~~take orders for cigarettes for~~
11 ~~resale solicit cigarette sales~~ in this state ~~for any manufacturer or permittee without~~
12 ~~first obtaining a~~ unless the person has filed an application for and obtained a valid
13 certificate under s. 73.03 (50) and a salesperson's permit from the department of
14 revenue. No manufacturer or permittee shall authorize any person to sell cigarettes
15 or take orders for cigarettes solicit cigarette sales in this state ~~without first having~~
16 ~~such person secure~~ unless the person has filed an application for and obtained a valid
17 certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize
18 ~~another person to sell cigarettes or solicit cigarette sales~~ in this state unless the
19 person has filed an application for and obtained a valid certificate under s. 73.03 (50)
20 and a valid permit under s. 139.34. The department shall issue the required number
21 of permits to manufacturers and permittees who hold a valid certificate issued under
22 s. 73.03 (50). Each application for a permit shall disclose the name and address of
23 the employer or the person for whom the sales person is soliciting and such permit
24 shall remain effective only while the salesperson represents such named employer
25 or person. If such salesperson is thereafter employed by another ~~manufacturer or~~

the sale or solicitation of

1 ~~permittee person~~, the salesperson shall obtain a new salesperson's permit. Each
2 ~~manufacturer and~~ permittee shall notify the department within 10 days after the
3 resignation or dismissal of any such salesperson holding a permit.

4 **SECTION 47.** 139.38 (1) of the statutes is amended to read:

5 139.38 (1) Every manufacturer located out of the state shall keep records of all
6 sales of cigarettes shipped into this state. Every manufacturer located in the state
7 shall keep records of production, sales and withdrawals of cigarettes. Every
8 distributor and direct marketer shall keep records of purchases and sales of
9 cigarettes. Every manufacturer, bonded direct marketer, and distributor ~~holding a~~
10 ~~permit from the secretary with the right~~ who is authorized to purchase and apply
11 stamps shall also keep records of purchases and disposition of stamps. Every jobber,
12 multiple retailer, and vending machine operator shall keep records of all purchases
13 and disposition of cigarettes. Every warehouse operator shall keep records of
14 receipts and withdrawals of cigarettes. All such records shall be accurate and
15 complete and be kept in a manner prescribed by the secretary. These records shall
16 be preserved on the premises described in the permit or license in such a manner as
17 to ensure permanency and accessibility for inspection at reasonable hours by
18 authorized personnel of the department.

19 **SECTION 48.** 139.38 (1m) of the statutes is created to read:

20 139.38 (1m) Records of purchases and sales of cigarettes under sub. (1) that
21 are kept by direct marketers shall indicate, for each shipment of cigarettes into this
22 state in the month preceding the report under sub. (2), the invoice date and number;
23 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the
24 manufacturer of the cigarettes shipped and the point of origin; the purchaser's name,
25 address, and birth date; the name of the person to whom the cigarettes were shipped;

1 the address to which the cigarettes were shipped; and any other information the
2 department requires.

3 SECTION 49. 139.38 (2) of the statutes is amended to read:

4 139.38 (2) (a) Except as provided in par. (b), every permittee manufacturer,
5 distributor, jobber, and direct marketer shall render a true and correct invoice of
6 every sale of cigarettes at wholesale and every permittee shall on or before the 15th
7 day of each calendar month file a verified report of all cigarettes purchased, sold,
8 received, warehoused or withdrawn during the preceding calendar month.

9 (b) The department may allow any jobber, multiple retailer, ^{non bonded} direct marketer
10 ~~permittee~~, or vending machine operator permittee who does not sell cigarettes,
11 except for those on which the tax under this chapter is paid, to file a quarterly report.

12 The quarterly report shall be filed on or before the 15th day of the next month
13 following the close of each calendar quarter. The report shall specify the number of
14 cigarettes purchased and sold during the preceding calendar quarter.

15 SECTION 50. 139.395 of the statutes is amended to read:

16 139.395 Theft of tax moneys. All cigarette tax moneys received by a
17 distributor, bonded direct marketer, or manufacturer for the sale of cigarettes on
18 which the tax under this subchapter has become due and has not been paid are trust
19 funds in the hands of the distributor, bonded direct marketer, or manufacturer and
20 are the property of this state. Any distributor, bonded direct marketer, or
21 manufacturer who fraudulently withholds, appropriates or otherwise uses cigarette
22 tax moneys that are the property of this state is guilty of theft under s. 943.20 (1),
23 whether or not the distributor, bonded direct marketer, or manufacturer has or
24 claims to have an interest in those moneys.

25 SECTION 51. 139.40 (2) of the statutes is amended to read:

INSERT
19-74

SECTION 51

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

11 **SECTION 52.** 139.44 (3) of the statutes is amended to read:

12 139.44 (3) Any permittee who fails to keep the records required by ss. 139.30
13 to 139.42 or 139.77 to 139.82 shall be fined not less than ~~\$100~~ \$500 nor more than
14 \$500 ~~\$1,000 for the first offense and shall be fined not less than \$1,000 nor more than~~
15 \$5,000 or imprisoned not more than ~~6 months~~ 180 days or both for the 2nd or
16 subsequent offense.

17 **SECTION 53.** 139.44 (4) of the statutes is amended to read:

18 139.44 (4) Any person who refuses to permit the examination or inspection
19 authorized in s. 139.39 (2) or 139.83 may be fined not ~~more~~ less than ~~\$500~~ nor more
20 than \$1,000 or imprisoned not more than ~~90~~ 180 days or both. Such refusal shall be
21 cause for immediate suspension or revocation of permit by the secretary.

22 **SECTION 54.** 139.44 (6m) of the statutes is created 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 is guilty of a Class
25 I felony.

1 **SECTION 55.** 139.44 (7) of the statutes is amended to read:

2 139.44 (7) In addition to the penalties imposed for violation of ss. 139.30 to
3 139.41 or 139.75 to 139.83 or any of the rules of the department, the permit of any
4 person convicted of a 2nd or subsequent offense shall be automatically revoked and
5 ~~he or she, the person~~ shall not be granted another permit for a period of 2 5 years
6 following such revocation, and, for the 5 year period following revocation, the person
7 shall not act as the employee or agent of a permittee under this subchapter to perform
8 acts authorized by any permit issued to the permittee under this subchapter.

9 **SECTION 56.** 139.45 of the statutes is amended to read:

10 **139.45 Prosecutions by attorney general.** Upon request by the secretary
11 of revenue, the attorney general may represent this state or assist a district attorney
12 in prosecuting any case arising under this subchapter or under ss. 134.65 and 134.66.

13 **SECTION 57.** 139.75 (2) of the statutes is amended to read:

14 139.75 (2) “Consumer” means any individual who receives tobacco products for
15 his or her personal use or consumption or any person individual who has title to or
16 possession of tobacco products ~~in storage for use or other consumption in this state~~
17 any purpose other than for sale or resale.

18 **SECTION 58.** 139.75 (3g) of the statutes is created to read:

19 139.75 (3g) “Direct marketer” means any person who solicits or sells tobacco
20 products to consumers in this state by direct marketing.

21 **SECTION 59.** 139.75 (3r) of the statutes is created to read:

22 139.75 (3r) “Direct marketing” means publishing or making accessible an offer
23 for the sale of tobacco products to consumers in this state, or selling tobacco products
24 to consumers in this state, using any means by which the consumer is not physically
25 present on a premise that sells tobacco products.

SECTION 60

1 **SECTION 60.** 139.75 (4) (a) of the statutes is amended to read:

2 139.75 (4) (a) Any person in this state engaged in the business of selling tobacco
3 products ~~in this state~~ who brings, or causes to be brought, into this state from outside
4 the state any tobacco products for sale;

5 **SECTION 61.** 139.75 (4) (c) of the statutes is amended to read:

6 139.75 (4) (c) Any person outside this state engaged in the business of selling
7 tobacco products ~~outside this state~~ who ships or transports tobacco products to
8 retailers in this state to be sold by those retailers.

9 **SECTION 62.** 139.75 (4) (cm) of the statutes is created to read:

10 139.75 (4) (cm) Any person outside this state engaged in the business of selling
11 tobacco products who ships or transports tobacco products to consumers in this state.

12 **SECTION 63.** 139.75 (4n) of the statutes is created to read:

13 139.75 (4n) "~~Government issued~~ identification" ^{card} ~~includes a valid driver's~~
14 ~~license, state identification card, passport, or military identification.~~ ^{has the meaning given in 134.66(1)(c)}

15 **SECTION 64.** 139.75 (5s) of the statutes is created to read:

16 139.75 (5s) "Person" means any individual, sole proprietorship, partnership,
17 limited liability company, corporation, or association, or any owner of a single-owner
18 entity that is disregarded as a separate entity under ch. 71.

19 **SECTION 65.** 139.75 (7) of the statutes is amended to read:

20 139.75 (7) "Retail outlet" means each place of business from which tobacco
21 products are sold to consumers by a retailer.

22 **SECTION 66.** 139.75 (12) of the statutes is amended to read:

23 139.75 (12) "Tobacco products" means cigars; cheroots; stogies; periques;
24 granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff;
25 snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos;

(INSERT 22-21) ↓

1 shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds
2 and forms of tobacco prepared in such manner as to be suitable for chewing or
3 smoking in a pipe or otherwise, or both for chewing and smoking; but “tobacco
4 products” does not include cigarettes, as defined under s. 139.30 (1) (1m).

5 **SECTION 67.** 139.76 (3) of the statutes is created to read:

6 139.76 (3) Except as provided in sub. (2), no person may possess tobacco
7 products in this state unless the tax imposed under sub. (1) is paid on such tobacco
8 products.

9 **SECTION 68.** 139.78 (1m) of the statutes is created to read:

10 139.78 (1m) Except as provided in s. 139.76 (2), no person other than a
11 distributor with a valid permit under s. 139.79 may import into this state tobacco
12 products for which the tax imposed under s. 139.76 (1) has not been paid.

13 **SECTION 69.** 139.79 (title) of the statutes is amended to read:

14 **139.79 (title) Permits; distributor; direct marketer; subjobber.**

15 **SECTION 70.** 139.79 (1) of the statutes is amended to read:

16 139.79 (1) No person may engage in the business of a distributor, direct
17 marketer, or subjobber of tobacco products at any place of business unless that
18 person has filed an application for and obtained a permit from the department to
19 engage in that business at such place.

20 **SECTION 71.** 139.79 (2) of the statutes is amended to read:

21 139.79 (2) Section 139.34 (1) ~~(b)~~ (c) to (f), (4) and (9) applies to the permits under
22 this section.

23 **SECTION 72.** 139.795 of the statutes is created to read:

24 **139.795 Direct marketing.** (1) (a) No person may sell tobacco products by
25 direct marketing to consumers in this state as a direct marketer or solicit sales of

SECTION 72

1 tobacco products to consumers in this state by direct marketing unless the person has
2 obtained a permit from the department to make such sales or solicitations. The
3 person shall file an application for a permit under this subsection with the
4 department, in the manner prescribed by the department, and shall submit a \$500
5 fee with the application.

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

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

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 tobacco product sales to consumers in this state shall be credit card transactions; that
14 the invoice for all shipments of tobacco product sales from the person shall bear the
15 person's name and address and permit ultimately issued under this subsection; and
16 that the person shall provide the department any information the department
17 considers necessary to administer this section.

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

21 (3) No person may sell tobacco products to a consumer in this state by direct
22 marketing unless the person does all of the following:

23 (a) The person uses a mechanism, approved by the department, to verify the
24 consumer's age.

1 (b) The person receives from the consumer, at the time of purchase, a copy or
2 facsimile of ~~a government issued~~ ^{an} identification ^{card}, the name specified on the
3 identification matches the name of the consumer.

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

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

11 (5) No tobacco products may be shipped or delivered to a person who is under
12 18 years of age and no tobacco products may be shipped to a post-office box. Every
13 package used to ship tobacco products that are sold as provided under this section
14 and delivered to a person in this state shall be clearly labeled to indicate that the
15 package contains tobacco products and may not be delivered to a person who is under
16 18 years of age.

17 **SECTION 73.** 139.81 (1) of the statutes is amended to read:

18 139.81 (1) No person may sell ~~or take orders for~~ tobacco products ~~for resale or~~
19 solicit sales of tobacco products in this state ~~for any manufacturer or permittee~~
20 unless the person has filed an application for and obtained a valid certificate under
21 s. 73.03 (50) and a salesperson's permit from the department. No ~~manufacturer or~~
22 permittee shall authorize any person to sell ~~or take orders for~~ tobacco products or
23 solicit sales of tobacco products in this state unless the person has filed an application
24 for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit.

25 No person may authorize another person to sell tobacco products or solicit sales of

the sale or solicitation

1 tobacco products in this state unless the person has filed an application for and
2 obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.79.

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

9 **SECTION 74.** 139.81 (2) of the statutes is amended to read:

10 139.81 (2) Section 139.34 (1) ~~(b)~~ (c) to (e) applies to the permits under this
11 section.

12 **SECTION 75.** 254.911 (1) of the statutes is amended to read:

13 254.911 (1) "Cigarette" has the meaning given in s. 139.30 ~~(1)~~ (1m).

14 **SECTION 76.** 891.455 (4) of the statutes is amended to read:

15 891.455 (4) The presumption under sub. (2) for cancers caused by smoking or
16 tobacco product use shall not apply to any municipal fire fighter who smokes
17 cigarettes, as defined in s. 139.30 ~~(1)~~ (1m), or who uses a tobacco product, as defined
18 in s. 139.75 (12), after January 1, 2001.

19 **SECTION 9441. Effective dates; revenue.**

20 (1) DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS. The repeal of
21 section 139.34 (1) (b) and 139.34 (1) (c) 1. to 6. of the statutes, the renumbering of
22 section 139.30 (1) of the statutes, the amendment of sections 77.61 (11), 134.65 (1),
23 134.65 (2) (a), 134.65 (5), 134.66 (1) (a), 134.66 (2) (a), 134.66 (2) (am), 134.66 (2) (d),
24 134.66 (2) (e), 139.30 (3), 139.30 (7), ^{139.30 (10) ^} 139.32 (1), 139.32 (4), 139.32 (5), 139.32 (5m),
25 139.32 (6), 139.321 (1) (intro.), 139.321 (1) (a) 1., 139.33 (3), 139.34 (1) (a), 139.34 (1)

1 (c) (intro.), 139.34 (3), 139.34 (4), 139.34 (6), 139.34 (8), 139.35 (1), 139.37 (1) (a),
2 139.38 (1), 139.38 (2), 139.39⁽⁶⁾, 139.40 (2), 139.44 (3), 139.44 (4), 139.44 (7), 139.45,
3 139.75 (2), 139.75 (4) (a), 139.75 (4) (c), 139.75 (7), 139.75⁽⁸⁾ (12), 139.79 (title), 139.79
4 (1), 139.79 (2), 139.81 (1), 139.81 (2), 254.911 (1) and 891.455 (4), of the statutes and
5 the creation of sections 134.65 (1n), 134.65 (1r), 134.66 (1) (am), 134.66 (3m), 139.30
6 (1d), 139.30 (1s), 139.30 (2n), 139.30 (2nn), 139.30 (2p), 139.30 (4n), 139.30 (8s),
7 139.34 (1) (c) 1m., 139.34 (1) (c) 2m., 139.34 (1) (c) 3m., 139.34 (1) (cm), 139.345,
8 139.38 (1m), 139.44 (6m), 139.75 (3g), 139.75 (3r), 139.75 (4) (cm), 139.75 (4n), 139.75
9 (5s), 139.76 (3), 139.78 (1m) and 139.795 of the statutes take effect on July 1, 2006.

10

(END)

Insert 9-19

Section #. 139.30 (10) of the statutes is amended to read:

139.30 (10) "Retailer" ~~means any person who sells, exposes for sale or possesses with intent to sell to consumers any cigarettes.~~ *has the meaning given in 50134066(1)(g)*

History: 1979 c. 34, 221; 1983 a. 27, 189; 1985 a. 302; 1993 a. 16, 482; 1997 a. 27; 1999 a. 9; 2001 a. 16.

Insert 19-19

Section #. 139.39 (6) of the statutes is amended to read:

139.39 (6) Sections 71.74 (1), (2), (10), (11) and (14), 71.77, 71.80 (12), 71.91 (1) (a) and (c) and (2) to (7), 71.92 and 73.0301 as they apply to the taxes under ch. 71 apply to the taxes under this subchapter. Section 71.74 (13) as it applies to the collection of the taxes under ch. 71 applies to the collection of the taxes under this subchapter, except that the period during which notice of an additional assessment shall be given begins on the due date of the report under this subchapter.

History: 1975 c. 39, 199; 1979 c. 34; 1981 c. 20; 1985 a. 135 s. 83 (5); 1989 a. 31, 122, 359; 1991 a. 39; 1995 a. 233, 408; 1997 a. 35, 237; 2001 a. 16; 2003 a. 33.

Not Section 78.70(6) as it applies to personal liability for paying taxes, interest, penalties, and other charges under ch 78 applies to personal liability for paying taxes, interest, penalties, and other charges under this subchapter.

Insert 22-21

Section #. 139.75 (8) of the statutes is amended to read:

139.75 (8) "Retailer" ~~means any person engaged in the business of selling tobacco products to~~
~~ultimate consumers.~~

History: 1981 c. 20; 1985 a. 302; 1997 a. 27; 1999 a. 9.

has the meaning given in ~~§~~ 134066(1)(g)

Kreye, Joseph

From: Kraus, Jennifer - DOA
Sent: Thursday, January 27, 2005 11:09 AM
To: Kreye, Joseph
Cc: Lashore, Patricia M
Subject: FW: cigarette direct marketers draft -- LRB

Joe - Here's another one - see what you can do. Thanks much - Jenny

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

From: Gates-Hendrix, Sherrie
Sent: Thursday, January 27, 2005 10:45 AM
To: Lashore, Patricia M; Kraus, Jennifer - DOA
Subject: cigarette direct marketers draft -- LRB 1598/4

Jenny -- our excise staff just submitted additional comments on the direct marketers draft. Knowing that it's likely too late for you to make these changes, I would recommend that especially the first one be considered for errata. It will be very important to the cig distributor industry.

Sherrie

EXPLANATION OF CHANGES TO LRB-1598/4

Additional Changes Submitted on 1/27/05

These changes (especially the first one) should be done as errata if not made in the budget bill before publication.

✓ **Pg. 3, Line 18:**

134.65(1) "No person, except a person who holds a valid permit under s.139.345 or 139.795 and whose business premises is not physically located in this state who sells cigarettes or tobacco products solely as a direct marketer, shall in any ..."

- * This change will void the requirement for a retail license for a direct marketer with premises outside the state and also for a direct marketer in this state who is selling cigarettes solely by direct marketing. This change will be very important to the distributors.

✓ **Pg. 15, Line 4:**

139.345(1)(d) "No person may be issued a permit under this subsection unless the person certifies to the department, in the manner prescribed by the department, that all cigarette sales to consumers in this state shall be credit card transactions; that the invoices and all means of solicitation for all shipments of cigarette sales from the person shall bear the person's name and address and permit ultimately issued under this subsection; and that the person shall provide the department any information the department considers necessary to administer this section."

- * The change is needed for the consumer to know that their direct marketing cigarette purchase is from a person who holds a permit for direct marketing under which all state taxes are required to be paid. It will also help with the enforcement of such solicitation and sales.

Pg. 25, Line3:

139.795(1)(d) "No person may be issued a permit under this subsection unless the person certifies to

the department, in the manner prescribed by the department, that all tobacco product sales to consumers in this state shall be credit card transactions; that the invoices and all means of solicitation for all shipments of tobacco product sales from the person shall bear the person's name and address and permit ultimately issued under this subsection; and that the person shall provide the department any information the department considers necessary to administer this section."

- * This change parallels the one above, but for tobacco purchases. It will enable the consumer to know that their direct marketing tobacco purchase is from a person who holds a permit for direct marketing under which all state taxes are required to be paid. It will also help with the enforcement of such solicitation and sales.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1598/5
JK:kjf/lk/ejs/wlj:ch

RM not R

DOA:.....Koskinen, BB0401 - Direct marketing of cigarettes and tobacco products

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

in 1-27-05

Today please

1 ^{Do Not Gen} AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

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 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. 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 on a premise that sells cigarettes or tobacco products.

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 less than 600,000 cigarettes annually to consumers in this state, the fee is \$500. If the direct marketer sells 600,000 or more cigarettes annually to consumers in this state, the fee is \$1,000. A direct marketer who sells tobacco products to consumers in this state must apply to DOR for a permit and submit a \$500 fee with the application. Permits issued to direct marketers expire each year on December 31.

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

- 1 **SECTION 1.** 77.61 (11) of the statutes is amended to read:
- 2 **77.61 (11)** Any city, village or town clerk or other official whose duty it is to issue
- 3 licenses or permits to engage in a business involving the sale at retail of tangible
- 4 personal property subject to tax under this subchapter, or the furnishing of services

*who sells cigarettes or tobacco products solely
as a direct marketer*

1 so subject to tax, shall, before issuing such license or permit, require proof that the
2 person to whom such license or permit is to be issued is the holder of a seller's permit
3 ~~as required by~~ or is registered to collect, report, and remit use tax under this
4 subchapter or has been informed by an employee of the department that the
5 department will issue a seller's permit to that person or register that person to
6 collect, report, and remit use tax.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

7 **SECTION 2.** 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 3.** 134.65 (1n) of the statutes is created to read:

17 134.65 (1n) (a) The department of revenue shall prepare an application form
18 for licenses issued under this section. In addition to the information required under
19 sub. (1m), the form shall require all of the following information:

- 20 1. The applicant's history relevant to the applicant's fitness to hold a license
- 21 under this section.
- 22 2. The kind of license for which the applicant is applying.
- 23 3. The premises where cigarettes or tobacco products will be sold or stored.

SECTION 3

1 4. If the applicant is a corporation, the identity of the corporate officers and
2 agent.

3 5. If the applicant is a limited liability company, the identity of the company
4 members or managers and agent.

5 6. The applicant's trade name, if any.

6 7. Any other information required by the department.

7 (b) The department of revenue shall provide 1 copy of each application prepared
8 under this subsection to each city, village, and town.

9 (c) Each applicant for a license under this section shall use the application form
10 prepared under this subsection.

11 (d) 1. Each application for a license under this section shall be sworn to by the
12 applicant and the applicant shall submit the application with the clerk of the city,
13 village, or town where the intended place of sale is located.

14 2. Within 10 days of any change in any fact set forth in an application, the
15 applicant or license holder shall file a written description of the change with the clerk
16 of the city, village, or town where the application was submitted.

17 3. Any person may inspect applications submitted under this paragraph. The
18 clerk of each city, village, or town where such applications are submitted shall retain
19 all applications submitted under this paragraph, but may destroy all applications
20 that have been retained for 5 years or longer.

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

22 134.65 (1r) (a) No license under sub. (1) may be issued to any person to whom
23 any of the following applies:

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

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

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

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

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

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

17 **SECTION 6.** 134.65 (5) of the statutes is amended to read:

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

1 being personally guilty of such failure to exercise due care and the person shall not
2 be entitled to another license hereunder for a period of 5 years thereafter, nor shall
3 the person in that period act as the servant or agent of a person licensed hereunder
4 for the performance of the acts authorized by such license.

5 **SECTION 7.** 134.66 (1) (a) of the statutes is amended to read:

6 134.66 (1) (a) “Cigarette” has the meaning given in s. 139.30 ~~(1)~~ (1m).

7 **SECTION 8.** 134.66 (1) (am) of the statutes is created to read:

8 134.66 (1) (am) “Direct marketer” has the meaning given in s. 139.30 (2n).

9 **SECTION 9.** 134.66 (2) (a) of the statutes is amended to read:

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

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

20 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,
21 subjobber, no agent, employee or independent contractor of a retailer, direct
22 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
23 of an independent contractor may provide for nominal or no consideration cigarettes
24 or tobacco products to any person except in a place where no person younger than 18
25 years of age is present or permitted to enter unless the person who is younger than

1 18 years of age is accompanied by his or her parent or guardian or by his or her spouse
2 who has attained the age of 18 years.

3 **SECTION 11.** 134.66 (2) (d) of the statutes is amended to read:

4 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber
5 or retailer, or their employees or agents, may provide cigarettes or tobacco products
6 for nominal or no consideration to any person under the age of 18.

7 **SECTION 12.** 134.66 (2) (e) of the statutes is amended to read:

8 134.66 (2) (e) No retailer or direct marketer may sell cigarettes in a form other
9 than as a package or container on which a stamp is affixed under s. 139.32 (1).

10 **SECTION 13.** 134.66 (3m) of the statutes is created to read:

11 134.66 (3m) DEFENSE OF DIRECT MARKETER. Proof of all of the following facts by
12 a direct marketer who sells cigarettes or tobacco products to a person under the age
13 of 18 is a defense to any prosecution for a violation under sub. (2) (a):

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

16 (b) That the purchaser falsely represented that he or she had attained the age
17 of 18 and presented a copy or facsimile of an identification card.

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

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

23 **SECTION 14.** 139.30 (1) of the statutes is renumbered 139.30 (1m).

24 **SECTION 15.** 139.30 (1d) of the statutes is created to read:

SECTION 15

1 139.30 **(1d)** “Bonded direct marketer” means any person who acquires
2 unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages
3 or other containers, stores them and sells them by direct marketing to consumers for
4 their own personal use and who may also acquire stamped cigarettes from
5 manufacturers or distributors for such sales.

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

7 139.30 **(1s)** “Consumer” means any individual who receives cigarettes for his
8 or her personal use or consumption or any individual who has title to or possession
9 of cigarettes for any purpose other than for sale or resale.

10 **SECTION 17.** 139.30 (2n) of the statutes is created to read:

11 139.30 **(2n)** “Direct marketer” means a bonded direct marketer or a nonbonded
12 direct marketer.

13 **SECTION 18.** 139.30 (2p) of the statutes is created to read:

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

18 **SECTION 19.** 139.30 (3) of the statutes is amended to read:

19 139.30 **(3)** “Distributor” means any person who acquires unstamped cigarettes
20 from the manufacturer thereof, affixes stamps to the packages or other containers,
21 stores them and sells them to other permittees or to retailers for resale ~~or~~ and who
22 acquires may acquire stamped cigarettes from another permittee manufacturers or
23 distributors for such sales.

24 **SECTION 20.** 139.30 (4n) of the statutes is created to read:

25 139.30 **(4n)** “Identification card” has the meaning given in s. 134.66 (1) (c).

1 **SECTION 21.** 139.30 (7) of the statutes is amended to read:

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

5 **SECTION 22.** 139.30 (8d) of the statutes is created to read:

6 139.30 (8d) “Nonbonded direct marketer” means any person who acquires
7 stamped cigarettes from the manufacturers or distributors, stores them, and sells
8 them by direct marketing to consumers for their own personal use.

9 **SECTION 23.** 139.30 (8s) of the statutes is created to read:

10 139.30 (8s) “Person” means any individual, sole proprietorship, partnership,
11 limited liability company, corporation, or association, or any owner of a single-owner
12 entity that is disregarded as a separate entity under ch. 71.

13 **SECTION 24.** 139.30 (10) of the statutes is amended to read:

14 139.30 (10) “Retailer” ~~means any person who sells, exposes for sale or possesses~~
15 ~~with intent to sell to consumers any cigarettes~~ has the meaning given in s. 134.66 (1)
16 (g).

17 **SECTION 25.** 139.32 (1) of the statutes is amended to read:

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

25 **SECTION 26.** 139.32 (4) of the statutes is amended to read:

1 139.32 (4) In lieu of stamps the secretary may authorize impressions applied
2 by the use of meter machines. The secretary shall prescribe by rule the type of
3 impression and the kind of machines which may be used.

4 **SECTION 27.** 139.32 (5) of the statutes is amended to read:

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

8 **SECTION 28.** 139.32 (5m) of the statutes is amended to read:

9 139.32 (5m) Distributors, bonded direct marketers, and manufacturers shall
10 pay to the department the cost of printing and shipping those stamps.

11 **SECTION 29.** 139.32 (6) of the statutes is amended to read:

12 139.32 (6) Manufacturers, bonded direct marketers, and distributors ~~having~~
13 ~~a permit from the secretary who are authorized by the department to purchase tax~~
14 stamps may purchase stamps on credit. The secretary may require manufacturers,
15 bonded direct marketers, and distributors who purchase stamps on credit to file
16 under the conditions prescribed by the secretary by rule.

17 **SECTION 30.** 139.321 (1) (intro.) of the statutes is amended to read:

18 139.321 (1) (intro.) It is unlawful for any person to possess ~~in excess of 400~~
19 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32
20 (1) and 139.33 (4).

21 **SECTION 31.** 139.321 (1) (a) 1. of the statutes is amended to read:

22 139.321 (1) (a) 1. Manufacturers, bonded direct marketers, distributors or
23 warehouse operators possessing valid permits issued by the secretary.

24 **SECTION 32.** 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 bonded direct marketer who is authorized
3 by the department to purchase and affix tax stamps may import into this state ~~more~~
4 ~~than 400~~ cigarettes on which the excise tax imposed by s. 139.31 has not been paid
5 and the container of which does not bear proper stamps. Within 15 days, any such
6 person importing cigarettes shall file a declaration of such cigarettes imported and
7 shall remit therewith the tax on such cigarettes imposed by this section. Members
8 of the armed forces shall not be required to report or pay the tax on cigarettes in their
9 possession if such cigarettes are issued to them by the U.S. government or any of its
10 subdivisions or were purchased in any armed forces post exchange or service store
11 for their personal use or consumption. If the use tax imposed by this section is not
12 paid when due, it shall become delinquent and the person liable for it shall pay, in
13 addition, a penalty of \$25 for each 200 cigarettes. Interest on the delinquent tax and
14 penalty shall accrue at the rate of 1.5% per month or each fraction of a month from
15 the date the tax became due until paid.

16 **SECTION 33.** 139.34 (1) (a) of the statutes is amended to read:

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

23 **SECTION 34.** 139.34 (1) (b) of the statutes is repealed.

24 **SECTION 35.** 139.34 (1) (c) (intro.) of the statutes is amended to read:

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

3 **SECTION 36.** 139.34 (1) (c) 1. to 6. of the statutes are repealed.

4 **SECTION 37.** 139.34 (1) (c) 1m. of the statutes is created to read:

5 139.34 (1) (c) 1m. Subject to ss. 111.321, 111.322, and 111.335, the person has
6 an arrest record or a conviction record.

7 **SECTION 38.** 139.34 (1) (c) 2m. of the statutes is created to read:

8 139.34 (1) (c) 2m. Subject to ss. 111.321, 111.322, and 111.335, the person has
9 been convicted of a felony, or as a repeat or habitual offender, unless pardoned.

10 **SECTION 39.** 139.34 (1) (c) 3m. of the statutes is created to read:

11 139.34 (1) (c) 3m. The person has not submitted proof as provided under s.
12 77.61 (11).

13 **SECTION 40.** 139.34 (1) (cm) of the statutes is created to read:

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

21 **SECTION 41.** 139.34 (3) of the statutes is amended to read:

22 139.34 (3) No distributor or bonded direct marketer may affix stamps to
23 cigarette packages, as provided in s. 139.32, unless the distributor or bonded direct
24 marketer certifies to the department, in a manner prescribed by the department,

1 that the distributor or bonded direct marketer purchases cigarettes directly from a
2 manufacturer.

3 **SECTION 42.** 139.34 (4) of the statutes is amended to read:

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

10 **SECTION 43.** 139.34 (6) of the statutes is amended to read:

11 139.34 (6) A vending machine operator or a multiple retailer may acquire
12 unstamped cigarettes from the manufacturers thereof and affix the stamps to
13 packages or other containers only if the vending machine operator or multiple
14 retailer also holds a permit as a distributor or bonded direct marketer.

15 **SECTION 44.** 139.34 (8) of the statutes is amended to read:

16 139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on
17 the premises described in the permit. The warehouse permit shall not authorize the
18 holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a
19 manufacturer, bonded direct marketer, or distributor may be delivered only to a
20 person holding a permit as a manufacturer ~~or~~, distributor, or bonded direct marketer
21 who is authorized by the department to purchase and affix tax stamps.

22 **SECTION 45.** 139.345 of the statutes is created to read:

23 **139.345 Direct marketing.** (1) (a) (intro.) No person may sell cigarettes to
24 consumers in this state as a direct marketer or solicit sales of cigarettes to consumers
25 in this state by direct marketing unless the person has obtained a permit from the

1 department to make such sales or solicitations. The person shall file an application
2 for a permit under this subsection with the department, in the manner prescribed
3 by the department, and shall submit the following fee with the application:

4 1. If the person sells less than 600,000 cigarettes annually to consumers in this
5 state by direct marketing, \$500.

6 2. If the person sells 600,000 or more cigarettes annually to consumers in this
7 state by direct marketing, \$1,000.

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

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

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 cigarette sales to consumers in this state shall be credit card transactions; that the
22 invoices for all shipments of cigarette sales from the person shall bear the person's
23 name and address and permit ultimately issued under this subsection; and that the
24 person shall provide the department any information the department considers
25 necessary to administer this section.

and all means of solicitation

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

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

10 (3) (a) No person may sell cigarettes to consumers in this state by direct
11 marketing unless the tax imposed under s. 139.31 (1) is paid on such cigarettes and
12 stamps are affixed to the cigarette packages or containers as provided under s.
13 139.32.

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

16 (c) No person may sell cigarettes to consumers in this state by direct marketing
17 unless the cigarette brands are approved by the department and listed in the
18 directory of certified tobacco product manufacturers and brands as provided under
19 s. 895.12 (2) (b).

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

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

SECTION 45

1 (b) The person receives from the consumer, at the time of purchase, a notarized
2 copy of an identification card, the name specified on the identification matches the
3 name of the consumer, and the birth date on the identification verifies that the
4 purchaser is at least 18 years of age.

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

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

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

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

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

23 (7) No cigarettes may be shipped to a person who is under 18 years of age and
24 no cigarettes may be shipped to a post-office box. Every package used to ship
25 cigarettes that are sold as provided under this section and delivered to a person in

1 this state shall be clearly labeled to indicate that the package contains cigarettes and
2 may not be delivered to a person who is under 18 years of age.

3 **SECTION 46.** 139.35 (1) of the statutes is amended to read:

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

9 **SECTION 47.** 139.37 (1) (a) of the statutes is amended to read:

10 139.37 (1) (a) No person shall sell cigarettes or ~~take orders for cigarettes for~~
11 ~~resale~~ solicit cigarette sales in this state ~~for any manufacturer or permittee without~~
12 ~~first obtaining a~~ unless the person has filed an application for and obtained a valid
13 certificate under s. 73.03 (50) and a salesperson's permit from the department of
14 revenue. No manufacturer or permittee shall authorize any person to sell cigarettes
15 ~~or take orders for cigarettes~~ solicit cigarette sales in this state ~~without first having~~
16 ~~such person secure~~ unless the person has filed an application for and obtained a valid
17 certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize
18 the sale or solicitation of cigarettes in this state unless the person has filed an
19 application for and obtained a valid certificate under s. 73.03 (50) and a valid permit
20 under s. 139.34. The department shall issue the required number of permits to
21 ~~manufacturers and permittees who hold a valid certificate issued under s. 73.03 (50).~~
22 Each application for a permit shall disclose the name and address of the employer
23 or the person for whom the sales person is soliciting and such permit shall remain
24 effective only while the salesperson represents such named employer or person. If
25 such salesperson is thereafter employed by another ~~manufacturer or permittee~~

1 person, the salesperson shall obtain a new salesperson's permit. Each ~~manufacturer~~
2 ~~and~~ permittee shall notify the department within 10 days after the resignation or
3 dismissal of any such salesperson holding a permit.

4 **SECTION 48.** 139.38 (1) of the statutes is amended to read:

5 139.38 (1) Every manufacturer located out of the state shall keep records of all
6 sales of cigarettes shipped into this state. Every manufacturer located in the state
7 shall keep records of production, sales and withdrawals of cigarettes. Every
8 distributor and direct marketer shall keep records of purchases and sales of
9 cigarettes. Every manufacturer, bonded direct marketer, and distributor ~~holding a~~
10 ~~permit from the secretary with the right~~ who is authorized by the department to
11 purchase and apply stamps shall also keep records of purchases and disposition of
12 stamps. Every jobber, multiple retailer, and vending machine operator shall keep
13 records of all purchases and disposition of cigarettes. Every warehouse operator
14 shall keep records of receipts and withdrawals of cigarettes. All such records shall
15 be accurate and complete and be kept in a manner prescribed by the secretary. These
16 records shall be preserved on the premises described in the permit or license in such
17 a manner as to ensure permanency and accessibility for inspection at reasonable
18 hours by authorized personnel of the department.

19 **SECTION 49.** 139.38 (1m) of the statutes is created to read:

20 139.38 (1m) Records of purchases and sales of cigarettes under sub. (1) that
21 are kept by direct marketers shall indicate, for each shipment of cigarettes into this
22 state in the month preceding the report under sub. (2), the invoice date and number;
23 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the
24 manufacturer of the cigarettes shipped and the point of origin; the purchaser's name,
25 address, and birth date; the name of the person to whom the cigarettes were shipped;

1 the address to which the cigarettes were shipped; and any other information the
2 department requires.

3 **SECTION 50.** 139.38 (2) of the statutes is amended to read:

4 139.38 (2) (a) Except as provided in par. (b), every permittee manufacturer,
5 distributor, jobber, and direct marketer shall render a true and correct invoice of
6 every sale of cigarettes ~~at wholesale and~~ every permittee shall on or before the 15th
7 day of each calendar month file a verified report of all cigarettes purchased, sold,
8 received, warehoused or withdrawn during the preceding calendar month.

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

15 **SECTION 51.** 139.39 (6) of the statutes is amended to read:

16 139.39 (6) Sections 71.74 (1), (2), (10), (11) and (14), 71.77, 71.80 (12), 71.91 (1)
17 (a) and (c) and (2) to (7), 71.92 and 73.0301 as they apply to the taxes under ch. 71
18 apply to the taxes under this subchapter. Section 71.74 (13) as it applies to the
19 collection of the taxes under ch. 71 applies to the collection of the taxes under this
20 subchapter, except that the period during which notice of an additional assessment
21 shall be given begins on the due date of the report under this subchapter. Section
22 78.70 (6) as it applies to personal liability for paying taxes, interest, penalties, and
23 other charges under ch. 78 applies to personal liability for paying taxes, interest,
24 penalties, and other charges under this subchapter.

25 **SECTION 52.** 139.395 of the statutes is amended to read:

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

10 **SECTION 53.** 139.40 (2) of the statutes is amended to read:

11 139.40 (2) ~~If cigarettes which do not bear the proper tax stamps or on which~~
12 ~~the tax has not been paid~~ Cigarettes that are so seized they as provided under sub.
13 (1) may be given to law enforcement officers to use in criminal investigations or sold
14 to qualified buyers by the secretary, without notice. If the cigarettes are sold, after
15 deducting the costs of the sale and ~~the keeping of~~ storing the property, the proceeds
16 of the sale shall be paid into the state treasury. If the secretary finds that such
17 cigarettes may deteriorate or become unfit for use in criminal investigations or for
18 sale or that those uses would otherwise be impractical, the secretary may order them
19 destroyed or give them to a charitable or penal institution for free distribution to
20 patients or inmates.

21 **SECTION 54.** 139.44 (3) of the statutes is amended to read:

22 139.44 (3) Any permittee who fails to keep the records required by ss. 139.30
23 to 139.42 or 139.77 to 139.82 shall be fined not less than \$100 \$500 nor more than
24 \$500 \$1,000 for the first offense and shall be fined not less than \$1,000 nor more than

1 \$5,000 or imprisoned not more than ~~6 months~~ 180 days or both for the 2nd or
2 subsequent offense.

3 **SECTION 55.** 139.44 (4) of the statutes is amended to read:

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

8 **SECTION 56.** 139.44 (6m) of the statutes is created to read:

9 139.44 (6m) Any person who manufactures or sells cigarettes in this state
10 without holding the proper permit issued under this subchapter is guilty of a Class
11 I felony.

12 **SECTION 57.** 139.44 (7) of the statutes is amended to read:

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

20 **SECTION 58.** 139.45 of the statutes is amended to read:

21 **139.45 Prosecutions by attorney general.** Upon request by the secretary
22 of revenue, the attorney general may represent this state or assist a district attorney
23 in prosecuting any case arising under this subchapter or under ss. 134.65 and 134.66.

24 **SECTION 59.** 139.75 (2) of the statutes is amended to read:

1 139.75 (2) “Consumer” means any individual who receives tobacco products for
2 his or her personal use or consumption or any person individual who has title to or
3 possession of tobacco products ~~in storage for use or other consumption in this state~~
4 any purpose other than for sale or resale.

5 **SECTION 60.** 139.75 (3g) of the statutes is created to read:

6 139.75 (3g) “Direct marketer” means any person who solicits or sells tobacco
7 products to consumers in this state by direct marketing.

8 **SECTION 61.** 139.75 (3r) of the statutes is created to read:

9 139.75 (3r) “Direct marketing” means publishing or making accessible an offer
10 for the sale of tobacco products to consumers in this state, or selling tobacco products
11 to consumers in this state, using any means by which the consumer is not physically
12 present on a premise that sells tobacco products.

13 **SECTION 62.** 139.75 (4) (a) of the statutes is amended to read:

14 139.75 (4) (a) Any person in this state engaged in the business of selling tobacco
15 products ~~in this state~~ who brings, or causes to be brought, into this state from outside
16 the state any tobacco products for sale;

17 **SECTION 63.** 139.75 (4) (c) of the statutes is amended to read:

18 139.75 (4) (c) Any person outside this state engaged in the business of selling
19 tobacco products ~~outside this state~~ who ships or transports tobacco products to
20 retailers in this state to be sold by those retailers.

21 **SECTION 64.** 139.75 (4) (cm) of the statutes is created to read:

22 139.75 (4) (cm) Any person outside this state engaged in the business of selling
23 tobacco products who ships or transports tobacco products to consumers in this state.

24 **SECTION 65.** 139.75 (4n) of the statutes is created to read:

25 139.75 (4n) “Identification card” has the meaning given in s. 134.66 (1) (c).

1 **SECTION 66.** 139.75 (5s) of the statutes is created to read:

2 139.75 (5s) “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 67.** 139.75 (7) of the statutes is amended to read:

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

8 **SECTION 68.** 139.75 (8) of the statutes is amended to read:

9 139.75 (8) “Retailer” ~~means any person engaged in the business of selling~~
10 ~~tobacco products to ultimate consumers~~ has the meaning given in s. 134.66 (1) (g).

11 **SECTION 69.** 139.75 (12) of the statutes is amended to read:

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

19 **SECTION 70.** 139.76 (3) of the statutes is created to read:

20 139.76 (3) Except as provided in sub. (2), no person may possess tobacco
21 products in this state unless the tax imposed under sub. (1) is paid on such tobacco
22 products.

23 **SECTION 71.** 139.78 (1m) of the statutes is created to read:

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

4 **SECTION 72.** 139.79 (title) of the statutes is amended to read:

5 **139.79 (title) Permits; distributor; direct marketer; subjobber.**

6 **SECTION 73.** 139.79 (1) of the statutes is amended to read:

7 139.79 **(1)** No person may engage in the business of a distributor, direct
8 marketer, or subjobber of tobacco products at any place of business unless that
9 person has filed an application for and obtained a permit from the department to
10 engage in that business at such place.

11 **SECTION 74.** 139.79 (2) of the statutes is amended to read:

12 139.79 **(2)** Section 139.34 (1) ~~(b)~~ (c) to (f), (4) and (9) applies to the permits under
13 this section.

14 **SECTION 75.** 139.795 of the statutes is created to read:

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

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

invoices and all means of solicitation

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

2 (d) No person may be issued a permit under this subsection unless the person
3 certifies to the department, in the manner prescribed by the department, that all
4 tobacco product sales to consumers in this state shall be credit card transactions; that

5 the ~~invoices~~ for all shipments of tobacco product sales from the person shall bear the
6 person's name and address and permit ultimately issued under this subsection; and
7 that the person shall provide the department any information the department
8 considers necessary to administer this section.

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

12 (3) No person may sell tobacco products to a consumer in this state by direct
13 marketing unless the person does all of the following:

14 (a) The person uses a mechanism, approved by the department, to verify the
15 consumer's age.

16 (b) The person receives from the consumer, at the time of purchase, a copy or
17 facsimile of an identification card, the name specified on the identification matches
18 the name of the consumer.

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

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

SECTION 75

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. Every
3 package used to ship tobacco products that are sold as provided under this section
4 and delivered to a person in this state shall be clearly labeled to indicate that the
5 package contains tobacco products and may not be delivered to a person who is under
6 18 years of age.

7 **SECTION 76.** 139.81 (1) of the statutes is amended to read:

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

24 **SECTION 77.** 139.81 (2) of the statutes is amended to read:

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

3 **SECTION 78.** 254.911 (1) of the statutes is amended to read:

4 254.911 (1) “Cigarette” has the meaning given in s. 139.30 ~~(1)~~ (1m).

5 **SECTION 79.** 891.455 (4) of the statutes is amended to read:

6 891.455 (4) The presumption under sub. (2) for cancers caused by smoking or
7 tobacco product use shall not apply to any municipal fire fighter who smokes
8 cigarettes, as defined in s. 139.30 ~~(1)~~ (1m), or who uses a tobacco product, as defined
9 in s. 139.75 (12), after January 1, 2001.

10 **SECTION 9441. Effective dates; revenue.**

11 (1) DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS. The repeal of
12 section 139.34 (1) (b) and 139.34 (1) (c) 1. to 6. of the statutes, the renumbering of
13 section 139.30 (1) of the statutes, the amendment of sections 77.61 (11), 134.65 (1),
14 134.65 (2) (a), 134.65 (5), 134.66 (1) (a), 134.66 (2) (a), 134.66 (2) (am), 134.66 (2) (d),
15 134.66 (2) (e), 139.30 (3), 139.30 (7), 139.30 (10), 139.32 (1), 139.32 (4), 139.32 (5),
16 139.32 (5m), 139.32 (6), 139.321 (1) (intro.), 139.321 (1) (a) 1., 139.33 (3), 139.34 (1)
17 (a), 139.34 (1) (c) (intro.), 139.34 (3), 139.34 (4), 139.34 (6), 139.34 (8), 139.35 (1),
18 139.37 (1) (a), 139.38 (1), 139.38 (2), 139.39 (6), 139.395, 139.40 (2), 139.44 (3), 139.44
19 (4), 139.44 (7), 139.45, 139.75 (2), 139.75 (4) (a), 139.75 (4) (c), 139.75 (7), 139.75 (8),
20 139.75 (12), 139.79 (title), 139.79 (1), 139.79 (2), 139.81 (1), 139.81 (2), 254.911 (1) and
21 891.455 (4), of the statutes and the creation of sections 134.65 (1n), 134.65 (1r),
22 134.66 (1) (am), 134.66 (3m), 139.30 (1d), 139.30 (1s), 139.30 (2n), 139.30 (2nn),
23 139.30 (2p), 139.30 (4n), 139.30 (8s), 139.34 (1) (c) 1m., 139.34 (1) (c) 2m., 139.34 (1)
24 (c) 3m., 139.34 (1) (cm), 139.345, 139.38 (1m), 139.44 (6m), 139.75 (3g), 139.75 (3r),

1 139.75 (4) (cm), 139.75 (4n), 139.75 (5s), 139.76 (3), 139.78 (1m) and 139.795 of the
2 statutes take effect on July 1, 2006.

3 (END)