



2007 DRAFTING REQUEST

Bill

Received: 11/13/2006

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Easton

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax, Other - alcohol and tobacco

Extra Copies:

Submit via email: NO

Pre Topic:

DOA:.....Easton, BB0153 -

Topic:

Direct marketing of cigarettes and tobacco products

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 11/14/2006	csicilia 12/08/2006		_____			S&L Crime
/1			pgreensl 12/08/2006	_____	sbasford 12/08/2006		S&L Crime
/2	jkreye 01/09/2007	csicilia 01/12/2007	rschluet 01/12/2007	_____	sbasford 01/12/2007		

FE Sent For:

<END>

2007 DRAFTING REQUEST

Bill

Received: 11/13/2006

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Easton

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax, Other - alcohol and tobacco

Extra Copies:

Submit via email: NO

Pre Topic:

DOA:.....Easton, BB0153 -

Topic:

Direct marketing of cigarettes and tobacco products

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 11/14/2006	csicilia 12/08/2006		_____			S&L Crime

/1		1/2 yrs 1/12/07	pgreensl 12/08/2006	_____	sbasford 12/08/2006		
----	--	-----------------	------------------------	-------	------------------------	--	--

FE Sent For:

Handwritten: 1127, <END>, JH

2007 DRAFTING REQUEST

Bill

Received: 11/13/2006

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Easton**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - alcohol and tobacco**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Easton, BB0153 -

Topic:

Direct marketing of cigarettes and tobacco products

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/?	jkreye						
----	--------	--	--	--	--	--	--

1ijs 12/8
06

PS
PS

PS
PS/ST
<END>

FE Sent For:

0719

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Direct Marketing of Cigarettes
- Tracking Code: BBO153
- SBO team: Tax and Local Government
- SBO analyst: Easton
 - Phone: 6-7597
 - Email: Darren.easton@wisconsin.gov
- Agency acronym: DOR
- Agency number: 566
- Priority (Low, Medium, High): Low

**Legislative Proposal Summary
Wisconsin Department of Revenue
Income, Sales & Excise Tax Division**

DATE: August 24, 2006

TITLE: Direct Marketing of Cigarettes and Tobacco Products

DESCRIPTION OF CURRENT LAW AND PROBLEM

2005 Act 25 provided for cigarette sales to consumers in Wisconsin by direct marketing if the direct marketer fulfills certain requirements.

- Direct marketers must submit to the department their name, trade name, address of the person's principal place of business, phone number, e-mail address and Web site address.
- Direct marketers must certify to the department that they will acquire stamped cigarettes from a licensed distributor or unstamped cigarettes from the manufacturer, pay the tax imposed on all unstamped cigarettes, affix the stamps to the cigarette packages and sell only the stamped cigarettes in Wisconsin by direct marketing.
- Direct marketers must certify to the department that they will register with debit and credit card companies; that the invoices for all shipments will bear the direct marketers' name and address and any valid cigarette permit issued to the seller by DOR; direct marketers will provide DOR any information the DOR considers necessary to administer the law.
- Direct marketer may not sell any cigarettes to consumers in Wisconsin unless the sales tax, use tax, or cigarette tax has been paid on the sale of the cigarettes.
- Direct marketer must verify the consumer's name and address and that the consumer is at least 18 years of age and obtain a statement signed by the consumer at the time of purchase.
- Direct marketers who sell cigarettes by means of the Internet shall obtain the purchasers' e-mail address and receive payment by credit card, debit card, or check prior to shipping.
- Packages are to be clearly labeled "Cigarettes" on the outside of the packages.
- Persons receiving delivery must show a government issued identification card verifying that the person is at least 18 years old.

Act 25 does not give DOR any enforcement authority over direct marketers to ensure they are complying with the requirements of the law.

Act 25 retained the municipal licensing requirement.

RECOMMENDATION FOR ACTION

- Require direct marketers to obtain a direct marketing permit from DOR to sell cigarettes and tobacco products in Wisconsin with certain requirements already in Act 25.
- Require direct marketers obtain a Wisconsin seller's permit.
- Remove the requirement that direct marketers obtain a municipal retailer license.
- Provide for penalties for noncompliance.

- Include tobacco products.

ADMINISTRATIVE IMPACT

Administrative impact is minimal

FAIRNESS/TAX EQUITY

Changes in the law will ensure a level-playing field between retailers, distributors, manufacturers and direct marketers.

FISCAL EFFECT

Fiscal impact is minimal

SUMMARY OF RECOMMENDED CHANGES

- Eliminate requirement that direct marketers obtain a municipal retailer license in s. 134.65(1)
- Add language to require direct marketers to obtain a direct marketing permit from DOR to direct market cigarettes and tobacco products in Wisconsin with language regarding who may not obtain a permit.
- Amend s. 134.65(5) to increase fines from \$25 for the first violation to \$500; from \$200 to \$5,000 nor less than \$1,000 for the 2nd or subsequent offense.
- Add requirement that direct marketers obtain a sellers permit
- Do various clean-up of language in the existing law as follows:
 - ✓ 139.44(1m) change cigarette meter to cigarette tax impression machine
 - 139.75 to 139.83 change he or she to the person
 - 139.75(4) add in this state after "Any person" and delete the same phrase after "tobacco products".
 - 139.75(7) add "by a retailer."
 - 139.75(8) change "Retailer" to has the meaning given in s. 134.66(1)(g).
 - 139.79 Add to title, Permits "required. Delete "distributor; subjobber".
 - 139.79(1) add "direct marketer" after distributor.
 - 139.79(2) change 139.34(1)(b) to (1)(c).
 - 139.81(1) delete "or take orders for"; add "or solicit sales of" tobacco products. Delete "for any manufacturer or permittee.
 - 139.81(2) Change 139.34(1)(b) to (1)(c).

EFFECTIVE DATE AN/OR INITIAL APPLICABILITY

Effective on date of publication.

DOR CONTACT PERSON

Diane Hardt
266-6798

Prepared by:
Lili Best Crane
266-8025

0719/11

EA

2005 ASSEMBLY BILL 1170

April 3, 2006 - Introduced by Representative KREUSER, cosponsored by Senator MILLER. Referred to Committee on State Affairs.

1 AN ACT *to repeal* 139.34 (1) (b); *to renumber and amend* 139.345 (3) (a) 2.; *to*
2 *amend* 77.61 (11), 134.65 (1), 134.65 (2) (a), 134.65 (5), 139.30 (7), 139.32 (4),
3 139.321 (1) (intro.), 139.321 (1) (a) 1., 139.34 (1) (a), 139.34 (1) (c) (intro.), 139.34
4 (4), 139.34 (6), 139.34 (8), 139.345 (1) (a) (intro.), 139.345 (1) (b), 139.345 (1) (d),
5 139.345 (3) (intro.), 139.345 (3) (a) (intro.), 139.345 (7) (a), 139.37 (1) (a), 139.40
6 (1), 139.40 (2), 139.44 (1m), 139.44 (2), 139.44 (3), 139.44 (4), 139.44 (5), 139.44
7 (6), 139.44 (7), 139.75 (2), 139.75 (4) (a), 139.75 (4) (c), 139.75 (7), 139.75 (8),
8 139.79 (title), 139.79 (1), 139.79 (2), 139.81 (1) and 139.81 (2); *to repeal and*
9 *recreate* 139.30 (4n); and *to create* 134.65 (1n), 134.65 (1r), 134.66 (2) (d),
10 134.66 (3m), 139.30 (8s), 139.34 (1) (c) 3m., 139.34 (1) (c) 4m., 139.34 (1) (cm),
11 139.345 (3) (a) 2. b., 139.345 (3) (a) 2. c., 139.345 (8), 139.345 (9), 139.345 (10),
12 139.44 (6m), 139.75 (3g), 139.75 (3r), 139.75 (4) (cm), 139.75 (4n), 139.76 (3),

ASSEMBLY BILL 1170

1 139.78 (1m) and 139.795 of the statutes; **relating to:** the direct marketing of
2 cigarette and tobacco products in this state and providing penalties.

TAXATION ← head
OTHER TAXATION ← sub

Analysis by the Legislative Reference Bureau

Under current law, generally, a person may not sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer without having a permit from ~~the Department of Revenue (DOR)~~. A "jobber" is any person who acquires cigarettes from manufacturers or distributors, stores the cigarettes, and sells the cigarettes to retailers for resale.

Current law also prohibits a direct marketer from selling cigarettes to consumers in this state unless the direct marketer fulfills certain requirements. Current law defines "direct marketing" as publishing or making accessible an offer for the sale of cigarettes to consumers in this state, or selling cigarettes, using any means by which the consumer is not physically present on a premise that sells cigarettes.

Under current law, a direct marketer must certify to DOR: that the person will register with debit and credit card companies; that the invoices for all shipments of cigarettes will bear the direct marketer's name and address; and that the direct marketer will provide DOR any information that DOR considers necessary. The direct marketer may not sell any cigarettes unless the sales tax, use tax, or cigarette tax, as appropriate, has been paid on the sale of the cigarettes.

Current law requires a direct marketer who sells cigarettes to consumers in this state to verify the consumer's name and address and that the consumer is at least 18 years of age. In addition, any person who delivers such cigarettes to consumers in this state must verify that the person who purchased the cigarettes, and who receives the delivery, is at least 18 years of age.

Under this bill, generally, the same provisions under current law that apply to the direct marketing of cigarettes also apply to the direct marketing of tobacco products. In addition, no person may sell cigarettes or tobacco products to consumers in this state unless the person applies to DOR for a permit.

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. Under the bill, no city, village, or town may issue a license to any person who has an arrest or conviction record related to selling cigarettes or tobacco products. Under the bill, a direct marketer who holds a valid permit to sell cigarettes or tobacco products to consumers in this state is not required to obtain a license from each city, village, or town in which the cigarettes or tobacco products are sold.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

ASSEMBLY BILL 1170

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

INSERT
3-10

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

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

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

ASSEMBLY BILL 1170**SECTION 3**

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

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

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

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

8 4. If the applicant is a corporation, the identity of the corporate officers and
9 agent.

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

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

13 7. Any other information required by the department.

14 (b) The department of revenue shall provide 1 copy of each application prepared
15 under this subsection to each city, village, and town. *one* *of the* *form*

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

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

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

24 3. Any person may inspect applications submitted under this paragraph. The
25 clerk of each city, village, or town where such applications are submitted shall retain

ASSEMBLY BILL 1170

1 all applications submitted under this paragraph, but may destroy all applications
2 that have been retained for 4 years or longer.

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

4 134.65 (1r) (a) ~~No~~ license under sub. (1) may be issued to any person to whom
5 any of the following applies:

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

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

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

11 4. The person is not 18 years of age or older. ✓

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

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

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

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

ASSEMBLY BILL 1170

SECTION 6

shall be fined

for not more than

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

8

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

14 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber
 15 or retailer, or their employees or agents may provide cigarettes or tobacco products
 16 for nominal or no consideration to any person under the age of 18. ✓

INSERT 6-15

17 **SECTION 8.** 134.66 (3m) of the statutes is created to read:

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

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

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

ASSEMBLY BILL 1170

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

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

SECTION 9. 139.30 (4n) of the statutes, as created by 2005 Wisconsin Act 25, is repealed and recreated to read:

139.30 (4n) "Identification card" has the meaning given in s. 134.66 (1) (c).

SECTION 10. 139.30 (7) of the statutes is amended to read:

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

SECTION 11. 139.30 (8s) of the statutes is created to read:

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

SECTION 12. 139.32 (4) of the statutes is amended to read:

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

SECTION 13. 139.321 (1) (intro.) of the statutes, as affected by 2005 Wisconsin

Act 25, is amended to read:

139.321 (1) (intro.) It is unlawful for any person to purchase or possess cigarettes unless the required stamps are properly affixed as provided in ss. 139.32 (1) and 139.33 (4).

ASSEMBLY BILL 1170

SECTION 14

1 **SECTION 14.** 139.321 (1) (a) 1. of the statutes is amended to read:

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

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

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

11 **SECTION 16.** 139.34 (1) (b) of the statutes is repealed.

12 **SECTION 17.** 139.34 (1) (c) (intro.) of the statutes is amended to read:

13 139.34 (1) (c) (intro.) Subject to ss. 111.321, 111.322 and 111.335, no No permit
14 under this section may be granted to any person to whom any of the following applies:

15 **SECTION 18.** 139.34 (1) (c) 3m. of the statutes is created to read:

16 139.34 (1) (c) 3m. The person has not submitted proof as provided under s.
17 77.61 (11).

18 **SECTION 19.** 139.34 (1) (c) 4m. of the statutes is created to read:

19 139.34 (1) (c) 4m. The person is not 18 years of age or older.

20 **SECTION 20.** 139.34 (1) (cm) of the statutes is created to read:

21 139.34 (1) (cm) The requirements under par. (c) apply to all partners of a
22 partnership, all members of a limited liability company, all agents, ~~directors, and~~
23 ~~shareholders~~ of a limited liability company or corporation, and all officers of a
24 corporation.

25 **SECTION 21.** 139.34 (4) of the statutes is amended to read:

ASSEMBLY BILL 1170

1 139.34 (4) A separate permit shall be required of and issued to each class of
2 permittee and the holder of any permit shall perform only the operations thereby
3 authorized. Such permit shall not be transferable from one person to another or from
4 one premises to another. A separate permit shall be required for each place where
5 cigarettes are stamped or where cigarettes are stored for sale at wholesale or
6 through vending machines or multiple retail outlets, or by direct marketing.

7 SECTION 22. 139.34 (6) of the statutes is amended to read:

8 139.34 (6) A vending machine operator or a multiple retailer may acquire
9 unstamped cigarettes from the manufacturers thereof and affix the stamps to
10 packages or other containers only if the vending machine operator or multiple
11 retailer also holds a permit as a distributor or bonded direct marketer.

12 SECTION 23. 139.34 (8) of the statutes is amended to read:

13 139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on
14 the premises described in the permit. The warehouse permit shall not authorize the
15 holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a
16 manufacturer, bonded direct marketer, or distributor may be delivered only to a
17 person holding a permit as a manufacturer or distributor, or bonded direct marketer
18 who is authorized by the department to purchase and affix tax stamps.

19 SECTION 24. 139.345 (1) (a) (intro.) of the statutes, as created by 2005 Wisconsin

20 Act 25, is amended to read:

21 139.345 (1) (a) (intro.) No person may sell cigarettes to consumers in this state
22 as a direct marketer or solicit sales of cigarettes to consumers in this state by direct
23 marketing unless the person submits to has obtained a permit from the department
24 ~~the person's name, trade name, address of the person's principal place of business,~~
25 ~~phone number, e-mail address, and Web site address~~ to make such sales or

ASSEMBLY BILL 1170

SECTION 24

1 solicitations. The person shall file an application for a permit under this subsection
2 with the department, in the manner prescribed by the department.

3 SECTION 25. 139.345 (1) (b) of the statutes, as created by 2005 Wisconsin Act

4 (25) is amended to read:

5 139.345 (1) (b) ~~No person may sell cigarettes as described under this section~~
6 The department may not issue a permit to a person under par. (a) unless the person
7 certifies to the department, in the manner prescribed by the department, that the
8 person shall acquire stamped cigarettes from a licensed distributor or unstamped
9 cigarettes from the manufacturer thereof, pay the tax imposed under this subchapter
10 on all unstamped cigarettes and affix stamps to the cigarette packages or containers
11 as provided under s. 139.32 (1), store such packages or containers, and sell only such
12 packages or containers to consumers in this state by direct marketing; or acquire
13 cigarettes from a distributor, to the packages or containers of which stamps have
14 been affixed as provided under s. 139.32 (1), and sell only such packages or
15 containers to consumers in this state by direct marketing.

16 SECTION 26. 139.345 (1) (d) of the statutes, as created by 2005 Wisconsin Act

17 (25) is amended to read:

18 139.345 (1) (d) ~~No person may sell cigarettes as described in this section~~ The
19 department may not issue a permit to a person under par. (a) unless the person
20 certifies to the department, in the manner prescribed by the department, that the
21 person shall register with credit card and debit card companies; that the invoices and
22 all means of solicitation for all shipments of cigarette sales from the person shall bear
23 the person's name and address and the permit number of the permit ultimately
24 issued under this subsection; and that the person shall provide the department any
25 information the department considers necessary to administer this section.

ASSEMBLY BILL 1170

1 **SECTION 27.** 139.345 (3) (intro.) of the statutes, as created by 2005 Wisconsin

2 Act 25 is amended to read:

3 139.345 (3) (intro.) No person may sell cigarettes to consumers a consumer in
4 this state unless the person does all of the following:

5 **SECTION 28.** 139.345 (3) (a) (intro.) of the statutes, as created by 2005 Wisconsin

6 Act 25, is amended to read:

7 139.345 (3) (a) (intro.) Verifies the consumer's name identity and address and
8 that the consumer is at least 18 years of age by any of the following methods:

9 **SECTION 29.** 139.345 (3) (a) 2. of the statutes, as created by 2005 Wisconsin Act

10 25, is renumbered 139.345 (3) (a) 2. a. and amended to read:

11 139.345 (3) (a) 2. a. The person receives from the consumer, at the time of
12 purchase, a copy of a government issued an identification card.

13 **SECTION 30.** 139.345 (3) (a) 2. b. of the statutes is created to read:

14 139.345 (3) (a) 2. b. The name specified on the identification card matches the
15 name of the consumer.

16 **SECTION 31.** 139.345 (3) (a) 2. c. of the statutes is created to read:

17 139.345 (3) (a) 2. c. The birth date on the identification card verifies that the
18 consumer is at least 18 years of age.

19 **SECTION 32.** 139.345 (7) (a) of the statutes, as created by 2005 Wisconsin Act

20 25, is amended to read:

21 139.345 (7) (a) No person may deliver a package of cigarettes sold by direct
22 marketing to a consumer in this state unless the person making the delivery receives
23 a government issued an identification card from the person receiving the package
24 and verifies that the person receiving the package is at least 18 years of age. If the
25 person receiving the package is not the person to whom the package is addressed, the

and verifies that

and that

indicates

ASSEMBLY BILL 1170**SECTION 32**

1 person delivering the package shall have the person receiving the package sign a
2 statement that affirms that the person to whom the package is addressed is at least
3 18 years of age.

4 **SECTION 33.** 139.345 (8) of the statutes is created to read:

5 139.345 (8) (a) No person may sell cigarettes to consumers in this state by direct
6 marketing unless the tax imposed under s. 139.31 (1) is paid on the cigarettes and
7 stamps are affixed to the cigarette packages or containers as provided under s.
8 139.32.

9 (b) No person may sell cigarettes to consumers in this state by direct marketing
10 unless the cigarette brands are approved by the department and listed in the
11 directory of certified tobacco product manufacturers and brands as provided under
12 s. 895.12(2) (b). 995.12

13 **SECTION 34.** 139.345 (9) of the statutes is created to read:

14 139.345 (9) Any person who, without having a valid permit under sub. (1), sells
15 or solicits sales of cigarettes to consumers in this state by direct marketing shall pay
16 a penalty to the department of \$5,000 or an amount that is equal to \$50 for every 200
17 cigarettes, or fraction of 200 cigarettes, sold to consumers in this state by direct
18 marketing, whichever is greater.

19 **SECTION 35.** 139.345 (10) of the statutes is created to read:

20 139.345 (10) (a) No sale of cigarettes to a consumer in this state by direct
21 marketing may exceed 10 cartons for each invoice or 20 cartons in a 30-day period
22 for each purchaser or address.

23 (b) Any person who sells cigarettes in an amount that exceeds the amounts
24 allowed under par. (a) shall pay a penalty to the department of \$5,000 or an amount

ASSEMBLY BILL 1170

1 that is equal to \$50 for every 200 cigarettes, or fraction of 200 cigarettes, sold in
2 excess of the amounts allowed under par. (a), whichever is greater.

3 (c) Any person who purchases cigarettes in an amount that exceeds the
4 amounts allowed under par. (a) shall apply for a permit under s. 139.34 and shall pay
5 a penalty to the department of \$25 for every 200 cigarettes, or fraction of 200
6 cigarettes, purchased in excess of the amounts allowed under par. (a).

7 **SECTION 36.** 139.37 (1) (a) of the statutes is amended to read:

8 139.37 (1) (a) No person shall sell cigarettes or take orders for cigarettes for
9 resale solicit cigarette sales in this state for any manufacturer or permittee without
10 first obtaining a unless the person has filed an application for and obtained a valid
11 certificate under s. 73.03 (50) and a salesperson's permit from the department of
12 revenue. No manufacturer or permittee shall authorize any person to sell cigarettes
13 or take orders for cigarettes solicit cigarette sales in this state without first having
14 such person secure unless the person has filed an application for and obtained a valid
15 certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize
16 the sale ^{of cigarettes} or solicitation of cigarettes ^{sales} in this state unless the person has filed an
17 application for and obtained a valid certificate under s. 73.03 (50) and a valid permit
18 under s. 139.34. The department shall issue the required number of permits to
19 manufacturers and permittees who hold a valid certificate issued under s. 73.03 (50).
20 Each application for a ^{Salesperson's} permit shall disclose the name and address of the employer
21 or the person for whom the sales person is ^{Jose up} ^{Selling or} soliciting and such permit shall remain
22 effective only while the salesperson represents such named employer or person. If
23 such salesperson is thereafter employed by another manufacturer or permittee
24 person, the salesperson shall obtain a new salesperson's permit. [↓] Each manufacturer

ASSEMBLY BILL 1170

SECTION 36

1 and ~~permittee~~ ^{The Employer of any such salesperson} shall notify the department within 10 days after the resignation or
 2 dismissal of ~~any such~~ ^{the} salesperson ~~holding a permit~~.

3 SECTION 37. 139.40 (1) of the statutes is amended to read:

4 139.40 (1) All cigarettes acquired, owned, imported, possessed, kept, stored,
 5 made, sold, distributed or transported in violation of this chapter or s. 134.65, and
 6 all personal property used in connection therewith is unlawful property and subject
 7 to seizure by the secretary or any peace officer. All cigarettes seized for violating s.
 8 139.31 (4) or (5) shall be destroyed.

9 SECTION 38. 139.40 (2) of the statutes is amended to read:

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

20 SECTION 39. 139.44 (1m) of the statutes is amended to read:

21 ^{tax} 139.44 (1m) Any person who falsely or fraudulently tampers with a cigarette
 22 meter impression machine in order to evade the tax under s. 139.31 is guilty of a
 23 Class G felony.

24 SECTION 40. 139.44 (2) of the statutes is amended to read:

ASSEMBLY BILL 1170

1 139.44 (2) Any person who makes or signs any false or fraudulent report or who
2 attempts to evade the tax imposed by s. 139.31 or 139.76, or who aids in or abets the
3 evasion or attempted evasion of that tax ~~may be fined not more than \$10,000 or~~
4 ~~imprisoned for not more than 9 months or both, is guilty of a Class H felony.~~ ✓

5 SECTION 41. 139.44 (3) of the statutes is amended to read:

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

11 SECTION 42. 139.44 (4) of the statutes is amended to read:

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

16 SECTION 43. 139.44 (5) of the statutes is amended to read:

17 139.44 (5) Any person who violates any of the provisions of ss. 139.30 to 139.41
18 or 139.75 to 139.83 for which no other penalty is prescribed shall be fined not less
19 ~~than \$100 nor~~ more than \$1,000 \$10,000 or imprisoned not less than 10 days nor
20 more than 90 days 9 months or both.

21 SECTION 44. 139.44 (6) of the statutes is amended to read:

22 139.44 (6) Any person who violates any of the rules of the department shall be
23 fined not less than \$100 \$500 nor more than \$500 \$1,000 or be imprisoned not more
24 than 6 9 months or both.

25 SECTION 45. 139.44 (6m) of the statutes is created to read:

ASSEMBLY BILL 1170**SECTION 45**

1 139.44 (6m) Any person who manufactures or sells cigarettes in this state
2 without holding the proper permit issued under this subchapter is guilty of a Class
3 I felony.

4 **SECTION 46.** 139.44 (7) of the statutes is amended to read:

5 139.44 (7) In addition to the penalties imposed for violation of ss. 139.30 to
6 139.41 or 139.75 to 139.83 or any of the rules of the department, the permit of any
7 person convicted of a 2nd or subsequent offense shall be automatically revoked and
8 ~~he or she~~ the person shall not be granted another permit for a period of 2 5 years
9 following such revocation.

10 **SECTION 47.** 139.75 (2) of the statutes is amended to read:

11 139.75 (2) "Consumer" means any individual who receives tobacco products for
12 his or her personal use or consumption or any person individual who has title to or
13 possession of tobacco products ~~in storage for use or other consumption in this state~~
14 any purpose other than for sale or resale.

15 **SECTION 48.** 139.75 (3g) of the statutes is created to read:

16 139.75 (3g) "Direct marketer" means any person who solicits ^{sales of} or sells tobacco
17 products to consumers in this state by direct marketing.

18 **SECTION 49.** 139.75 (3r) of the statutes is created to read:

19 139.75 (3r) "Direct marketing" means publishing or making accessible an offer
20 for the sale of tobacco products to consumers in this state, or selling tobacco products
21 to consumers in this state, using any means by which the consumer is not physically
22 present on a premise that sells tobacco products.

23 **SECTION 50.** 139.75 (4) (a) of the statutes is amended to read:

ASSEMBLY BILL 1170

1 139.75 (4) (a) Any person in this state engaged in the business of selling tobacco
2 products ~~in this state~~ who brings, or causes to be brought, into this state from outside
3 the state any tobacco products for sale;

4 **SECTION 51.** 139.75 (4) (c) of the statutes is amended to read:

5 139.75 (4) (c) Any person outside this state engaged in the business of selling
6 tobacco products ~~outside this state~~ who ships or transports tobacco products to
7 retailers in this state to be sold by those retailers.

8 **SECTION 52.** 139.75 (4) (cm) of the statutes is created to read:

9 139.75 (4) (cm) Any person outside this state engaged in the business of selling
10 tobacco products who ships or transports tobacco products to consumers in this state.

11 **SECTION 53.** 139.75 (4n) of the statutes is created to read:

12 139.75 (4n) "Identification card" has the meaning given in s. 134.66 (1) (c).

13 **SECTION 54.** 139.75 (7) of the statutes is amended to read:

14 139.75 (7) "Retail outlet" means each place of business from which tobacco
15 products are sold to consumers by a retailer.

16 **SECTION 55.** 139.75 (8) of the statutes is amended to read:

17 139.75 (8) "Retailer" ~~means any person engaged in the business of selling~~
18 ~~tobacco products to ultimate consumers~~ has the meaning given in s. 134.66 (1) (g).

19 **SECTION 56.** 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 57.** 139.78 (1m) of the statutes is created to read:

ASSEMBLY BILL 1170**SECTION 57**

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 58.** 139.79 (title) of the statutes is amended to read:

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

6 **SECTION 59.** 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 60.** 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 61.** 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.

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

ASSEMBLY BILL 1170

1 (c) No person may be issued a permit under this subsection unless the person
2 certifies to the department, in the manner prescribed by the department, that the
3 person shall register with credit card and debit card companies; that the invoices and
4 all means of solicitation for all shipments of tobacco product sales from the person
5 shall bear the person's name and address and the permit number of the permit
6 ultimately issued under this subsection; and that the person shall provide the
7 department any information the department considers necessary to administer this
8 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) Verifies the consumer's identity and address and that the consumer is at
15 least 18 years of age by any of the following methods:

16 1. The person uses a database that includes information based on public
17 records.

18 2. (a) The person receives from the consumer, at the time of purchase, a copy of
19 an identification card.

20 ~~b.~~ The name specified on the identification card matches the name of the
21 consumer.

22 ~~or~~ The birth date on the identification card ~~verifies~~ that the consumer is at least
23 18 years of age.

24 3. The person uses a mechanism, other than a mechanism specified under subd.
25 1. or 2., that is approved by the department.

ASSEMBLY BILL 1170**SECTION 61**

1 (b) Obtains from the consumer, at the time of purchase, a statement signed by
2 the consumer that confirms all of the following:

3 1. The consumer's name, address, and birth date.

4 2. That the consumer understands that no person who is under 18 years of age
5 may purchase or possess tobacco products or falsely represent his or her age for the
6 purpose of receiving tobacco products, as provided under s. 254.92. ✓

7 3. That the consumer understands that any person who, for the purpose of
8 obtaining credit, goods, or services, intentionally uses, attempts to use, or possesses
9 with intent to use, any personal identifying information or personal identification
10 document of an individual, including a deceased individual, without the
11 authorization or consent of the individual and by representing that he or she is the
12 individual, that he or she is acting with the authorization or consent of the
13 individual, or that the information or document belongs to him or her, is guilty of a
14 Class H felony, as provided under s. 943.201. ✓

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

20 (5) (a) No person may deliver a package of tobacco products sold by direct
21 marketing to a consumer in this state unless the person making the delivery receives
22 an identification card from the person receiving the package and verifies that the
23 person receiving the package is at least 18 years of age. If the person receiving the
24 package is not the person to whom the package is addressed, the person delivering

ASSEMBLY BILL 1170

1 the package shall have the person receiving the package sign a statement that
2 affirms that the person to whom the package is addressed is at least 18 years of age. ✓

3 (b) No person may deliver a package of tobacco products to a consumer in this
4 state unless the seller of the tobacco products provides proof to the person making
5 the delivery that the seller has complied with all requirements under this ✓
6 subchapter. A seller shall have no course of action against any person who refuses ✓
7 to deliver tobacco products as provided under this paragraph. ✓

8 **SECTION 62.** 139.81 (1) of the statutes is amended to read:

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

16 No person may authorize the sale ^{of tobacco products} or solicitation ^{sales of} of tobacco products in this state
17 unless the person has filed an application for and obtained a valid certificate under
18 s. 73.03 (50) and a valid permit under s. 139.79. Each application for a ^{Salesperson's} permit shall
19 disclose the name and address of the employer or the person for whom the
20 salesperson is ^{selling or} soliciting and shall remain effective only while the salesperson
21 represents the named employer or person. If the salesperson is thereafter employed
22 by another ~~manufacturer or permittee~~ person the salesperson shall obtain a new
23 salesperson's permit. ~~Each manufacturer and permittee~~ shall notify the department
24 within 10 days after the resignation or dismissal of ^{the} any salesperson holding a permit. (C)

25 **SECTION 63.** 139.81 (2) of the statutes is amended to read:

The employer of any such salesperson

ASSEMBLY BILL 1170

IN SET
22-2

1
2
3
4
5

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

✓

SECTION 64. Effective date.

(1) This act takes effect on July 1, 2006

(END)

D-note

Insert 3-10

Section #. 100.20 (1n) of the statutes is amended to read:

100.20 (1n) It is an unfair method of competition or an unfair trade practice for any person to sell cigarettes to consumers in this state in violation of s. 139.345.

History: 1975 c. 308; 1985 a. 284; 1993 a. 158, 496; 1997 a. 229; 2001 a. 16, 102; 2003 a. 326; 2005 a. 25, 45.

or to sell tobacco products to consumers in this state in violation of s. 139.795

X

~~Section #. 134.66 (2) (a) of the statutes is amended to read:~~

INSERT
6-15

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

History: 1987 a. 336; 1989 a. 31; 1991 a. 95; 1993 a. 210, 312; 1995 a. 352; 1997 a. 214; 1999 a. 9; 2001 a. 75; 2003 a. 326; 2005 a. 25.

Section #. 139.86 of the statutes is amended to read:

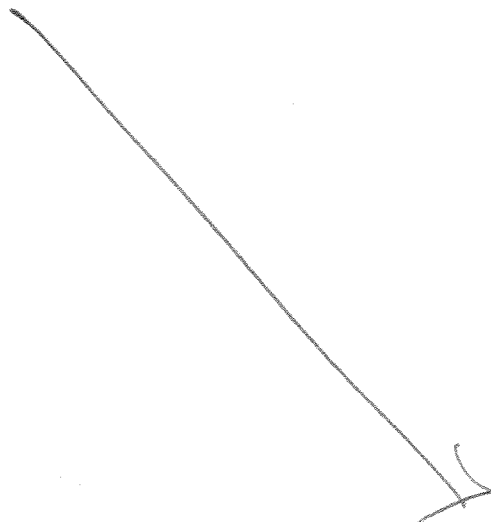
139.86 Prosecutions by attorney general. Upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any case arising under this subchapter.

The attorney general may take any action necessary to

History: 1985 a. 302.

enforce s. 139.795

✓



Insert 22-2

2

Section #. ^{139.87} ~~139.46~~ of the statutes is ^{created} amended to read:

ⓑ
139.87

~~139.46~~ Lists. The department shall compile and maintain a list of direct marketers who have complied with the requirements of s. ~~139.345~~ ^{139.795} and a list of direct marketers who the department knows have not complied with such requirements. The department shall provide copies of the lists described under this section to the attorney general and to each person who delivers ~~cigarettes~~ ^{tobacco products} to consumers in this state that are sold by direct marketing under s. ~~139.345~~ ^{139.795}.

History: 2005 a. 25.

tobacco products

139.795

Section #. 995.12 (5)^(a) of the statutes is amended to read:

995.12 (5) ~~PENALTIES AND OTHER REMEDIES~~. (a) *License revocation and civil penalty*. Upon a determination that a distributor has violated sub. (2) (c), the department may revoke ^{or suspend} the license of the distributor in the manner provided under s. 139.44 (4) and (7). Each stamp affixed and each sale of cigarettes or offer or possession to sell cigarettes in violation of sub. (2) (c) shall constitute a separate violation. For each violation the department may also impose a forfeiture in an amount not to exceed the greater of 500% of the retail value of the cigarettes or \$5,000.

~~(b) *Contraband and seizure*. Any cigarettes that have been sold, offered for sale, or possessed for sale, in this state, in violation of sub. (2) (c) shall be deemed contraband and such cigarettes shall be subject to seizure as provided under s. 139.40. All cigarettes that are seized shall be destroyed and not resold.~~

~~(c) *Injunction*. The attorney general, on behalf of the department, may seek an injunction to restrain a threatened or actual violation of sub. (2) (c) or failure to comply with sub. (4) (a) or (d) by a distributor and to compel the distributor to comply with those subsections.~~

~~(d) *Unlawful sale and distribution*. It shall be unlawful for a person to sell or distribute cigarettes or acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of sub. (2) (c). Section 139.44 (7), as it applies to violations under subchs. II and III of ch. 139, applies to a violation of this paragraph.~~

~~(e) *Unfair and deceptive trade practice*. A person who violates sub. (2) (c) engages in an unfair and deceptive trade practice in violation of s. 100.20.~~

History: 2003 a. 73; 2005 a. 155 s. 32; Stats. 2005 s. 995.12.

end of insert 22-2

07/19/11 du
VK cjs

Please review this draft carefully to ensure that it is
consistent with your intent. This draft is similar to
2005 Assembly Bill 1170.

Do you want the draft to ^{first} VK
apply to sales made on the effective ~~date~~
bill
date of the bill to avoid any enforcement
issues arise items
issues that may arise with regard to items
shipped ^{but not yet received} before the effective date of the
bill?



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0719/1dn
JK:cjs:pg

December 8, 2006

Please review this draft carefully to ensure that it is consistent with your intent. This draft is similar to 2005 Assembly Bill 1170. Do you want the draft to first apply to sales made on the effective date of the bill to avoid any enforcement issues that may arise with regard to items shipped, but not yet received, before the effective date of the bill?

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

Kreye, Joseph

From: Easton, Darren - DOA
Sent: Tuesday, January 09, 2007 11:54 AM
To: Kreye, Joseph
Subject: LRB Draft 0719/1 - Direct Marketing proposal and drafting language
Attachments: LRB Draft: 07-0719/1 Direct marketing of cigarettes and tobacco products; Direct Mkt-Changes AB 1170.doc; Direct Marketing 01-03-07.doc

Joe,

DOR forward me the attached documents for additional language to be incorporated in the Direct Marketing of Cigarettes draft. One is written as changes to AB 1170 (LRB 4254).

With respect to the question from your drafter's note, DOR wants the draft to first apply to sales made on the effective date of the bill to avoid any enforcement issues that may arise.

Darren
6-7597

From: Brennan, Audra D [mailto:audra.brennan@dor.state.wi.us]
Sent: Monday, January 08, 2007 11:09 AM
To: Easton, Darren - DOA; Easton, Darren - DOA
Subject: FW: Direct Marketing proposal and drafting language

In answer to LRB's questions, yes, the draft should first apply to sales made on the effective date of the bill to avoid any enforcement issues that may arise.

Our updated version also has some changes related to the unfair sales act -as suggested by those who reviewed it.

From: Brennan, Audra D
Sent: Monday, January 08, 2007 9:24 AM
To: Crane, Lili B
Cc: Timmons, Anthony; Gates-Hendrix, Sherrie
Subject: FW: Direct Marketing proposal and drafting language

Can you provide answers to Darren's inquiry below? Did you get a copy of the drafter's questions from Anthony?

From: Easton, Darren - DOA [mailto:Darren.Easton@Wisconsin.gov]
Sent: Saturday, January 06, 2007 9:03 AM
To: Brennan, Audra D - DOR
Cc: Gates-Hendrix, Sherrie L - DOR; Timmons, Anthony A - DOR
Subject: RE: Direct Marketing proposal and drafting language

<<LRB Draft: 07-0719/1 Direct marketing of cigarettes and tobacco products>>

Before I send this off to Joe, do you have an answer for him regarding his question about enforcement in his drafter's note? Or any other comments about his draft?

Also, is the only difference in the recommended changes section between this document and the one you gave me in November the 4th bullet about waiving penalties?

Thanks,

01/09/2007

Darren

From: Brennan, Audra D [mailto:audra.brennan@dor.state.wi.us]
Sent: Friday, January 05, 2007 5:37 PM
To: Easton, Darren - DOA; Easton, Darren - DOA
Cc: Gates-Hendrix, Sherrie L - DOR
Subject: FW: Direct Marketing proposal and drafting language

Here is the direct marketing piece for the budget - I have not had a chance to go through myself in detail, but wanted to get it to you. It should be pretty solid.

From: Crane, Lili B
Sent: Wednesday, January 03, 2007 1:16 PM
To: Gates-Hendrix, Sherrie; Brennan, Audra D; Timmons, Anthony
Cc: Zwettler, Charles R; Hanson, Jeffrey W
Subject: Direct Marketing proposal and drafting language

This has been approved by Diane.

<< File: Direct Marketing 01-03-07.doc >> << File: Direct Mkt-Changes AB 1170.doc >>

Lili Best Crane

Deputy Administrator

Income, Sales & Excise Tax Division

Wisconsin Department of Revenue

(608) 266-8025

August 24, 2006

wp, 139.34(1)(c) 1.
ni mi

Changes to AB1170

Section 17 P8 L12-14

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

Section 18 and 19 P8 L15-19 is replaced by the following:

Repeal and amend 139.34(1)(c) 1, 2, 3, 4, 5, 6, 7

134(1)(c)1. The person has an arrest or conviction record

139.34(1)(c)2. The person has habitually been a law offender or has been convicted of a felony unless duly pardoned.

134.34(1)(c)3. The person does not hold a permit under s. 77.52(9), if the person is a retailer.

139.34(1)(c)4. The person is not 18 years of age or older.

Section 33 P 12 L 12

139.345(8) (b) No person may sell cigarettes to consumers in this state by direct marketing unless the cigarette brands are approved by the department and listed in the directory of certified tobacco product manufacturers and brands as provided under s. 8-995.12 (2) (b).

Section 38 P 14 L18-19

139.40 (2) of the statutes is amended to read:

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

Add to AB1170

SECTION X. S. 100.30(2)(c)1.b is amended to read:

b. For every person holding a permit as a bonded direct marketer as defined in s. 139.30(1d), a distributor as defined in s. 139.30(3) or as a multiple retailer as defined in s. 139.30(8), with respect to that portion of the person's business which involves the purchase and sale of cigarettes "cost to wholesaler" means the cost charged by the cigarette manufacturer, disregarding any manufacturer's discount or any discount under s. 139.32(5), plus the amount of tax imposed under s. 139.31. Except for a sale at wholesale between wholesalers, a markup to cover a proportionate part of the cost of doing business shall be added to the cost to wholesaler. In the absence of proof of a lesser cost, this markup shall be 3% of the cost to wholesaler as set forth in this subd. 1. b.

SECTION Y. S. 100.30(2)(L) is amended to read:

"Wholesaler" includes every person acting as bonded direct marketer as defined under s. 139.30(1d), holding a permit as a multiple retailer under s. 139.30(8) and every person engaged in the business of making sales at wholesale, other than sales of motor vehicle fuel at wholesale, within this state except as follows:

1. In the case of a person engaged in the business of selling both at wholesale and at retail, "wholesaler" applies to that portion of the person's business involving the purchase and sale of cigarettes and to any wholesale portion of that person's business.
2. In the case of a person acting as a bonded direct marketer as defined under s. 139.30(1d) or holding a permit as a multiple retailer as defined in s. 139.30(8), "wholesaler" applies to that portion of the person's business involving the purchase and sale of cigarettes and to any wholesale portion of that person's business.

Create

139.795 (6) All packages of *cigarettes* shipped to consumers in this state shall be clearly labelled "TOBACCO PRODUCTS" on the outside of such packages.

Create

139.345(11) Agent for service of process.

(a) Requirement for agent for service of process. Any nonresident or foreign direct marketer that has not registered to do business in this state as a foreign corporation or business entity shall, as a condition precedent to having permit under s. 139.34(1), appoint and continually engage the services of an agent in this state to act as agent for the service of process on whom all processes, and any action or proceeding against it concerning or arising out of the enforcement of this section and s. 139, may be served in any manner authorized by law. That service shall constitute legal and valid service of process on the direct marketer. The direct marketer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the Department of Revenue.

(b) Notification of termination of agent. The direct marketer shall provide notice to the Department of Revenue 30 calendar days before termination of the authority of an agent under par. (a) and shall provide proof to the satisfaction of the Department of Revenue of the appointment of a new agent no less than 5 calendar days before the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the direct marketer shall notify the Department of Revenue of that termination within 5 calendar days and shall include proof to the satisfaction of the Department of Revenue of the appointment of a new agent.

(c) Service on secretary of state. Any direct marketer whose cigarettes are sold in this state, who has not appointed and engaged an agent as required in this subsection, shall be considered to have appointed the secretary of state as that agent and may be proceeded against in courts of this state by service of process upon the secretary of state provided, however, that the appointment of the secretary of state as that agent does not satisfy the condition precedent for having the permit required under 139.34(1).

Create

139.795(6) Agent for service of process.

(a) Requirement for agent for service of process. Any nonresident or foreign direct marketer that has not registered to do business in this state as a foreign corporation or

business entity shall, as a condition precedent to having permit under s. 139.34(1), appoint and continually engage the services of an agent in this state to act as agent for the service of process on whom all processes, and any action or proceeding against it concerning or arising out of the enforcement of this section and s. 139, may be served in any manner authorized by law. That service shall constitute legal and valid service of process on the direct marketer. The direct marketer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the Department of Revenue.

(b) Notification of termination of agent. The direct marketer shall provide notice to the Department of Revenue 30 calendar days before termination of the authority of an agent under par. (a) and shall provide proof to the satisfaction of the Department of Revenue of the appointment of a new agent no less than 5 calendar days before the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the direct marketer shall notify the Department of Revenue of that termination within 5 calendar days and shall include proof to the satisfaction of the Department of Revenue of the appointment of a new agent.

(c) Service on secretary of state. Any direct marketer whose cigarettes are sold in this state, who has not appointed and engaged an agent as required in this subsection, shall be considered to have appointed the secretary of state as that agent and may be proceeded against in courts of this state by service of process upon the secretary of state provided, however, that the appointment of the secretary of state as that agent does not satisfy the condition precedent for having the permit required under 139.34(1).

✓ **Create 139.75(5s) to read:**

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

✓ **Create 134.65(6) to read:**

✓ **EXCEPTIONS TO PENALTIES.** No penalty is required under secs. 134.65(5), 139.345, and 139.44 if any of the following conditions apply:

- (a) The secretary of revenue determines that because of inadvertence or mistake, or other unusual circumstances it is not equitable to impose the penalty.
- (b) The failure to follow the statute was due to good cause and not due to neglect.