



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0719/A

JK:cjs:pg

*RMK stays*

DOA:.....Easton, BB0153 - Direct marketing of cigarettes and tobacco products

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

*Change in 1907 Do NOT GenCat*

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. 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.

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

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

1           **SECTION 1.** 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.

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1           **SECTION 2.** 100.20 (1n) of the statutes is amended to read:

2           100.20 (1n) It is an unfair method of competition or an unfair trade practice  
3 for any person to sell cigarettes to consumers in this state in violation of s. 139.345  
4 or to sell tobacco products to consumers in this state in violation of s. 139.795.

5           **SECTION 3.** 134.65 (1) of the statutes is amended to read:

6           134.65 (1) No person shall in any manner, or upon any pretense, or by any  
7 device, directly or indirectly sell, expose for sale, possess with intent to sell,  
8 exchange, barter, dispose of or give away any cigarettes or tobacco products to any  
9 person not holding a license as herein provided or a permit under ss. 139.30 to 139.41  
10 ~~or, 139.79,~~ or 139.795 without first obtaining a license from the clerk of the city,  
11 village, or town wherein such privilege is sought to be exercised. This subsection  
12 does not apply to a person who holds a valid permit under s. 139.345 or 139.795 and  
13 who sells cigarettes or tobacco products solely as a direct marketer.

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

15           134.65 (1n) (a) The department of revenue shall prepare an application form  
16 for licenses issued under this section. In addition to the information required under  
17 sub. (1m), the form shall require all of the following information:

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

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

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

22           4. If the applicant is a corporation, the identity of the corporate officers and  
23 agent.

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

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

2           7. Any other information required by the department.

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

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

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

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

13           3. Any person may inspect applications submitted under this paragraph. The  
14 clerk of each city, village, or town where such applications are submitted shall retain  
15 all applications submitted under this paragraph, but may destroy all applications  
16 that have been retained for 4 years or longer.

17           **SECTION 5.** 134.65 (1r) of the statutes is created to read:

18           134.65 (1r) (a) Subject to ss. 111.321, 111.322, and 111.335, no license under  
19 sub. (1) may be issued to any person to whom any of the following applies:

20           1. The person has an arrest record or a conviction record.

21           2. The person has been convicted of a felony, or as a repeat or habitual offender,  
22 unless pardoned.

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

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

*renumbered 134.65(5)(a) and*

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

7 SECTION 6. 134.65 (2) (a) of the statutes is amended to read:

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

14 SECTION 7. 134.65 (5) of the statutes is amended to read: *par. (b), any*

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

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1 thereafter, nor shall the person in that period act as the servant or agent of a person  
2 licensed hereunder for the performance of the acts authorized by such license.

3 **SECTION 8.** 134.66 (2) (d) of the statutes is created to read:

4 134.66 (2) (d) No retailer, direct marketer, manufacturer, distributor, jobber or  
5 subjobber, no agent, employee or independent contractor of a retailer, direct  
6 marketer, manufacturer, distributor, jobber or subjobber, and no agent or employee  
7 of an independent contractor may provide cigarettes or tobacco products for nominal  
8 or no consideration to any person under the age of 18.

9 **SECTION 9.** 134.66 (3m) of the statutes is created to read:

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

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

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

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

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

22 **SECTION 10.** 139.30 (4n) of the statutes is repealed and recreated to read:

23 139.30 (4n) "Identification card" has the meaning given in s. 134.66 (1) (c).

24 **SECTION 11.** 139.30 (7) of the statutes is amended to read:

1           139.30 (7) "Manufacturer" means any person who directly manufactures  
2 cigarettes for the purpose of sale, including the authorized agent of a person who  
3 directly manufactures cigarettes for the purpose of sale.

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

5           139.30 (8s) "Person" means any individual, sole proprietorship, partnership,  
6 limited liability company, corporation, or association, or any owner of a single-owner  
7 entity that is disregarded as a separate entity under ch. 71.

8           **SECTION 13.** 139.32 (4) of the statutes is amended to read:

9           139.32 (4) In lieu of stamps the secretary may authorize impressions applied  
10 by the use of meter machines. The secretary shall prescribe by rule the type of  
11 impression and the kind of machines which may be used.

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

13           139.321 (1) (intro.) It is unlawful for any person to purchase or possess  
14 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32  
15 (1) and 139.33 (4).

16           **SECTION 15.** 139.321 (1) (a) 1. of the statutes is amended to read:

17           139.321 (1) (a) 1. Manufacturers, bonded direct marketers, distributors or  
18 warehouse operators possessing valid permits issued by the secretary.

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

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

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1 SECTION 17. 139.34 (1) (b) of the statutes is repealed.

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

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

4 77.61 (11).

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

6 139.34 (1) (c) 4m. The person is not 18 years of age or older.

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

8 139.34 (1) (cm) The requirements under par. (c) apply to all partners of a  
9 partnership, all members of a limited liability company, all agents of a limited  
10 liability company or corporation, and all officers of a corporation.

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

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

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

19 139.34 (6) A vending machine operator or a multiple retailer may acquire  
20 unstamped cigarettes from the manufacturers thereof and affix the stamps to  
21 packages or other containers only if the vending machine operator or multiple  
22 retailer also holds a permit as a distributor or bonded direct marketer.

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

24 139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on  
25 the premises described in the permit. The warehouse permit shall not authorize the

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1 holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a  
2 manufacturer, bonded direct marketer, or distributor may be delivered only to a  
3 person holding a permit as a manufacturer ~~or~~, distributor, or bonded direct marketer  
4 who is authorized by the department to purchase and affix tax stamps.

5 **SECTION 24.** 139.345 (1) (a) of the statutes is amended to read:

6 139.345 (1) (a) No person may sell cigarettes to consumers in this state as a  
7 direct marketer or solicit sales of cigarettes to consumers in this state by direct  
8 marketing unless the person submits to has obtained a permit from the department  
9 ~~the person's name, trade name, address of the person's principal place of business,~~  
10 ~~phone number, e-mail address, and Web site address~~ to make such sales or  
11 solicitations. The person shall file an application for a permit under this subsection  
12 with the department, in the manner prescribed by the department.

13 **SECTION 25.** 139.345 (1) (b) of the statutes is amended to read:

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

25 **SECTION 26.** 139.345 (1) (d) of the statutes is amended to read:

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

9           **SECTION 27.** 139.345 (3) (intro.) of the statutes is amended to read:

10          139.345 (3) (intro.) No person may sell cigarettes to ~~consumers~~ a consumer in  
11          this state unless the person does all of the following:

12          **SECTION 28.** 139.345 (3) (a) (intro.) of the statutes is amended to read:

13          139.345 (3) (a) (intro.) Verifies the consumer's name identity and address and  
14          that the consumer is at least 18 years of age by any of the following methods:

15          **SECTION 29.** 139.345 (3) (a) 2. of the statutes is amended to read:

16          139.345 (3) (a) 2. The person receives from the consumer, at the time of  
17          purchase, a copy of ~~a government issued~~ an identification card and verifies that the  
18          name specified on the identification card matches the name of the consumer and that  
19          the birth date on the identification card indicates that the consumer is at least 18  
20          years of age.

21          **SECTION 30.** 139.345 (7) (a) of the statutes is amended to read:

22          139.345 (7) (a) No person may deliver a package of cigarettes sold by direct  
23          marketing to a consumer in this state unless the person making the delivery receives  
24          ~~a government issued~~ an identification card from the person receiving the package  
25          and verifies that the person receiving the package is at least 18 years of age. If the

1 person receiving the package is not the person to whom the package is addressed, the  
2 person delivering the package shall have the person receiving the package sign a  
3 statement that affirms that the person to whom the package is addressed is at least  
4 18 years of age.

5 **SECTION 31.** 139.345 (8) of the statutes is created to read:

6 139.345 (8) (a) No person may sell cigarettes to consumers in this state by direct  
7 marketing unless the tax imposed under s. 139.31 (1) is paid on the cigarettes and  
8 stamps are affixed to the cigarette packages or containers as provided under s.  
9 139.32.

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

14 **SECTION 32.** 139.345 (9) of the statutes is created to read:

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

20 **SECTION 33.** 139.345 (10) of the statutes is created to read:

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

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

*Except as provided in sub. (12),*

*Except as provided in sub. (12),*

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).

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7 SECTION 34. 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 the solicitation of cigarette sales in this state unless the  
17 person has filed an application for and obtained a valid certificate under s. 73.03 (50)  
18 and a valid permit under s. 139.34. The department shall issue the required number  
19 of permits to manufacturers and permittees who hold a valid certificate issued under  
20 s. 73.03 (50). Each application for a salesperson's permit shall disclose the name and  
21 address of the employer or the person for whom the salesperson is selling or soliciting  
22 and such permit shall remain effective only while the salesperson represents such  
23 named employer or person. If such salesperson is thereafter employed by another  
24 ~~manufacturer or permittee~~ person, the salesperson shall obtain a new salesperson's  
25 ~~permit. Each manufacturer and permittee~~ The employer of any such salesperson

1 shall notify the department within 10 days after the resignation or dismissal of any  
2 such the salesperson holding a permit.

3 **SECTION 35.** 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 36.** 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 37.** 139.44 (1m) of the statutes is amended to read:

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

24 **SECTION 38.** 139.44 (2) of the statutes is amended to read:

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 39.** 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 a  
10 2nd or subsequent offense.

11           **SECTION 40.** 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 41.** 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 42.** 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 43.** 139.44 (6m) of the statutes is created to read:

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 44.** 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.

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10          **SECTION 45.** 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 46.** 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  
17 tobacco products to consumers in this state by direct marketing.

18          **SECTION 47.** 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 48.** 139.75 (4) (a) of the statutes is amended to read:

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 49.** 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 50.** 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 51.** 139.75 (4n) of the statutes is created to read:

12 INSERT  
16-12 139.75 (4n) "Identification card" has the meaning given in s. 134.66 (1) (c).

13           **SECTION 52.** 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 53.** 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 54.** 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 55.** 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 56.** 139.79 (title) of the statutes is amended to read:

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

6           **SECTION 57.** 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 58.** 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 59.** 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.

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. The person receives from the consumer, at the time of purchase, a copy of an  
19 identification card and verifies that the name specified on the identification card  
20 matches the name of the consumer and that the birth date on the identification card  
21 indicates that the consumer is at least 18 years of age.

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

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

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

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

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

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

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

INSERT 20-5

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

6 SECTION 60. 139.81 (1) of the statutes is amended to read:

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

25 SECTION 61. 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 62.** 139.86 of the statutes is amended to read:

4           **139.86 Prosecutions by attorney general.** Upon request by the secretary  
5 of revenue, the attorney general may represent this state or assist a district attorney  
6 in prosecuting any case arising under this subchapter. The attorney general may  
7 take any action necessary to enforce s. 139.795.

8           **SECTION 63.** 139.87 of the statutes is created to read:

9           **139.87 Lists.** The department shall compile and maintain a list of direct  
10 marketers who have complied with the requirements of s. 139.795 and a list of direct  
11 marketers who the department knows have not complied with such requirements.  
12 The department shall provide copies of the lists described under this section to the  
13 attorney general and to each person who delivers tobacco products to consumers in  
14 this state that are sold by direct marketing under s. 139.795.

15           **SECTION 64.** 995.12 (5) (a) of the statutes is amended to read:

16           995.12 (5) (a) *License revocation and civil penalty.* Upon a determination that  
17 a distributor has violated sub. (2) (c), the department may revoke ~~or suspend~~ the  
18 license of the distributor in the manner provided under s. 139.44 (4) and (7). Each  
19 stamp affixed and each sale of cigarettes or offer or possession to sell cigarettes in  
20 violation of sub. (2) (c) shall constitute a separate violation. For each violation the  
21 department may also impose a forfeiture in an amount not to exceed the greater of  
22 500% of the retail value of the cigarettes or \$5,000.

23

(END)

INSERT

01-22

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0719/2ins  
JK:cjs:pg

Insert 3 - 4

1 SECTION 1. 100.30 (2) (c) 1. b. of the statutes is amended to read:

2 100.30 (2) (c) 1. b. For every person holding a permit as a bonded direct  
3 marketer as defined in s. 139.30 (1d), as a distributor as defined in s. 139.30 (3), or  
4 as a multiple retailer as defined in s. 139.30 (8), with respect to that portion of the  
5 person's business which involves the purchase and sale of cigarettes "cost to  
6 wholesaler" means the cost charged by the cigarette manufacturer, disregarding any  
7 manufacturer's discount or any discount under s. 139.32 (5), plus the amount of tax  
8 imposed under s. 139.31. Except for a sale at wholesale between wholesalers, a  
9 markup to cover a proportionate part of the cost of doing business shall be added to  
10 the cost to wholesaler. In the absence of proof of a lesser cost, this markup shall be  
11 3% of the cost to wholesaler as set forth in this subd. 1. b.

History: 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (20); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175; 1993 a. 16; 1997 a. 55; 2001 a. 16.

12 SECTION 2. 100.30 (2) (L) (intro.) of the statutes is amended to read:

13 100.30 (2) (L) (intro.) "Wholesaler" includes every person acting as a bonded  
14 direct marketer as defined in s. 139.30 (1d) holding a permit as a multiple retailer  
15 under s. 139.30 (8) and every person engaged in the business of making sales at or  
16 wholesale, other than sales of motor vehicle fuel at wholesale, within this state  
17 except as follows:

History: 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (20); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175; 1993 a. 16; 1997 a. 55; 2001 a. 16.

18 SECTION 3. 100.30 (2) (L) 2. of the statutes is amended to read:

19 100.30 (2) (L) 2. In the case of a person acting as a bonded direct marketer as  
20 defined in s. 139.30 (1d) or holding a permit as a multiple retailer as defined in s.  
21 139.30 (8), "wholesaler" applies to that portion of the person's business involving the

1 purchase and sale of cigarettes and to any wholesale portion of that person's  
2 business.

**History:** 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (20); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175; 1993 a. 16; 1997 a. 55; 2001 a. 16.

**Insert 6 - 2**

3 **SECTION 4.** 134.65 (5) (b) of the statutes is created to read:

4 134.65 (5) (b) No penalty shall be imposed under par. (a) if any of the following  
5 apply:

6 1. The secretary of revenue determines that imposing a penalty would be  
7 inequitable because of inadvertent acts, mistakes, or unusual circumstances related  
8 to the violation.

9 2. The person who is subject to a penalty under par. (a) had good cause to violate  
10 this section, and such violation did not result from the person's neglect.

**Insert 8 - 4**

11 **SECTION 5.** 139.34 (1) (c) 1. of the statutes is repealed.

12 **SECTION 6.** 139.34 (1) (c) 1m. of the statutes is created to read:

13 139.34 (1) (c) 1m. The person has an arrest record or a conviction record.

14 **SECTION 7.** 139.34 (1) (c) 2. of the statutes is amended to read:

15 139.34 (1) (c) 2. The person has been convicted of a felony, or as a repeat or  
16 habitual offender, unless pardoned.

**History:** 1971 c. 219; 1973 c. 198; 1975 c. 39 s. 732 (2m); 1977 c. 125; 1979 c. 34, 89, 221; 1981 c. 79 s. 18; 1981 c. 334 s. 25 (1); 1981 c. 380, 391; 1985 a. 313; 1989 a. 303; 1991 a. 32, 39; 1993 a. 112, 482; 1995 a. 27, 448; 1997 a. 27; 2001 a. 16; 2005 a. 25.

17 **SECTION 8.** 139.34 (1) (c) 3. of the statutes is repealed.

18 **SECTION 9.** 139.34 (1) (c) 4. of the statutes is repealed.

**Insert 8 - 6**

19 **SECTION 10.** 139.34 (1) (c) 5. of the statutes is repealed.

20 **SECTION 11.** 139.34 (1) (c) 6. of the statutes is repealed.

④ Section #. CR; 139.345(11)

1 SECTION 12. 139.34 (1) (c) 7. of the statutes is renumbered 139.34 (1) (c) 5m.

Insert 12 - 6

139.345

2 } (11) (a) Any nonresident or foreign direct marketer that has not registered<sup>ed</sup> to do  
3 business in this state as a foreign corporation or business entity shall, as a condition  
4 precedent to having a permit under s. 139.34 (1), appoint and continually engage the  
5 services of an agent in this state to act as agent for the service of process on whom  
6 all processes, and any action or proceeding against it concerning or arising out of the  
7 enforcement of this section and ch. 139,<sup>e chapter</sup> may be served in any manner authorized by  
8 law. That service shall constitute legal and valid service of process on the direct  
9 marketer. The direct marketer shall provide the name, address, phone number, and  
10 proof of the appointment and availability of the agent to the department.

11 (b) A direct marketer described under par. (a) shall provide notice to the  
12 department no later than 30 calendar days before termination of the authority of an  
13 agent under par. (a) and shall provide proof to the satisfaction of the department of  
14 the appointment of a new agent no later than 5 calendar days before the termination  
15 of an existing appointment. In the event an agent terminates an appointment, the  
16 direct marketer shall notify the department of that termination no later than 5  
17 calendar days after the termination and shall include proof to the satisfaction of the  
18 department of the appointment of a new agent.

19 (c) The secretary of state is the agent in this state for the service of process of  
20 any direct marketer who has not appointed and engaged an agent as provided under  
21 par. (a), except that the secretary of state acting as the direct marketer's agent for  
22 the service of process does not satisfy the condition precedent for having the permit  
23 required under 139.34(1).

*obtaining*  
*requirements imposed by par. (a)*



139.345 → SECTION # CR; 139.345 (12)

1 (12) No penalty shall be imposed under subs. (9) and (10) if any of the following  
2 apply:

3 1. The secretary of revenue determines that imposing a penalty would be  
4 inequitable because of inadvertent acts, mistakes, or unusual circumstances related  
5 to the violation.

6 2. The person who is subject to a penalty under par. (a) had good cause to violate  
7 this section and such violation did not result from the person's neglect.

**Insert 15 - 9**

8 SECTION 13. 134.44 (13) of the statutes is created to read:

9 134.44 (13) No penalty shall be imposed under this section if any of the  
10 following apply:

11 1. The secretary of revenue determines that imposing a penalty would be  
12 inequitable because of inadvertent acts, mistakes, or unusual circumstances related  
13 to the violation.

14 2. The person who is subject to a penalty under par. (a) had good cause to violate  
15 this section and such violation did not result from the person's neglect.

**Insert 16 - 12**

16 SECTION 14. 139.75 (5s) of the statutes is created to read:

17 139.75 (5s) "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.

**Insert 20 - 5**

20 (5) All packages of tobacco products shipped to consumers in this state shall  
21 be clearly labelled "TOBACCO PRODUCTS" on the outside of such packages.

7 B

obtaining holding?

ed

1 (6) (a) Any nonresident or foreign direct marketer that has not register<sup>ed</sup> to do  
 2 business in this state as a foreign corporation or business entity shall, as a condition  
 3 precedent to having a permit under s. 139.79 (1), appoint and continually engage the  
 4 services of an agent in this state to act as agent for the service of process on whom  
 5 all processes, and any action or proceeding against it concerning or arising out of the  
 6 enforcement of this section and ch. 139, <sup>e chapter</sup> may be served in any manner authorized by  
 7 law. That service shall constitute legal and valid service of process on the direct  
 8 marketer. The direct marketer shall provide the name, address, phone number, and  
 9 proof of the appointment and availability of the agent to the department.

10 (b) A direct marketer described under par. (a) shall provide notice to the  
 11 department no later than 30 calendar days before termination of the authority of an  
 12 agent under par. (a) and shall provide proof to the satisfaction of the department of  
 13 the appointment of a new agent no later than 5 calendar days before the termination  
 14 of an existing appointment. In the event an agent terminates an appointment, the  
 15 direct marketer shall notify the department of that termination no later than 5  
 16 calendar days after the termination and shall include proof to the satisfaction of the  
 17 department of the appointment of a new agent.

18 (c) The secretary of state is the agent in this state for the service of process of  
 19 any direct marketer who has not appointed and engaged an agent as provided under  
 20 par. (a), except that the secretary of state acting as the direct marketer's agent for  
 21 the service of process does not satisfy the condition precedent for having the permit  
 22 required under 139.79 (1).

requirements imposed by par. (a)

Insert 21 - 22

SECTION 9341. Initial applicability; Revenue.

100.30 (2) (c) 1-b. and (L) (intro.) and 2.,  
~~134.44 (13),~~

1 (1) DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS. The treatment of  
 2 sections 77.61 (11), 100.20 (1n), 134.65 (1), (1n), (1r), <sup>and</sup> (2) (a), <sup>and</sup> (5) (a) and (b), 134.66  
 3 (2) (d) and (3m), 139.30 (4n), (7), and (8s), 139.32 (4), 139.321 (1) (intro.) and (a) 1.,  
 4 139.34 (1) (a), (b), (c) 1., 1m., 2., 3., 4., 4m., 5., 6., and 7., and (cm), (4), (6), and (8),  
 5 139.345 (1) (a), (b), and (d), (3) (intro.) <sup>and</sup> (a) (intro.) and 2., (7) (a), (8), (9), (10), (11), and  
 6 (12), 139.37 (1) (a), 139.40 (1) and (2), 139.44 (1m), (2), (3), (4), (5), (6), (6m), and (7),  
 7 139.75 (2), (3g), (3r), (4) (a), (c), and (cm), (4n), <sup>(5)</sup> (7), and (8), 139.76 (3), 139.78 (1m),  
 8 139.79 (title), (1), and (2), 139.795, 139.81 (1) and (2), 139.86, 139.87, and 995.12 (5)  
 9 (a) of the statutes <sup>apply</sup> first ~~applies~~ to sales of cigarettes and tobacco products made on  
 10 the effective date of this subsection. <sup>apply</sup>

and (13) 5

the renumbering and amendment of  
 section 134.65 (5) of the statutes  
 and the creation of section  
 134.65 (5) (b) of  
 the statutes

DOA:.....Easton, BB0153 - Direct marketing of cigarettes and tobacco products

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

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

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*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

Under current law, 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. 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.

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

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

1           **SECTION 1.** 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.

1           **SECTION 2.** 100.20 (1n) of the statutes is amended to read:

2           100.20 (1n) It is an unfair method of competition or an unfair trade practice  
3 for any person to sell cigarettes to consumers in this state in violation of s. 139.345  
4 or to sell tobacco products to consumers in this state in violation of s. 139.795.

5           **SECTION 3.** 100.30 (2) (c) 1. b. of the statutes is amended to read:

6           100.30 (2) (c) 1. b. For every person holding a permit as a bonded direct  
7 marketer as defined in s. 139.30 (1d), as a distributor as defined in s. 139.30 (3), or  
8 as a multiple retailer as defined in s. 139.30 (8), with respect to that portion of the  
9 person's business which involves the purchase and sale of cigarettes "cost to  
10 wholesaler" means the cost charged by the cigarette manufacturer, disregarding any  
11 manufacturer's discount or any discount under s. 139.32 (5), plus the amount of tax  
12 imposed under s. 139.31. Except for a sale at wholesale between wholesalers, a  
13 markup to cover a proportionate part of the cost of doing business shall be added to  
14 the cost to wholesaler. In the absence of proof of a lesser cost, this markup shall be  
15 3% of the cost to wholesaler as set forth in this subd. 1. b.

16           **SECTION 4.** 100.30 (2) (L) (intro.) of the statutes is amended to read:

17           100.30 (2) (L) (intro.) "Wholesaler" includes every person holding a permit as  
18 a bonded direct marketer as defined in s. 139.30 (1d) or as a multiple retailer under  
19 s. 139.30 (8) and every person engaged in the business of making sales at wholesale,  
20 other than sales of motor vehicle fuel at wholesale, within this state except as follows:

21           **SECTION 5.** 100.30 (2) (L) 2. of the statutes is amended to read:

22           100.30 (2) (L) 2. In the case of a person holding a permit as a bonded direct  
23 marketer as defined in s. 139.30 (1d) or as a multiple retailer as defined in s. 139.30  
24 (8), "wholesaler" applies to that portion of the person's business involving the

1 purchase and sale of cigarettes and to any wholesale portion of that person's  
2 business.

3 **SECTION 6.** 134.65 (1) of the statutes is amended to read:

4 134.65 (1) No person shall in any manner, or upon any pretense, or by any  
5 device, directly or indirectly sell, expose for sale, possess with intent to sell,  
6 exchange, barter, dispose of or give away any cigarettes or tobacco products to any  
7 person not holding a license as herein provided or a permit under ss. 139.30 to 139.41  
8 ~~or, 139.79, or 139.795~~ without first obtaining a license from the clerk of the city,  
9 village, or town wherein such privilege is sought to be exercised. This subsection  
10 does not apply to a person who holds a valid permit under s. 139.345 or 139.795 and  
11 who sells cigarettes or tobacco products solely as a direct marketer.

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

13 134.65 (1n) (a) The department of revenue shall prepare an application form  
14 for licenses issued under this section. In addition to the information required under  
15 sub. (1m), the form shall require all of the following information:

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

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

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

20 4. If the applicant is a corporation, the identity of the corporate officers and  
21 agent.

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

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

25 7. Any other information required by the department.

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

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

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

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

11 3. Any person may inspect applications submitted under this paragraph. The  
12 clerk of each city, village, or town where such applications are submitted shall retain  
13 all applications submitted under this paragraph, but may destroy all applications  
14 that have been retained for 4 years or longer.

15 **SECTION 8.** 134.65 (1r) of the statutes is created to read:

16 134.65 (1r) (a) Subject to ss. 111.321, 111.322, and 111.335, no license under  
17 sub. (1) may be issued to any person to whom any of the following applies:

18 1. The person has an arrest record or a conviction record.

19 2. The person has been convicted of a felony, or as a repeat or habitual offender,  
20 unless pardoned.

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

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

23 (b) The requirements under par. (a) apply to all partners of a partnership, all  
24 members of limited liability company, all agents of a limited liability company or  
25 corporation, and all officers of a corporation. Subject to ss. 111.321, 111.322, and



1 111.335, if a business entity has been convicted of a crime, the entity may not be  
2 issued a license under sub. (1) unless the entity has terminated its relationship with  
3 the individuals whose actions directly contributed to the conviction.

4 **SECTION 9.** 134.65 (2) (a) of the statutes is amended to read:

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

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

13 134.65 (5) (a) ~~Any~~ Except as provided in par. (b), any person violating this  
14 section shall be fined not more than ~~\$100~~ \$1,000 nor less than ~~\$25~~ \$500 for the first  
15 offense and ~~shall be fined~~ not more than ~~\$200~~ \$5,000 nor less than ~~\$25~~ \$1,000 or  
16 imprisoned for not more than 180 days or both for the 2nd or subsequent offense. ~~If~~  
17 ~~upon such 2nd or subsequent violation, the person so violating this section was~~  
18 ~~personally guilty of a failure to exercise due care to prevent violation thereof, the~~  
19 ~~person shall be fined not more than \$300 nor less than \$25 or imprisoned not~~  
20 ~~exceeding 60 days or both.~~ Conviction Upon conviction of a 2nd or subsequent  
21 offense, the court shall immediately terminate the license of the person convicted of  
22 ~~being personally guilty of such failure to exercise due care~~ and the person shall not  
23 be entitled to another license hereunder for a period of 5 years thereafter, nor shall  
24 the person in that period act as the servant or agent of a person licensed hereunder  
25 for the performance of the acts authorized by such license.

1           **SECTION 11.** 134.65 (5) (b) of the statutes is created to read:

2           134.65 (5) (b) No penalty shall be imposed under par. (a) if any of the following  
3           apply:

4           1. The secretary of revenue determines that imposing a penalty would be  
5           inequitable because of inadvertent acts, mistakes, or unusual circumstances related  
6           to the violation.

7           2. The person who is subject to a penalty under par. (a) had good cause to violate  
8           this section, and such violation did not result from the person's neglect.

9           **SECTION 12.** 134.66 (2) (d) of the statutes is created to read:

10           134.66 (2) (d) 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 provide cigarettes or tobacco products for nominal  
14           or no consideration to any person under the age of 18.

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

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

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

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

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

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 (4n) of the statutes is repealed and recreated to read:

5 139.30 (4n) “Identification card” has the meaning given in s. 134.66 (1) (c).

6 **SECTION 15.** 139.30 (7) of the statutes is amended to read:

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

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

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

14 **SECTION 17.** 139.32 (4) of the statutes is amended to read:

15 139.32 (4) In lieu of stamps the secretary may authorize impressions applied  
16 by the use of ~~meter~~ machines. The secretary shall prescribe by rule the type of  
17 impression and the kind of machines which may be used.

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

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

22 **SECTION 19.** 139.321 (1) (a) 1. of the statutes is amended to read:

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

25 **SECTION 20.** 139.34 (1) (a) of the statutes is amended to read:

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

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

8           **SECTION 22.** 139.34 (1) (c) 1. of the statutes is repealed.

9           **SECTION 23.** 139.34 (1) (c) 1m. of the statutes is created to read:

10          139.34 (1) (c) 1m. The person has an arrest record or a conviction record.

11          **SECTION 24.** 139.34 (1) (c) 2. of the statutes is amended to read:

12          139.34 (1) (c) 2. The person has been convicted of a felony, or as a repeat or  
13 habitual offender, unless pardoned.

14          **SECTION 25.** 139.34 (1) (c) 3. of the statutes is repealed.

15          **SECTION 26.** 139.34 (1) (c) 4. of the statutes is repealed.

16          **SECTION 27.** 139.34 (1) (c) 4m. of the statutes is created to read:

17          139.34 (1) (c) 4m. The person is not 18 years of age or older.

18          **SECTION 28.** 139.34 (1) (c) 5. of the statutes is repealed.

19          **SECTION 29.** 139.34 (1) (c) 6. of the statutes is repealed.

20          **SECTION 30.** 139.34 (1) (c) 7. of the statutes is renumbered 139.34 (1) (c) 5m.

21          **SECTION 31.** 139.34 (1) (cm) of the statutes is created to read:

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

25          **SECTION 32.** 139.34 (4) of the statutes is amended to read:

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 33.** 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 34.** 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 35.** 139.345 (1) (a) of the statutes is amended to read:

20          139.345 (1) (a) No person may sell cigarettes to consumers in this state as a  
21          direct marketer or solicit sales of cigarettes to consumers in this state by direct  
22          marketing unless the person submits to has obtained a permit from the department  
23          the person's name, trade name, address of the person's principal place of business,  
24          phone number, e-mail address, and Web site address to make such sales or

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 36.** 139.345 (1) (b) of the statutes is amended to read:

4 139.345 (1) (b) ~~No person may sell cigarettes as described under this section~~  
5 The department may not issue a permit to a person under par. (a) unless the person  
6 certifies to the department, in the manner prescribed by the department, that the  
7 person shall acquire stamped cigarettes from a licensed distributor or unstamped  
8 cigarettes from the manufacturer thereof, pay the tax imposed under this subchapter  
9 on all unstamped cigarettes and affix stamps to the cigarette packages or containers  
10 as provided under s. 139.32 (1), store such packages or containers, and sell only such  
11 packages or containers to consumers in this state by direct marketing; or acquire  
12 cigarettes from a distributor, to the packages or containers of which stamps have  
13 been affixed as provided under s. 139.32 (1), and sell only such packages or  
14 containers to consumers in this state by direct marketing.

15 **SECTION 37.** 139.345 (1) (d) of the statutes is amended to read:

16 139.345 (1) (d) ~~No person may sell cigarettes as described in this section~~ The  
17 department may not issue a permit to a person under par. (a) unless the person  
18 certifies to the department, in the manner prescribed by the department, that the  
19 person shall register with credit card and debit card companies; that the invoices and  
20 all means of solicitation for all shipments of cigarette sales from the person shall bear  
21 the person's name and address and the permit number of the permit ultimately  
22 issued under this subsection; and that the person shall provide the department any  
23 information the department considers necessary to administer this section.

24 **SECTION 38.** 139.345 (3) (intro.) of the statutes is amended to read:

1           139.345 (3) (intro.) No person may sell cigarettes to ~~consumers~~ a consumer in  
2 this state unless the person does all of the following:

3           **SECTION 39.** 139.345 (3) (a) (intro.) of the statutes is amended to read:

4           139.345 (3) (a) (intro.) Verifies the consumer's ~~name~~ identity and address and  
5 that the consumer is at least 18 years of age by any of the following methods:

6           **SECTION 40.** 139.345 (3) (a) 2. of the statutes is amended to read:

7           139.345 (3) (a) 2. The person receives from the consumer, at the time of  
8 purchase, a copy of ~~a government issued~~ an identification card and verifies that the  
9 name specified on the identification card matches the name of the consumer and that  
10 the birth date on the identification card indicates that the consumer is at least 18  
11 years of age.

12           **SECTION 41.** 139.345 (7) (a) of the statutes is amended to read:

13           139.345 (7) (a) No person may deliver a package of cigarettes sold by direct  
14 marketing to a consumer in this state unless the person making the delivery receives  
15 ~~a government issued~~ an identification card from the person receiving the package  
16 and verifies that the person receiving the package is at least 18 years of age. If the  
17 person receiving the package is not the person to whom the package is addressed, the  
18 person delivering the package shall have the person receiving the package sign a  
19 statement that affirms that the person to whom the package is addressed is at least  
20 18 years of age.

21           **SECTION 42.** 139.345 (8) of the statutes is created to read:

22           139.345 (8) (a) No person may sell cigarettes to consumers in this state by direct  
23 marketing unless the tax imposed under s. 139.31 (1) is paid on the cigarettes and  
24 stamps are affixed to the cigarette packages or containers as provided under s.  
25 139.32.

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

5 **SECTION 43.** 139.345 (9) of the statutes is created to read:

6 139.345 (9) Except as provided in sub. (12), any person who, without having  
7 a valid permit under sub. (1), sells or solicits sales of cigarettes to consumers in this  
8 state by direct marketing shall pay a penalty to the department of \$5,000 or an  
9 amount that is equal to \$50 for every 200 cigarettes, or fraction of 200 cigarettes, sold  
10 to consumers in this state by direct marketing, whichever is greater.

11 **SECTION 44.** 139.345 (10) of the statutes is created to read:

12 139.345 (10) (a) No sale of cigarettes to a consumer in this state by direct  
13 marketing may exceed 10 cartons for each invoice or 20 cartons in a 30-day period  
14 for each purchaser or address.

15 (b) Except as provided in sub. (12), any person who sells cigarettes in an amount  
16 that exceeds the amounts allowed under par. (a) shall pay a penalty to the  
17 department of \$5,000 or an amount that is equal to \$50 for every 200 cigarettes, or  
18 fraction of 200 cigarettes, sold in excess of the amounts allowed under par. (a),  
19 whichever is greater.

20 (c) Except as provided in sub. (12), any person who purchases cigarettes in an  
21 amount that exceeds the amounts allowed under par. (a) shall apply for a permit  
22 under s. 139.34 and shall pay a penalty to the department of \$25 for every 200  
23 cigarettes, or fraction of 200 cigarettes, purchased in excess of the amounts allowed  
24 under par. (a).

25 **SECTION 45.** 139.345 (11) of the statutes is created to read:



1           139.345 (11) (a) Any nonresident or foreign direct marketer that has not  
2 registered to do business in this state as a foreign corporation or business entity  
3 shall, as a condition precedent to obtaining a permit under s. 139.34 (1), appoint and  
4 continually engage the services of an agent in this state to act as agent for the service  
5 of process on whom all processes, and any action or proceeding against it concerning  
6 or arising out of the enforcement of this chapter, may be served in any manner  
7 authorized by law. That service shall constitute legal and valid service of process on  
8 the direct marketer. The direct marketer shall provide the name, address, phone  
9 number, and proof of the appointment and availability of the agent to the  
10 department.

11           (b) A direct marketer described under par. (a) shall provide notice to the  
12 department no later than 30 calendar days before termination of the authority of an  
13 agent under par. (a) and shall provide proof to the satisfaction of the department of  
14 the appointment of a new agent no later than 5 calendar days before the termination  
15 of an existing appointment. In the event an agent terminates an appointment, the  
16 direct marketer shall notify the department of that termination no later than 5  
17 calendar days after the termination and shall include proof to the satisfaction of the  
18 department of the appointment of a new agent.

19           (c) The secretary of state is the agent in this state for the service of process of  
20 any direct marketer who has not appointed and engaged an agent as provided under  
21 par. (a), except that the secretary of state acting as the direct marketer's agent for  
22 the service of process does not satisfy the requirements imposed by par. (a).

23           **SECTION 46.** 139.345 (12) of the statutes is created to read:

24           139.345 (12) No penalty shall be imposed under subs. (9) and (10) if any of the  
25 following apply:

1 (a) The secretary of revenue determines that imposing a penalty would be  
2 inequitable because of inadvertent acts, mistakes, or unusual circumstances related  
3 to the violation.

4 (b) The person who is subject to a penalty under sub. (9) or (10) had good cause  
5 to violate sub. (9) or (10), and such violation did not result from the person's neglect.

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

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

1 shall notify the department within 10 days after the resignation or dismissal of any  
2 such the salesperson holding a permit.

3 **SECTION 48.** 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 49.** 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 50.** 139.44 (1m) of the statutes is amended to read:

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

24 **SECTION 51.** 139.44 (2) of the statutes is amended to read:

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 52.** 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 a  
10 2nd or subsequent offense.

11           **SECTION 53.** 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 54.** 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 55.** 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 56.** 139.44 (6m) of the statutes is created to read:

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 57.** 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 58.** 139.44 (13) of the statutes is created to read:

11          139.44 (13) Notwithstanding subs. (1) to (8), no penalty shall be imposed under  
12 subs. (1) to (8) if any of the following apply:

13           1. The secretary of revenue determines that imposing a penalty would be  
14 inequitable because of inadvertent acts, mistakes, or unusual circumstances related  
15 to the violation.

16           2. The person who is subject to a penalty under subs. (1) to (8) had good cause  
17 to commit the violation to which the penalty applies, and such violation did not result  
18 from the person's neglect.

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

20          139.75 (2) "Consumer" means any individual who receives tobacco products for  
21 his or her personal use or consumption or any person individual who has title to or  
22 possession of tobacco products ~~in storage for use or other consumption in this state~~  
23 any purpose other than for sale or resale.

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

1           139.75 (3g) “Direct marketer” means any person who solicits sales of or sells  
2 tobacco products to consumers in this state by direct marketing.

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

4           139.75 (3r) “Direct marketing” means publishing or making accessible an offer  
5 for the sale of tobacco products to consumers in this state, or selling tobacco products  
6 to consumers in this state, using any means by which the consumer is not physically  
7 present on a premise that sells tobacco products.

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

9           139.75 (4) (a) Any person in this state engaged in the business of selling tobacco  
10 products ~~in this state~~ who brings, or causes to be brought, into this state from outside  
11 the state any tobacco products for sale;

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

13           139.75 (4) (c) Any person outside this state engaged in the business of selling  
14 tobacco products ~~outside this state~~ who ships or transports tobacco products to  
15 retailers in this state to be sold by those retailers.

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

17           139.75 (4) (cm) Any person outside this state engaged in the business of selling  
18 tobacco products who ships or transports tobacco products to consumers in this state.

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

20           139.75 (4n) “Identification card” has the meaning given in s. 134.66 (1) (c).

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

22           139.75 (5s) “Person” means any individual, sole proprietorship, partnership,  
23 limited liability company, corporation, or association, or any owner of a single-owner  
24 entity that is disregarded as a separate entity under ch. 71.

25           **SECTION 67.** 139.75 (7) of the statutes is amended to read:

1           139.75 (7) “Retail outlet” means each place of business from which tobacco  
2 products are sold to consumers by a retailer.

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

4           139.75 (8) “Retailer” ~~means any person engaged in the business of selling~~  
5 ~~tobacco products to ultimate consumers~~ has the meaning given in s. 134.66 (1) (g).

6           **SECTION 69.** 139.76 (3) of the statutes is created to read:

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

10          **SECTION 70.** 139.78 (1m) of the statutes is created to read:

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

14          **SECTION 71.** 139.79 (title) of the statutes is amended to read:

15          **139.79 (title) Permits; distributor; subjobber.**

16          **SECTION 72.** 139.79 (1) of the statutes is amended to read:

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

21          **SECTION 73.** 139.79 (2) of the statutes is amended to read:

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

24          **SECTION 74.** 139.795 of the statutes is created to read:

1           **139.795 Direct marketing.** (1) (a) No person may sell tobacco products by  
2 direct marketing to consumers in this state as a direct marketer or solicit sales of  
3 tobacco products to consumers in this state by direct marketing unless the person has  
4 obtained a permit from the department to make such sales or solicitations. The  
5 person shall file an application for a permit under this subsection with the  
6 department, in the manner prescribed by the department.

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

11           (c) 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 the  
13 person shall register with credit card and debit card companies; that the invoices and  
14 all means of solicitation for all shipments of tobacco product sales from the person  
15 shall bear the person's name and address and the permit number of the permit  
16 ultimately issued under this subsection; and that the person shall provide the  
17 department any information the department considers necessary to administer this  
18 section.

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

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

24           (a) Verifies the consumer's identity and address and that the consumer is at  
25 least 18 years of age by any of the following methods:



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

3           2. The person receives from the consumer, at the time of purchase, a copy of an  
4 identification card and verifies that the name specified on the identification card  
5 matches the name of the consumer and that the birth date on the identification card  
6 indicates that the consumer is at least 18 years of age.

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

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

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

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

15           3. That the consumer understands that any person who, for the purpose of  
16 obtaining credit, goods, or services, intentionally uses, attempts to use, or possesses  
17 with intent to use, any personal identifying information or personal identification  
18 document of an individual, including a deceased individual, without the  
19 authorization or consent of the individual and by representing that he or she is the  
20 individual, that he or she is acting with the authorization or consent of the  
21 individual, or that the information or document belongs to him or her, is guilty of a  
22 Class H felony, as provided under s. 943.201.

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

1 of the tax due on the tobacco products the person sold, without having a valid permit  
2 under sub. (1), to consumers in this state by direct marketing, whichever is greater.

3 (5) (a) No person may deliver a package of tobacco products sold by direct  
4 marketing to a consumer in this state unless the person making the delivery receives  
5 an identification card from the person receiving the package and verifies that the  
6 person receiving the package is at least 18 years of age. If the person receiving the  
7 package is not the person to whom the package is addressed, the person delivering  
8 the package shall have the person receiving the package sign a statement that  
9 affirms that the person to whom the package is addressed is at least 18 years of age.

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

15 (6) All packages of tobacco products shipped to consumers in this state shall  
16 be clearly labelled "TOBACCO PRODUCTS" on the outside of such packages.

17 (7) (a) Any nonresident or foreign direct marketer that has not registered to  
18 do business in this state as a foreign corporation or business entity shall, as a  
19 condition precedent to obtaining a permit under s. 139.79 (1), appoint and  
20 continually engage the services of an agent in this state to act as agent for the service  
21 of process on whom all processes, and any action or proceeding against it concerning  
22 or arising out of the enforcement of this chapter, may be served in any manner  
23 authorized by law. That service shall constitute legal and valid service of process on  
24 the direct marketer. The direct marketer shall provide the name, address, phone

1 number, and proof of the appointment and availability of the agent to the  
2 department.

3 (b) A direct marketer described under par. (a) shall provide notice to the  
4 department no later than 30 calendar days before termination of the authority of an  
5 agent under par. (a) and shall provide proof to the satisfaction of the department of  
6 the appointment of a new agent no later than 5 calendar days before the termination  
7 of an existing appointment. In the event an agent terminates an appointment, the  
8 direct marketer shall notify the department of that termination no later than 5  
9 calendar days after the termination and shall include proof to the satisfaction of the  
10 department of the appointment of a new agent.

11 (c) The secretary of state is the agent in this state for the service of process of  
12 any direct marketer who has not appointed and engaged an agent as provided under  
13 par. (a), except that the secretary of state acting as the direct marketer's agent for  
14 the service of process does not satisfy the requirements imposed by par. (a).

15 **SECTION 75.** 139.81 (1) of the statutes is amended to read:

16 139.81 (1) No person may sell ~~or take orders for~~ tobacco products ~~for resale or~~  
17 solicit sales of tobacco products in this state ~~for any manufacturer or permittee~~  
18 unless the person has filed an application for and obtained a valid certificate under  
19 s. 73.03 (50) and a salesperson's permit from the department. No ~~manufacturer or~~  
20 ~~permittee~~ shall authorize any person to sell ~~or take orders for~~ tobacco products ~~or~~  
21 solicit sales of tobacco products in this state unless the person has filed an application  
22 for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit.  
23 No person may authorize the sale of tobacco products or the solicitation of sales of  
24 tobacco products in this state unless the person has filed an application for and  
25 obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.79.

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

9 **SECTION 76.** 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 77.** 139.86 of the statutes is amended to read:

13 **139.86 Prosecutions by attorney general.** Upon request by the secretary  
14 of revenue, the attorney general may represent this state or assist a district attorney  
15 in prosecuting any case arising under this subchapter. The attorney general may  
16 take any action necessary to enforce s. 139.795.

17 **SECTION 78.** 139.87 of the statutes is created to read:

18 **139.87 Lists.** The department shall compile and maintain a list of direct  
19 marketers who have complied with the requirements of s. 139.795 and a list of direct  
20 marketers who the department knows have not complied with such requirements.  
21 The department shall provide copies of the lists described under this section to the  
22 attorney general and to each person who delivers tobacco products to consumers in  
23 this state that are sold by direct marketing under s. 139.795.

24 **SECTION 79.** 995.12 (5) (a) of the statutes is amended to read:

