

2019 DRAFTING REQUEST**Assembly Amendment (AA-AB56)**

For: **Legislative Fiscal Bureau** Drafter: **elunder**
 By: **Spika** Secondary Drafters:
 Date: **6/13/2019** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email:
 Carbon copy (CC) to: **erika.lunder@legis.wisconsin.gov**
joseph.kreye@legis.wisconsin.gov
Sean.Moran@legis.wisconsin.gov
rick.olin@legis.wisconsin.gov
Dan.Spika@legis.wisconsin.gov

Pre Topic:

LFB:.....Spika -

Topic:

Imposing tobacco products tax on vapor products and yanking little cigar provisions

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	elunder 6/13/2019	anienaja 6/13/2019			
/P1	elunder 6/13/2019	anienaja 6/13/2019	dwalker 6/13/2019		
/P2	elunder 6/13/2019	wjackson 6/13/2019	lparisi 6/13/2019		
/P3	elunder	anienaja	wjackson		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	6/14/2019	6/14/2019	6/13/2019		
/P4	elunder 6/14/2019	anienaja 6/14/2019	lparisi 6/14/2019		
/P5	elunder 6/16/2019	wjackson 6/16/2019	jmurphy 6/14/2019		
/P6			wjackson 6/16/2019		

FE Sent For:

<END>

Lunder, Erika

From: Kreye, Joseph
Sent: Wednesday, June 12, 2019 6:08 PM
To: Toftness, Jenny
Cc: Moran, Sean; Lunder, Erika
Subject: FW: vapor tax language
Attachments: 201906121745.pdf; ATT00001.htm

Jenny,

The governor's proposal imposes the tax on a vapor product regardless of whether the solution in the cartridge contains nicotine.

Joe

Joseph T. Kreye
Legal Services Manager
Legislative Reference Bureau
608 504-5857

From: Champagne, Rick <Rick.Champagne@legis.wisconsin.gov>
Sent: Wednesday, June 12, 2019 6:01 PM
To: Kreye, Joseph <Joseph.Kreye@legis.wisconsin.gov>; Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>
Subject: Fwd: vapor tax language

Can you work with Jenny on this?

Sent from my iPhone

Begin forwarded message:

From: "Toftness, Jenny" <Jenny.Toftness@legis.wisconsin.gov>
Date: June 12, 2019 at 5:53:33 PM CDT
To: "Ottman, Tad" <Tad.Ottman@legis.wisconsin.gov>, "Smith, Heather" <Heather.Smith@legis.wisconsin.gov>, "Hurlburt, Waylon" <Waylon.Hurlburt@legis.wisconsin.gov>, "Schwanz, Nathan" <Nathan.Schwanz@legis.wisconsin.gov>, "Champagne, Rick" <Rick.Champagne@legis.wisconsin.gov>, "Moran, Sean" <Sean.Moran@legis.wisconsin.gov>
Subject: RE: vapor tax language

Forgot to attach

From: Toftness, Jenny
Sent: Wednesday, June 12, 2019 5:53 PM
To: Ottman, Tad <Tad.Ottman@legis.wisconsin.gov>; Smith, Heather <Heather.Smith@legis.wisconsin.gov>; Hurlburt, Waylon <Waylon.Hurlburt@legis.wisconsin.gov>; Schwanz, Nathan <Nathan.Schwanz@legis.wisconsin.gov>; Champagne, Rick <Rick.Champagne@legis.wisconsin.gov>; Moran, Sean <Sean.Moran@legis.wisconsin.gov>
Subject: vapor tax language

Attached is tobacco tax language to reflect 5 center per milliliter, no floor tax.

There appears to be mistakes in the language on page four and five. It appears to make a distinction between open and closed systems. Under the agreed upon tax scheme, I'm not sure mentioning each separately is necessary. Additionally the last sentence of this paragraph on page 5 there is reference to x% of wholesale price. That should be struck .

This draft taxes vapor with nicotine. Does gov evers bill make any distinctions for vapor with or without nicotine? My understanding is there is vapor without nicotine.

Finally, because there are some mistakes in this draft, we would really appreciate the opportunity to see the language in the morning just to make sure it's right.

Thanks!

Jenny

Lunder, Erika

From: Kreye, Joseph
Sent: Wednesday, June 12, 2019 9:32 PM
To: Toftness, Jenny
Cc: Spika, Dan; Moran, Sean; Champagne, Rick; Lunder, Erika
Subject: RE: Vapor Products Omnibus

Got it. Thanks Jenny.

From: Toftness, Jenny
Sent: Wednesday, June 12, 2019 9:12 PM
To: Kreye, Joseph
Cc: Spika, Dan; Moran, Sean; Champagne, Rick
Subject: Re: Vapor Products Omnibus

I think we need one change - we'd like to tax all vapor products, not just those with nicotine.

Thank you.

Sent from my iPhone

> On Jun 12, 2019, at 8:53 PM, Kreye, Joseph <Joseph.Kreye@legis.wisconsin.gov> wrote:

>
> The draft will be available first thing in the morning.
>
> Joe

> **From:** Toftness, Jenny
> **Sent:** Wednesday, June 12, 2019 8:51 PM
> **To:** Spika, Dan
> **Cc:** Moran, Sean; Kreye, Joseph; Champagne, Rick
> **Subject:** Re: Vapor Products Omnibus

>
> Thank you. I believe it does. Do you have the statutory language?

>
> Sent from my iPhone

>
> On Jun 12, 2019, at 8:45 PM, Spika, Dan <Dan.Spika@legis.wisconsin.gov<mailto:Dan.Spika@legis.wisconsin.gov>> wrote:

>
> Hello Jenny,

>
> I wanted to provide the current write-up I am carrying in the Republican omnibus motion for vapor products. Please let me know if this accomplishes your intent, or whether it needs to be changed in any way.

>
> Define a vapor product to mean a non-combustible product that produces vapor or aerosol for inhalation from the application of a heating element to a liquid substance containing tobacco-derived nicotine. Include vapor products in the definition of tobacco products, and impose an excise tax on vapor products as follows. For cartridges or containers of liquid or other substances containing nicotine, impose an excise tax at a rate of \$0.05 per milliliter on the volume of the

liquid or other substance and a proportionate tax at the like rate on all fractional parts of a milliliter thereof. Impose the tax on vapor products based on the net volume of the solution as listed by the manufacturer in the device as listed by the manufacturer. Require every distributor to file a return showing the quantity and taxable price of milliliters of vapor product brought, shipped, or transported into Wisconsin for sale in the state; or made, manufactured, or fabricated in Wisconsin for sale in the state, during the preceding month. Assuming the provision would take effect October 1, 2019, estimate increased excise tax revenues of \$2,100,000 in 2019-20 and \$3,000,000 in 2020-21. Specify that an inventory tax on vapor products would not be imposed.

>
> Thanks,
>
> Dan Spika
> Fiscal Analyst
> Wisconsin Legislative Fiscal Bureau
> (608) 266-3847 Dan.Spika@legis.wisconsin.gov<mailto:Dan.Spika@legis.wisconsin.gov>
>



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBb0370(?)

EKL:...awm

LFB:.....Spika - Imposing tobacco products tax on vapor products

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 56

SA
Xcel
PWS

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 912, line 2: delete lines 2 to 15 and substitute:

3 “139.75 (14) “Vapor product” means a noncombustible product that produces
4 vapor or aerosol for inhalation from the application of a heating element to a liquid
5 or other substance, regardless of whether the liquid or other substance contains
6 nicotine.”.

7 **2.** Page 912, line 20: after “snuff” insert “, vapor products,”.

8 **3.** Page 912, line 24: after “products” insert “and, for vapor products, at the
9 rate of \$0.05 per milliliter, or fraction thereof, of the liquid or other substance based
10 on the net volume contained in the device as listed by the manufacturer”.

11 **4.** Page 913, line 18: after that line insert:

1 "SECTION 1756m. 139.77 (1) of the statutes is amended to read:

2 139.77 (1) On or before the 15th day of each month, every distributor with a
3 place of business in this state shall file a return showing the quantity, including
4 milliliters in the case of a vapor product, and taxable price of each tobacco product
5 brought, or caused to be brought, into this state for sale; or made, manufactured or
6 fabricated in this state for sale in this state, during the preceding month. Every
7 distributor outside this state shall file a return showing the quantity, including
8 milliliters in the case of a vapor product, and taxable price of each tobacco product
9 shipped or transported to retailers in this state to be sold by those retailers during
10 the preceding month. At the time that the return is filed, the distributor shall pay
11 the tax."

History: 1981 c. 20; 1985 a. 302; 1987 a. 399; 1991 a. 39; 1997 a. 27; 2017 a. 324.

12 5. Page 913, line 21: after "snuff" insert "vapor products,"

13 6. Page 913, line 25: after "products" insert "and, for vapor products, at the
14 rate of \$0.05 per milliliter, or fraction thereof, of the liquid or other substance based
15 on the net volume contained in the device as listed by the manufacturer".
no score

16 7. Page 1144, line 19: after "and (1m)," insert "139.77 (1),".

17 (END)

Item # Page 1110, line 10: delete lines 10 to 18.

Lunder, Erika

From: Toftness, Jenny
Sent: Thursday, June 13, 2019 10:12 AM
To: Kreye, Joseph; Spika, Dan
Cc: Lunder, Erika
Subject: RE: Draft review: LRB b0370/P1

Great. Let's do that.

From: Kreye, Joseph <Joseph.Kreye@legis.wisconsin.gov>
Sent: Thursday, June 13, 2019 10:11 AM
To: Toftness, Jenny <Jenny.Toftness@legis.wisconsin.gov>; Spika, Dan <Dan.Spika@legis.wisconsin.gov>
Cc: Lunder, Erika <Erika.Lunder@legis.wisconsin.gov>
Subject: RE: Draft review: LRB b0370/P1

Hi Jenny,

Neither Erika nor I know what "net volume" is or how that would differ from gross volume. We probably should have ignored that language in the instructions. In any case, we think it would be best to just delete the word "net" to avoid any confusion.

Joe

Joseph T. Kreye
Legal Services Manager
Legislative Reference Bureau
608 504-5857

From: Toftness, Jenny <Jenny.Toftness@legis.wisconsin.gov>
Sent: Thursday, June 13, 2019 10:05 AM
To: Spika, Dan <Dan.Spika@legis.wisconsin.gov>; Kreye, Joseph <Joseph.Kreye@legis.wisconsin.gov>
Subject: RE: Draft review: LRB b0370/P1

Can you define "net volume". The concern is that it would imply there is a gross volume and we are not sure what determine gross vs. net. It may be that we ask net to be removed. Let me know.

Thanks,
Jenny

From: Spika, Dan <Dan.Spika@legis.wisconsin.gov>
Sent: Thursday, June 13, 2019 9:37 AM
To: Toftness, Jenny <Jenny.Toftness@legis.wisconsin.gov>
Subject: FW: Draft review: LRB b0370/P1

Here is the bill draft. I am going through it now.

From: LRB.Legal <lrblegal@legis.wisconsin.gov>
Sent: Thursday, June 13, 2019 9:19 AM

To: Spika, Dan <Dan.Spika@legis.wisconsin.gov>

Subject: Draft review: LRB b0370/P1

Draft Requester: Legislative Fiscal Bureau

Following is the PDF version of draft LRB b0370/P1.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBb0370/P1
EKL:amn

LFB:.....Spika - Imposing tobacco products tax on vapor products

**FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 56**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 912, line 2: delete lines 2 to 15 and substitute:

3 “139.75 (14) “Vapor product” means a noncombustible product that produces
4 vapor or aerosol for inhalation from the application of a heating element to a liquid
5 or other substance, regardless of whether the liquid or other substance contains
6 nicotine.”.

7 **2.** Page 912, line 20: after “snuff” insert “, vapor products,”.

8 **3.** Page 912, line 24: after “products” insert “and, for vapor products, at the
9 rate of \$0.05 per milliliter, or fraction thereof, of the liquid or other substance based
10 on the net volume contained in the device as listed by the manufacturer”.

11 **4.** Page 913, line 18: after that line insert:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

SECTION 1756m. 139.77 (1) of the statutes is amended to read:

139.77 (1) On or before the 15th day of each month, every distributor with a place of business in this state shall file a return showing the quantity, including milliliters in the case of a vapor product, and taxable price of each tobacco product brought, or caused to be brought, into this state for sale; or made, manufactured or fabricated in this state for sale in this state, during the preceding month. Every distributor outside this state shall file a return showing the quantity, including milliliters in the case of a vapor product, and taxable price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers during the preceding month. At the time that the return is filed, the distributor shall pay the tax.”.

5. Page 913, line 21: after “snuff” insert “, vapor products.”.

6. Page 913, line 25: after “products” insert “and, for vapor products, at the rate of \$0.05 per milliliter, or fraction thereof, of the liquid or other substance based on the net volume contained in the device as listed by the manufacturer”.

7. Page 1118, line 10: delete lines 10 to 18.

8. Page 1144, line 19: after “and (1m),” insert “139.77 (1),”.

(END)



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBb0370/P2

EKL:amn

P3
TWLj

LFB:.....Spika - Imposing tobacco products tax on vapor products and
yanking little cigar provisions

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY BILL 56

1 At the locations indicated, amend the bill as follows:

INS 1-2 →

2 **1.** Page 912, line 2: delete lines 2 to 15 and substitute:

3 "139.75 (14) "Vapor product" means a noncombustible product that produces
4 vapor or aerosol for inhalation from the application of a heating element to a liquid
5 or other substance, regardless of whether the liquid or other substance contains
6 nicotine."

7 **2.** Page 912, line 20: after "snuff" insert "vapor products."

8 **3.** Page 912, line 24: after "products" insert "and, for vapor products, at the
9 rate of \$0.05 per milliliter, or fraction thereof, of the liquid or other substance based
10 on the volume contained in the device as listed by the manufacturer".

INS 2-2 →

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

4. Page 913, line 18: after that line insert:

SECTION 1756m. 139.77 (1) of the statutes is amended to read:

139.77 (1) On or before the 15th day of each month, every distributor with a place of business in this state shall file a return showing the quantity, including milliliters in the case of a vapor product, and taxable price of each tobacco product brought, or caused to be brought, into this state for sale; or made, manufactured or fabricated in this state for sale in this state, during the preceding month. Every distributor outside this state shall file a return showing the quantity, including milliliters in the case of a vapor product, and taxable price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers during the preceding month. At the time that the return is filed, the distributor shall pay the tax.”.

5. Page 913, line 21: after “snuff” insert “vapor products.”.

6. Page 913, line 25: after “products” insert “and, for vapor products, at the rate of \$0.05 per milliliter, or fraction thereof, of the liquid or other substance based on the volume contained in the device as listed by the manufacturer”.

INS 2-17 →

7. Page 1118, line 10: delete lines 10 to 18.

INS 2-19 →

8. Page 1144, line 19: after “and (1m),” insert “139.77 (1),”.

(END)

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0370/P2ins
EKL:amn

1 INS 1-2

2 √**1.** Page 910, line 16: delete the material beginning with that line and ending
3 with page 911, line 16.

4 √**2.** Page 911, line 18: delete “little cigars.”

5 INS 2-2

6 **3.** Page 912, line 17: delete the material beginning with that line and ending

7 with page 913, line 18 and substitute:

8 “139.76 (1) An excise tax is imposed upon the sale, offering or exposing for sale,
9 possession with intent to sell or removal for consumption or sale or other disposition
10 for any purpose of tobacco products by any person engaged as a distributor of them
11 at the rate, for tobacco products, not including moist snuff and vapor products, of 71
12 percent of the manufacturer’s established list price to distributors without
13 diminution by volume or other discounts on domestic products and, for moist snuff,
14 at the rate of 100 percent of the manufacturer’s established list price to distributors
15 without diminution by volume or other discounts on domestic products and, for vapor
16 products, at the rate of \$0.05 per milliliter, or fraction thereof, of the liquid or other
17 substance based on the volume contained in the device as listed by the manufacturer.

18 The tax imposed under this subsection on cigars shall not exceed an amount equal
19 to 50 cents for each cigar. On products imported from another country, not including
20 moist snuff and vapor products, the rate of tax is 71 percent of the amount obtained
21 by adding the manufacturer’s list price to the federal tax, duties and transportation
22 costs to the United States. On moist snuff imported from another country, the rate
23 of the tax is 100 percent of the amount obtained by adding the manufacturer’s list

1 price to the federal tax, duties, and transportation costs to the United States. The
2 tax attaches at the time the tobacco products are received by the distributor in this
3 state. The tax shall be passed on to the ultimate consumer of the tobacco products.
4 All tobacco products received in this state for sale or distribution within this state,
5 except tobacco products actually sold as provided in sub. (2), shall be subject to such
6 tax.

7 INS 2-17

8 **4.** Page 913, line 20: delete the material beginning with that line and ending
9 with page 914, line 15[^] and substitute:

10 “139.78 (1) A tax is imposed upon the use or storage by consumers of tobacco
11 products in this state at the rate, for tobacco products, not including moist snuff and
12 vapor products, of 71 percent of the cost of the tobacco products and, for moist snuff,
13 at the rate of 100 percent of the manufacturer’s established list price to distributors
14 without diminution by volume or other discounts on domestic products and, for vapor
15 products, at the rate of \$0.05 per milliliter, or fraction thereof, of the liquid or other
16 substance based on the volume contained in the device as listed by the manufacturer.

17 The tax imposed under this subsection on cigars shall not exceed an amount equal
18 to 50 cents for each cigar. The tax does not apply if the tax imposed by s. 139.76 (1)
19 on the tobacco products has been paid or if the tobacco products are exempt from the
20 tobacco products tax under s. 139.76 (2).”.

21 INS 2-19

22 **5.** Page 1144, line 18: delete lines 18 to 22 and substitute:

1

2
3

(2) TAX ON VAPOR PRODUCTS. The treatment of ss. 139.75 (12) and (14), 139.76

2

(1), 139.77 (1), and 139.78 (1) takes effect on the first day of the 3rd month beginning

3

after publication." 0

Lunder, Erika

From: Spika, Dan
Sent: Friday, June 14, 2019 3:09 PM
To: Moran, Sean; Lunder, Erika
Subject: RE: 370/P3

Erika,

I agree that striking "contained in the device" should accomplish the intent.

Thank you!

Dan

From: Moran, Sean <Sean.Moran@legis.wisconsin.gov>
Sent: Friday, June 14, 2019 2:55 PM
To: Lunder, Erika <Erika.Lunder@legis.wisconsin.gov>
Cc: Spika, Dan <Dan.Spika@legis.wisconsin.gov>
Subject: RE: 370/P3

Hi Erika,

For the first question, as long as either language accomplishes the same intent, that's fine by me. The alcohol statutes are the only ones I work with that impose taxes on liquids based on volume, so I just wanted to make sure they accomplished the same intent. I think deleting that language from the draft as you stated below should accomplish that intent, but I'll check with Dan once he's back.

-Sean

From: Lunder, Erika <Erika.Lunder@legis.wisconsin.gov>
Sent: Friday, June 14, 2019 2:48 PM
To: Moran, Sean <Sean.Moran@legis.wisconsin.gov>
Cc: Spika, Dan <Dan.Spika@legis.wisconsin.gov>
Subject: RE: 370/P3

Hi Sean and Dan,

With respect to the first question, I can add that language if that is your preference. With respect to the second question, I agree that needs to be addressed. Would deleting "contained in the device" work? So, it would say "based on the volume as listed by the manufacturer".

Thanks!
Erika

From: Moran, Sean <Sean.Moran@legis.wisconsin.gov>
Sent: Friday, June 14, 2019 2:28 PM
To: Lunder, Erika <Erika.Lunder@legis.wisconsin.gov>

Cc: Spika, Dan <Dan.Spika@legis.wisconsin.gov>

Subject: 370/P3

Hi Erika,

I just wanted to send an email confirming your discussion with Dan regarding Item 4 of LRB 370/P3.

Under ch. 139.02(1), beer is taxed by volume at a rate of \$2 per barrel of 31 gallons "and at a proportionate rate for any other quantity or fractional parts thereof." However, the tax on vapor products would be at a rate of \$0.05 per milliliter, "or fraction thereof,". I wanted to confirm that the proposed milliliter tax would be proportional, such that a half a milliliter would be subject to a tax of 2.5 cents.

In addition, I wanted to check on the imposition based on volume "contained in the device" as listed by the manufacturer. It is our understanding that there are two types of vaping systems: closed systems, where liquid is in a cartridge and used as a component of a physical product; and open systems, where a jar of liquid is purchased and poured into an existing device. The intent of the motion is to tax both types of liquid, and my concern would be that the "volume contained in the device" may be construed to only apply to closed systems, and not liquid or solution purchased for use in an open system.

I just wanted to check that this draft would impose the \$0.05 per milliliter tax at a proportional rate (not impose a minimum tax of 5 cents for each milliliter interval) and that the draft would impose the tax on all vapor products, not only vapor products purchased as part of a closed system. I would be more comfortable if the vapor products tax were based on volume regardless of whether the liquid or other substance is contained in the device.

Thanks,

-Sean

Sean P. Moran, Program Supervisor
Wisconsin Legislative Fiscal Bureau
One East Main St., Suite 301
Madison, WI 53703

Phone: 608-266-3847

Fax: 608-267-6873

Email: Sean.Moran@legis.wisconsin.gov



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBb0370/P3
EKL:amn&wlj

(104)

LFB:.....Spika - Imposing tobacco products tax on vapor products and
yanking little cigar provisions

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY BILL 56

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 910, line 16: delete the material beginning with that line and ending
3 with page 911, line 16.

4 **2.** Page 911, line 18: delete "little cigars;"

5 **3.** Page 912, line 2: delete lines 2 to 15 and substitute:

6 "139.75 (14) "Vapor product" means a noncombustible product that produces
7 vapor or aerosol for inhalation from the application of a heating element to a liquid
8 or other substance, regardless of whether the liquid or other substance contains
9 nicotine."

1 4. Page 912, line 17: delete the material beginning with that line and ending
2 with page 913, line 18, and substitute:

3 "139.76 (1) An excise tax is imposed upon the sale, offering or exposing for sale,
4 possession with intent to sell or removal for consumption or sale or other disposition
5 for any purpose of tobacco products by any person engaged as a distributor of them
6 at the rate, for tobacco products, not including moist snuff and vapor products, of 71
7 percent of the manufacturer's established list price to distributors without
8 diminution by volume or other discounts on domestic products and, for moist snuff,
9 at the rate of 100 percent of the manufacturer's established list price to distributors
10 without diminution by volume or other discounts on domestic products and, for vapor
11 products, at the rate of \$0.05 per milliliter, or fraction thereof, of the liquid or other
12 substance based on the volume contained in the device as listed by the manufacturer.

13 The tax imposed under this subsection on cigars shall not exceed an amount equal
14 to 50 cents for each cigar. On products imported from another country, not including
15 moist snuff and vapor products, the rate of tax is 71 percent of the amount obtained
16 by adding the manufacturer's list price to the federal tax, duties and transportation
17 costs to the United States. On moist snuff imported from another country, the rate
18 of the tax is 100 percent of the amount obtained by adding the manufacturer's list
19 price to the federal tax, duties, and transportation costs to the United States. The
20 tax attaches at the time the tobacco products are received by the distributor in this
21 state. The tax shall be passed on to the ultimate consumer of the tobacco products.
22 All tobacco products received in this state for sale or distribution within this state,
23 except tobacco products actually sold as provided in sub. (2), shall be subject to such
24 tax.

and at a proportionate rate for any other quantity or fractional part thereof

1 **SECTION 1756m.** 139.77 (1) of the statutes is amended to read:

2 139.77 (1) On or before the 15th day of each month, every distributor with a
3 place of business in this state shall file a return showing the quantity, including
4 milliliters in the case of a vapor product, and taxable price of each tobacco product
5 brought, or caused to be brought, into this state for sale; or made, manufactured or
6 fabricated in this state for sale in this state, during the preceding month. Every
7 distributor outside this state shall file a return showing the quantity, including
8 milliliters in the case of a vapor product, and taxable price of each tobacco product
9 shipped or transported to retailers in this state to be sold by those retailers during
10 the preceding month. At the time that the return is filed, the distributor shall pay
11 the tax.”.

12 **5.** Page 913, line 20: delete the material beginning with that line and ending
13 with page 914, line 15, and substitute:

14 “139.78 (1) A tax is imposed upon the use or storage by consumers of tobacco
15 products in this state at the rate, for tobacco products, not including moist snuff and
16 vapor products, of 71 percent of the cost of the tobacco products and, for moist snuff,
17 at the rate of 100 percent of the manufacturer’s established list price to distributors
18 without diminution by volume or other discounts on domestic products and, for vapor
19 products, at the rate of \$0.05 per milliliter, or fraction thereof, of the liquid or other
20 substance based on the volume contained in the device as listed by the manufacturer.
21 The tax imposed under this subsection on cigars shall not exceed an amount equal
22 to 50 cents for each cigar. The tax does not apply if the tax imposed by s. 139.76 (1)
23 on the tobacco products has been paid or if the tobacco products are exempt from the
24 tobacco products tax under s. 139.76 (2).”.

and at a proportionate rate for any other quantity or fractional part thereof

15. *Impose Tobacco Products Tax on Vapor Products (Paper #350)*. Define a vapor product to mean a non-combustible product that produces vapor or aerosol for inhalation from the application of a heating element to a liquid solution or other substance that is depleted as the product is used. Include vapor products in the definition of tobacco products, and impose an excise tax on vapor products as follows. For cartridges or containers of liquid or other substances that are depleted as the vapor product is used, impose an excise tax at a rate of \$0.05 per milliliter on the volume of the liquid or other substance and a proportionate tax at the like rate on all fractional parts of a milliliter thereof. Impose the tax on vapor products based on the net volume of the solution as listed by the manufacturer in the device as listed by the manufacturer. Require every distributor to file a return showing the quantity and taxable price of milliliters of vapor product brought, shipped, or transported into Wisconsin for sale in the state; or made, manufactured, or fabricated in Wisconsin for sale in the state, during the preceding month. Specify that the provision would take effect October 1, 2019, and estimate increased excise tax revenues of \$2,300,000 in 2019-20 and \$3,200,000 in 2020-21.

16. *Cigarette and Tobacco Product Tax Refunds -- Current Law Reestimate (Paper #352)*. Reestimate the sum sufficient appropriation for cigarette and tobacco product tax refunds under current law at \$32,200,000 GPR in 2019-20 and at \$31,700,000 GPR in 2020-21. Compared to the base, the reestimate would decrease the appropriation by \$1,796,000 GPR in 2019-20 and \$2,296,000 GPR in 2020-21 (Modification in LFB Paper #352).

17. *Limit Real Estate Transfer Fee Exemptions for Transfers Between Related Entities (Paper #353)*. Adopt the Governor's recommendation to clarify that, to be eligible for the exemption regarding transfers between parent and subsidiary, both the subsidiary and the parent must be a corporation. Also stipulate that, regarding the exemption for conveyances made to provide or release security for a debt, the exemption would not apply if the debt or obligation was incurred as the result of a conveyance. Specify that the provision would first apply to conveyances made on the first day of the third month beginning after publication of the bill. Estimate increased state tax revenues of \$538,500 in 2019-20 and \$718,000 in 2020-21 and annually thereafter. In addition, estimate increased county tax revenues of \$135,000 in 2019-20 and \$180,000 in 2020-21 and annually thereafter (Modification in LFB Paper #353).

18. *Oil Pipeline Terminal Tax Distribution (LFB Summary #4, Page 291)*. Adopt the Governor's recommendation to increase the estimated payments from the sum sufficient appropriation by \$886,100 GPR in 2019-20 and \$948,600 GPR in 2020-21 to reflect payments estimated at \$6,386,100 GPR in 2019-20 and \$6,448,600 GPR in 2020-21 to make payments to municipalities where oil pipeline terminal facilities are located.

19. *Transfer Unencumbered Economic Development Funds*. Require the Wisconsin Economic Development Corporation to make a payment of \$30,000,000 for deposit into the state's general fund on or before January 1, 2020.

20. *Interactive Effects*. Increase individual income tax collections by an estimated \$2,000,000 in 2019-20 and \$4,000,000 in 2020-21 to reflect the interactive effects of the proposed changes to tax rates on nonrefundable tax credits.

21. *Expand Auditing Activity (Paper #625)*. Notwithstanding s. 230.27(1), specify that the



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBb0370/P4
EKL:amn&wlj

P5

LFB:.....Spika - Imposing tobacco products tax on vapor products and yanking little cigar provisions

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

**ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 56**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 910, line 16: delete the material beginning with that line and ending
3 with page 911, line 16.

4 **2.** Page 911, line 18: delete "little cigars."

5 **3.** Page 912, line 2: delete lines 2 to 15 and substitute:

6 "139.75 (14) "Vapor product" means a noncombustible product that produces
7 vapor or aerosol for inhalation from the application of a heating element to a liquid
8 or other substance, regardless of whether the liquid or other substance contains
9 nicotine."

that is depleted as the product is used

1 **4.** Page 912, line 17: delete the material beginning with that line and ending
2 with page 913, line 18, and substitute:

3 “139.76 (1) An excise tax is imposed upon the sale, offering or exposing for sale,
4 possession with intent to sell or removal for consumption or sale or other disposition
5 for any purpose of tobacco products by any person engaged as a distributor of them
6 at the rate, for tobacco products, not including moist snuff and vapor products, of 71
7 percent of the manufacturer’s established list price to distributors without
8 diminution by volume or other discounts on domestic products and, for moist snuff,
9 at the rate of 100 percent of the manufacturer’s established list price to distributors
10 without diminution by volume or other discounts on domestic products and, for vapor
11 products, at the rate of \$0.05 per milliliter of the liquid or other substance based on
12 the volume as listed by the manufacturer and at a proportionate rate for any other
13 quantity or fractional part thereof. The tax imposed under this subsection on cigars
14 shall not exceed an amount equal to 50 cents for each cigar. On products imported
15 from another country, not including moist snuff and vapor products, the rate of tax
16 is 71 percent of the amount obtained by adding the manufacturer’s list price to the
17 federal tax, duties and transportation costs to the United States. On moist snuff
18 imported from another country, the rate of the tax is 100 percent of the amount
19 obtained by adding the manufacturer’s list price to the federal tax, duties, and
20 transportation costs to the United States. The tax attaches at the time the tobacco
21 products are received by the distributor in this state. The tax shall be passed on to
22 the ultimate consumer of the tobacco products. All tobacco products received in this
23 state for sale or distribution within this state, except tobacco products actually sold
24 as provided in sub. (2), shall be subject to such tax.

1 **SECTION 1756m.** 139.77 (1) of the statutes is amended to read:

2 139.77 (1) On or before the 15th day of each month, every distributor with a
3 place of business in this state shall file a return showing the quantity, including
4 milliliters in the case of a vapor product, and taxable price of each tobacco product
5 brought, or caused to be brought, into this state for sale; or made, manufactured or
6 fabricated in this state for sale in this state, during the preceding month. Every
7 distributor outside this state shall file a return showing the quantity, including
8 milliliters in the case of a vapor product, and taxable price of each tobacco product
9 shipped or transported to retailers in this state to be sold by those retailers during
10 the preceding month. At the time that the return is filed, the distributor shall pay
11 the tax.”.

12 **5.** Page 913, line 20: delete the material beginning with that line and ending
13 with page 914, line 15, and substitute:

14 “139.78 (1) A tax is imposed upon the use or storage by consumers of tobacco
15 products in this state at the rate, for tobacco products, not including moist snuff and
16 vapor products, of 71 percent of the cost of the tobacco products and, for moist snuff,
17 at the rate of 100 percent of the manufacturer’s established list price to distributors
18 without diminution by volume or other discounts on domestic products and, for vapor
19 products, at the rate of \$0.05 per milliliter of the liquid or other substance based on
20 the volume as listed by the manufacturer and at a proportionate rate for any other
21 quantity or fractional part thereof. The tax imposed under this subsection on cigars
22 shall not exceed an amount equal to 50 cents for each cigar. The tax does not apply
23 if the tax imposed by s. 139.76 (1) on the tobacco products has been paid or if the
24 tobacco products are exempt from the tobacco products tax under s. 139.76 (2).”.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBb0370/P5
EKL:amn&wlj

16

LFB:.....Spika - Imposing tobacco products tax on vapor products and yanking little cigar provisions

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY BILL 56

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 910, line 16: delete the material beginning with that line and ending
3 with page 911, line 16.

4 **2.** Page 911, line 18: delete "little cigars;"

5 **3.** Page 912, line 2: delete lines 2 to 15 and substitute:

6 "139.75 (14) "Vapor product" means a noncombustible product that produces
7 vapor or aerosol for inhalation from the application of a heating element to a liquid
8 or other substance that is depleted as the product is used, regardless of whether the
9 liquid or other substance contains nicotine."

1 **4.** Page 912, line 17: delete the material beginning with that line and ending
2 with page 913, line 18, and substitute:

3 “139.76 (1) An excise tax is imposed upon the sale, offering or exposing for sale,
4 possession with intent to sell or removal for consumption or sale or other disposition
5 for any purpose of tobacco products by any person engaged as a distributor of them
6 at the rate, for tobacco products, not including moist snuff and vapor products, of 71
7 percent of the manufacturer’s established list price to distributors without
8 diminution by volume or other discounts on domestic products and, for moist snuff,
9 at the rate of 100 percent of the manufacturer’s established list price to distributors
10 without diminution by volume or other discounts on domestic products and, for vapor
11 products, at the rate of \$0.05 per milliliter of the liquid or other substance based on
12 the volume as listed by the manufacturer and at a proportionate rate for any other
13 quantity or fractional part thereof. The tax imposed under this subsection on cigars
14 shall not exceed an amount equal to 50 cents for each cigar. On products imported
15 from another country, not including moist snuff and vapor products, the rate of tax
16 is 71 percent of the amount obtained by adding the manufacturer’s list price to the
17 federal tax, duties and transportation costs to the United States. On moist snuff
18 imported from another country, the rate of the tax is 100 percent of the amount
19 obtained by adding the manufacturer’s list price to the federal tax, duties, and
20 transportation costs to the United States. The tax attaches at the time the tobacco
21 products are received by the distributor in this state. The tax shall be passed on to
22 the ultimate consumer of the tobacco products. All tobacco products received in this
23 state for sale or distribution within this state, except tobacco products actually sold
24 as provided in sub. (2), shall be subject to such tax.

1 **SECTION 1756m.** 139.77 (1) of the statutes is amended to read:

2 139.77 (1) On or before the 15th day of each month, every distributor with a
3 place of business in this state shall file a return showing the quantity, including
4 milliliters in the case of a vapor product, and taxable price of each tobacco product
5 brought, or caused to be brought, into this state for sale; or made, manufactured or
6 fabricated in this state for sale in this state, during the preceding month. Every
7 distributor outside this state shall file a return showing the quantity, including
8 milliliters in the case of a vapor product, and taxable price of each tobacco product
9 shipped or transported to retailers in this state to be sold by those retailers during
10 the preceding month. At the time that the return is filed, the distributor shall pay
11 the tax.”.

12 **5.** Page 913, line 20: delete the material beginning with that line and ending
13 with page 914, line 15, and substitute:

14 “139.78 (1) A tax is imposed upon the use or storage by consumers of tobacco
15 products in this state at the rate, for tobacco products, not including moist snuff and
16 vapor products, of 71 percent of the cost of the tobacco products and, for moist snuff,
17 at the rate of 100 percent of the manufacturer’s established list price to distributors
18 without diminution by volume or other discounts on domestic products and, for vapor
19 products, at the rate of \$0.05 per milliliter of the liquid or other substance based on
20 the volume as listed by the manufacturer and at a proportionate rate for any other
21 quantity or fractional part thereof. The tax imposed under this subsection on cigars
22 shall not exceed an amount equal to 50 cents for each cigar. The tax does not apply
23 if the tax imposed by s. 139.76 (1) on the tobacco products has been paid or if the
24 tobacco products are exempt from the tobacco products tax under s. 139.76 (2).”.

Lunder, Erika

From: Moran, Sean
Sent: Sunday, June 16, 2019 12:17 PM
To: Lunder, Erika
Cc: Spika, Dan
Subject: FW: Draft review: LRB b0370/P5
Attachments: 19b0370/P5.pdf

Hi Erika,

I was looking over the language of the motion and this draft again, and I think the effective date needs to be changed to "October 1, 2019" rather than "the first day of the third month beginning after publication of the bill."

Motion #150 states that the effective date is October 1, 2019, and I think the bill draft needs to reflect that date.

Sorry for requesting a redraft.

-Sean

From: LRB.Legal <lrblegal@legis.wisconsin.gov>
Sent: Friday, June 14, 2019 4:55 PM
To: Moran, Sean <Sean.Moran@legis.wisconsin.gov>
Subject: Draft review: LRB b0370/P5

Draft Requester: Legislative Fiscal Bureau

Following is the PDF version of draft LRB b0370/P5.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBb0370/P6
EKL:amn&wlj

LFB:.....Spika - Imposing tobacco products tax on vapor products and
yanking little cigar provisions

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

**ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 56**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 910, line 16: delete the material beginning with that line and ending
3 with page 911, line 16.

4 **2.** Page 911, line 18: delete "little cigars;"

5 **3.** Page 912, line 2: delete lines 2 to 15 and substitute:

6 "139.75 (14) "Vapor product" means a noncombustible product that produces
7 vapor or aerosol for inhalation from the application of a heating element to a liquid
8 or other substance that is depleted as the product is used, regardless of whether the
9 liquid or other substance contains nicotine."

1 **4.** Page 912, line 17: delete the material beginning with that line and ending
2 with page 913, line 18, and substitute:

3 “139.76 (1) An excise tax is imposed upon the sale, offering or exposing for sale,
4 possession with intent to sell or removal for consumption or sale or other disposition
5 for any purpose of tobacco products by any person engaged as a distributor of them
6 at the rate, for tobacco products, not including moist snuff and vapor products, of 71
7 percent of the manufacturer’s established list price to distributors without
8 diminution by volume or other discounts on domestic products and, for moist snuff,
9 at the rate of 100 percent of the manufacturer’s established list price to distributors
10 without diminution by volume or other discounts on domestic products and, for vapor
11 products, at the rate of \$0.05 per milliliter of the liquid or other substance based on
12 the volume as listed by the manufacturer and at a proportionate rate for any other
13 quantity or fractional part thereof. The tax imposed under this subsection on cigars
14 shall not exceed an amount equal to 50 cents for each cigar. On products imported
15 from another country, not including moist snuff and vapor products, the rate of tax
16 is 71 percent of the amount obtained by adding the manufacturer’s list price to the
17 federal tax, duties and transportation costs to the United States. On moist snuff
18 imported from another country, the rate of the tax is 100 percent of the amount
19 obtained by adding the manufacturer’s list price to the federal tax, duties, and
20 transportation costs to the United States. The tax attaches at the time the tobacco
21 products are received by the distributor in this state. The tax shall be passed on to
22 the ultimate consumer of the tobacco products. All tobacco products received in this
23 state for sale or distribution within this state, except tobacco products actually sold
24 as provided in sub. (2), shall be subject to such tax.

1 **SECTION 1756m.** 139.77 (1) of the statutes is amended to read:

2 139.77 (1) On or before the 15th day of each month, every distributor with a
3 place of business in this state shall file a return showing the quantity, including
4 milliliters in the case of a vapor product, and taxable price of each tobacco product
5 brought, or caused to be brought, into this state for sale; or made, manufactured or
6 fabricated in this state for sale in this state, during the preceding month. Every
7 distributor outside this state shall file a return showing the quantity, including
8 milliliters in the case of a vapor product, and taxable price of each tobacco product
9 shipped or transported to retailers in this state to be sold by those retailers during
10 the preceding month. At the time that the return is filed, the distributor shall pay
11 the tax.”.

12 **5.** Page 913, line 20: delete the material beginning with that line and ending
13 with page 914, line 15, and substitute:

14 “139.78 (1) A tax is imposed upon the use or storage by consumers of tobacco
15 products in this state at the rate, for tobacco products, not including moist snuff and
16 vapor products, of 71 percent of the cost of the tobacco products and, for moist snuff,
17 at the rate of 100 percent of the manufacturer’s established list price to distributors
18 without diminution by volume or other discounts on domestic products and, for vapor
19 products, at the rate of \$0.05 per milliliter of the liquid or other substance based on
20 the volume as listed by the manufacturer and at a proportionate rate for any other
21 quantity or fractional part thereof. The tax imposed under this subsection on cigars
22 shall not exceed an amount equal to 50 cents for each cigar. The tax does not apply
23 if the tax imposed by s. 139.76 (1) on the tobacco products has been paid or if the
24 tobacco products are exempt from the tobacco products tax under s. 139.76 (2).”.

1 **6.** Page 1118, line 10: delete lines 10 to 18.

2 **7.** Page 1144, line 18: delete lines 18 to 22 and substitute:

3 “(2i) TAX ON VAPOR PRODUCTS. The treatment of ss. 139.75 (12) and (14), 139.76
4 (1), 139.77 (1), and 139.78 (1) takes effect on October 1, 2019.”.

5 **(END)**