



1999 ASSEMBLY BILL 898

March 20, 2000 - Introduced by Representative M. LEHMAN, cosponsored by Senator ROBSON. Referred to Committee on Ways and Means.

1 **AN ACT to amend** 139.30 (7) and 139.321 (1) (intro.); and **to create** 139.31 (4),
2 139.34 (3) and 139.39 (4m) of the statutes; **relating to:** the sale of cigarettes
3 that are not intended for sale in the United States and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, tax stamps must be affixed to each package of cigarettes that is sold in this state. Under current law, a person who possesses over 400 cigarettes without tax stamps but not more than 6,000 cigarettes without tax stamps is subject to a fine of not more than \$200 or imprisonment for not more than six months or both. A person who possesses over 6,000 cigarettes without tax stamps but not more than 36,000 cigarettes without tax stamps is subject to a fine of not more than \$1,000 or imprisonment for not more than one year or both. A person who possesses over 36,000 cigarettes without tax stamps is subject to a fine of not more than \$10,000 or imprisonment for not more than two years or both.

This bill prohibits affixing tax stamps to cigarettes that are intended for sale outside the United States; to cigarettes that are labeled as provided under federal law as not for consumption inside the United States; and to cigarette packages that are modified by a person who is not the cigarette manufacturer or an authorized agent of the cigarette manufacturer. Under the bill, a person who possesses, sells or distributes these types of cigarettes is subject to the same penalties that are applicable to the possession of cigarettes without tax stamps.

The bill allows any person to bring a suit for damages or injunctive relief against a person who affixes tax stamps to cigarettes that are intended for sale outside the United States.

ASSEMBLY BILL 898

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

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

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

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

5 **SECTION 2.** 139.31 (4) of the statutes is created to read:

6 139.31 (4) No person may affix stamps, as described under s. 139.32, to any of
7 the following:

8 (a) A cigarette package that is labeled as tax exempt under section 5704 (b) of
9 the Internal Revenue Code or as tax exempt under 27 CFR 290.185.

10 (b) A cigarette package that is labeled as provided under federal law as not
11 intended for consumption in the United States.

12 (bm) A cigarette package that is not labeled as provided under federal law.

13 (c) A cigarette package that is modified by a person who is not the cigarette
14 manufacturer.

15 (d) Any cigarettes that are imported into the United States after December 31,
16 1999, in violation of federal law.

17 **SECTION 3.** 139.321 (1) (intro.) of the statutes is amended to read:

18 139.321 (1) (intro.) It is unlawful for any person to possess in excess of 400
19 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32
20 (1) and 139.33 (4). It is unlawful for any person to possess in excess of 400 cigarettes
21 as described under s. 139.31 (4); or to sell or distribute cigarettes as described under

ASSEMBLY BILL 898

1 s. 139.31 (4); other than cigarettes that may be brought into the United States for
2 personal use and cigarettes that are sold or intended for sale by a duty-free
3 enterprise, as provided under federal law.

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

5 139.34 (3) No distributor may affix stamps to cigarette packages, as provided
6 in s. 139.32, unless the distributor certifies to the department, in a manner
7 prescribed by the department, that the distributor purchases cigarettes directly from
8 a manufacturer.

9 **SECTION 5.** 139.39 (4m) of the statutes is created to read:

10 139.39 (4m) Any person may bring an action for a violation of s. 139.31 (4) for
11 actual damages sustained as a result of the violation and for injunctive relief.
12 Notwithstanding s. 814.04 (1), the court may order the violator to pay the prevailing
13 party's costs and reasonable attorney fees. The trier of fact may increase recovery
14 to an amount not exceeding 3 times the actual damages sustained as a result of the
15 violation, if the trier of fact determines that the violation is wilful.

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(END)