

CHAPTER 67

AN ACT to repeal 139.50 and 139.51; to amend 20.555 (43) and 20.703 (41) (a); to repeal and recreate 134.65; and to create 139.30 to 139.44 of the statutes, relating to the cigarette tax law and local licensing provisions.

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

SECTION 1. 20.555 (43) of the statutes is amended to read:

20.555 (43) Taxes collected and paid into the state treasury in excess of lawful taxation, when claims therefor have been established as provided in ss. 71.10 (10) and (11), 71.11 (19), 71.12 (2) and (4), 72.08, 74.73, 76.13 (3), 76.19, 76.20, 76.38, 76.39, 78.19, 78.20, 78.75, 139.12, ~~139.50 (17)~~ and ~~(26)~~ 139.36, 139.39 (4) and 168.12 (2), (3) and (4).

SECTION 2. 20.703 (41) (a) of the statutes is amended to read:

20.703 (41) (a) All moneys collected under ss. ~~139.50 (2) (b)~~ and ~~139.51 (2) (b)~~ 139.31 (2) and 139.33 (2) shall be paid within one week after receipt into the general fund, and are appropriated therefrom to the state recreation committee for purposes specified in s. 15.60 and as provided in ss. 20.280 (81), (82), (83), (84), (85), 20.420 (86), 20.670 (48), 20.705 (44) and (45) and 20.750 (41).

SECTION 3. 134.65 of the statutes is repealed and recreated to read:

134.65 CIGARETTE RETAILER LICENSE. (1) No person shall in any manner, or upon any pretense, or by any device, directly or indirectly sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any cigarettes to any person not holding a license as herein provided or a permit under ss. 139.30 to 139.41 without first obtaining a license from the clerk of the city, village or town wherein such privilege is sought to be exercised.

(2) Upon filing of a proper written application such licenses shall be issued on July 1 of each year or when applied for and continue in force until the following June 30 unless sooner revoked. The fee for such license shall be \$5 which shall be paid to the city, village or town treasurer before the license is issued.

(3) Each such license shall name the licensee and specifically describe the premises where such business is to be conducted. Such licenses shall not be transferable from one person to another nor from one premises to another.

(4) Every licensed retailer shall keep complete and accurate records of all purchases and receipts of cigarettes. Such records shall be preserved on the licensed premises for 2 years in such a manner as to insure permanency and accessibility for inspection and shall be subject to inspection at all reasonable hours by authorized state and local law enforcement officials.

(5) Any person violating this section shall be fined not more than \$100 nor less than \$25 for the first offense and not more than \$200 nor less than \$25 for the 2nd or subsequent offense. If upon such 2nd or subsequent violation, the person so violating this section was personally guilty of a failure to exercise due care to prevent violation thereof, he shall be fined not more than \$300 nor less than \$25 or imprisoned not exceeding 60 days or both. Conviction shall immediately terminate the license of the

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

SECTION 4. 139.30 to 139.44 of the statutes are created to read:

139.30 CIGARETTE TAX; DEFINITIONS. In ss. 139.30 to 139.44, unless the context otherwise requires:

(1) "Cigarette" means any roll of tobacco wrapped in paper or any substance other than tobacco.

(2) "Department" means the state department of taxation.

(3) "Commissioner" means the commissioner of taxation.

(4) "Sell" or "sale" includes the transfer, gift, barter, trade or exchange or any shift, device, scheme or transaction whereby cigarettes may be obtained, but does not include the solicitation of orders for or the sale for future delivery of cigarettes.

(5) "Vending machine" is any mechanical device which automatically dispenses cigarettes upon the deposit therein of specified coins in payment for such cigarettes.

(6) "Manufacturer" means any person who manufactures cigarettes for the purpose of sale.

(7) "Distributor" means any person who acquires unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages or other containers, stores them and sells them to other permittees or to retailers for resale. He may also acquire stamped cigarettes from another permittee for such sales.

(8) "Jobber" means any person who acquires stamped cigarettes from manufacturers or distributors, stores them and sells them to retailers for resale.

(9) "Vending machine operator" means a person who acquires stamped cigarettes from manufacturers or permittees, stores them, and sells them through the medium of vending machines which he owns, operates or services and which are located on premises owned or under the control of other persons.

(10) "Multiple retailer" means any person who acquires stamped cigarettes from manufacturers or permittees, stores them and sells them to consumers through 10 or more retail outlets which he owns and operates within or without this state.

(11) "Retailer" means any person who sells, exposes for sale or possesses with intent to sell to consumers any cigarettes.

(12) "Warehouse" means the premises where any person is lawfully engaged in the business of storing cigarettes for profit but shall not include the premises where common carriers store cigarettes which are received by them as common carriers and are in transit in interstate commerce.

(13) "Stamp" means the authorized indicia of cigarette tax payment including water transfer stamps, heat applied stamps and meter impressions. In provisions relating to the sale or transfer of stamps the term also includes meter settings.

139.31 TAX IMPOSED; EXCEPTIONS. (1) An occupational tax is imposed on the sale, offering or exposing for sale, possession with intent to sell or removal for consumption or sale of cigarettes or other disposition for any purpose whatsoever at the following rates:

(a) On cigarettes weighing not more than 3 pounds per thousand, 4 mills on each cigarette.

(b) On cigarettes weighing more than 3 pounds per thousand, 8 mills on each cigarette.

(2) One-eighth of all taxes imposed by sub. (1) shall be paid into the general fund and appropriated to the state recreation committee under s. 20.703 (41) (a).

(3) Cigarettes sold to post exchanges of the armed forces of the United States and to federally or state operated veterans hospitals in this state and cigarettes sold to an interstate carrier of passengers for hire to be resold to bona fide passengers actually being transported and cigarettes sold for shipment outside this state in interstate commerce are not subject to the tax.

139.32 PAYMENT OF TAXES. (1) The tax imposed by s. 139.31 shall be paid by the purchase of stamps from the commissioner. To evidence the payment, stamps of the proper denomination shall be affixed to each package or other container in which cigarettes are packed, prior to the first sale within this state. The tax shall be paid only once on each package or container.

(2) The commissioner shall prepare and have available for sale stamps of such denominations and quantities as he deems necessary for the payment of the taxes imposed by s. 139.31. The stamps shall be of such designs and materials as to make the removal and reuse thereof impossible after being once affixed.

(3) Stamps shall be affixed in the manner prescribed by the commissioner.

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

(5) Manufacturers and distributors having a permit from the commissioner, may purchase stamps at a discount of 2.6 per cent. No part of this discount shall be charged against that part of the taxes imposed and appropriated to the state recreation committee under s. 20.703 (41) (a).

(6) Manufacturers and distributors having a permit from the commissioner may purchase stamps on credit upon filing a payment guarantee bond in the amount and under the conditions prescribed by the commissioner by rule.

(7) If the tax imposed by s. 139.31 is not paid when due, a penalty of 2 percent thereof shall immediately accrue and in addition thereto interest on the tax and penalty shall accrue at the rate of one per cent per month or a fraction of a month from the date the tax became due.

(8) It is unlawful for any person except a manufacturer or a distributor having a permit from the commissioner, to receive or possess cigarettes unless the required stamps are properly affixed to the package, but any permittee may, upon obtaining department approval, acquire and have possession of unstamped exempt cigarettes for sales under s. 139.31 (3) if he maintains a separate inventory thereof and records pertaining thereto in such manner and form as the department prescribes by rule.

139.33 USE TAX. (1) A use tax is imposed and levied upon the use of cigarettes in this state by any person for any purpose if the occupational tax imposed by s. 139.31 has not been paid on such cigarettes. Such tax is levied and shall be collected at the same rates as provided for in s. 139.31. Such tax shall be imposed but once with respect to the same cigarettes whether the possession continues with the person paying the tax or is transferred to another. The tax imposed by this section is not applicable to cigarettes subject to the occupational tax imposed by s. 139.31 nor to cigarettes exempt from that tax under s. 139.31 (3).

(2) One-eighth of all taxes imposed by sub. (1) shall be paid into the general fund and appropriated to the state recreational committee under s. 20.703 (41) (a).

(3) Any person who imports into this state more than 2 cartons of cigarettes on which the occupational tax imposed by s. 139.31 has not been paid or the container of which does not bear proper stamps shall, within 3 days, file with the department a declaration of such cigarettes and shall remit therewith the amount of the tax on such cigarettes as herein imposed. The commissioner shall then issue a receipt for such taxes so paid identifying the taxpayer and the cigarettes.

(4) Sections 139.30 to 139.44 relating to collection and enforcement of the tax shall apply with like effect to the occupational tax imposed by s. 139.31 and the use tax imposed by this section.

139.34 PERMITS REQUIRED. (1) No person shall manufacture cigarettes in this state or sell cigarettes in this state as a distributor, jobber, vending machine operator or multiple retailer and no person shall operate a warehouse in this state for the storage of cigarettes for another person without first obtaining a permit from the commissioner. The application for a permit and the permit shall be in the form prescribed by the commissioner.

(2) Each permit shall expire on June 30 of each year.

(3) The annual fee for each such permit shall be \$50.

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

(5) The ownership and operation of a retail outlet shall not preclude a person from receiving a permit as a distributor or jobber. At least 75 per cent of his sales of cigarettes shall be at wholesale to other retailers or other permittees. Each such permittee shall maintain and operate a truck delivery service to retailers.

(6) A vending machine operator or a multiple retailer may acquire unstamped cigarettes from the manufacturers thereof and affix the stamps to packages or other containers only if he also holds a permit as a distributor.

(7) The commissioner may require by rule that stamps affixed to cigarette packages be identified by a permit or code number assigned to the person affixing them.

(8) The holder of a warehouse permit is entitled to store cigarettes on the premises described in the permit. The warehouse permit shall not authorize the holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a manufacturer or distributor may be delivered only to a person holding a permit as a manufacturer or distributor.

(9) The applicant for a permit, if a nonresident or foreign corporation, shall file proof that he has appointed the secretary of state his agent for the service of process on any matter arising under ss. 139.30 to 139.44. A foreign corporation without a place of business in this state need not obtain a certificate of authority under s. 180.801.

(10) Every vending machine operator shall in his application for a permit list each county in which he operates such machines and state the number of such machines he is then operating in each such county.

139.35 STAMPS. (1) **TRANSFERS.** No person may give, sell or lend any stamps to another and no person may accept, purchase or borrow any

stamps from another. All sales and transfers of stamps may be made only by the commissioner to permit holding manufacturers and distributors.

(2) RECORDS. The commissioner shall keep a record of the sale of all stamps including the names of the purchasers and the date of sale.

139.36 REFUNDS. The commissioner shall refund to any purchaser the money paid for any stamps returned unfit for use or otherwise unused or which have been affixed to packages which are unsalable. He shall prescribe by rule the proof required to obtain such refund. The permittee shall pay the expenses of determining the amount of such refund. Refunds of taxes collected and paid into the general fund and appropriated to the state recreation committee under s. 20.703 (41) shall be charged against that appropriation.

139.37 SALESMEN. (1) No person shall sell or take orders for cigarettes for resale in this state for any manufacturer or permittee without first being registered with the department by his employer. No manufacturer or permittee shall authorize any person to sell or take orders for cigarettes in this state without first registering such person with the department as a salesman. The fee for such registration is \$2. Each application for registration shall disclose the name and address of the employer and such registration shall remain effective only while the registrant represents such named employer. If such salesman is thereafter employed by another manufacturer or permittee he shall be registered by his new employer. Each manufacturer and permittee shall notify the department within 10 days after the resignation or dismissal of any such registered salesman.

(2) No representative of any manufacturer shall sell more than 3 cartons of any one kind of cigarettes to any retailer at one time.

139.38 RECORDS, RETURNS. (1) Every manufacturer located out of the state shall keep records of all sales of cigarettes shipped into this state. Every manufacturer located in the state shall keep records of production, sales and withdrawals of cigarettes. Every distributor shall keep records of purchases and sales of cigarettes. Every manufacturer and distributor holding a permit from the commissioner with the right to purchase and apply stamps shall also keep records of purchases and disposition of stamps. Every jobber, multiple retailer and vending machine operator shall keep records of all purchases and disposition of cigarettes. Every warehouse operator shall keep records of receipts and withdrawals of cigarettes. All such records shall be accurate and complete and be kept in a manner prescribed by the commissioner. These records shall be preserved on the premises described in the permit or license for 2 years in such a manner as to insure permanency and accessibility for inspection at reasonable hours by authorized personnel of the department.

(2) Every permittee shall on or before the 15th day of each calendar month make a verified report to the commissioner of all cigarettes purchased, sold, received, warehoused or withdrawn during the preceding calendar month.

(3) The commissioner shall prescribe reasonable and uniform methods of keeping records and making reports. He shall prescribe and furnish the necessary report forms.

(4) If the commissioner finds that the records of any permittee are not kept in the prescribed form or are in such condition that an unusual amount of time is required to determine therefrom the amount of tax due, he shall give notice of such fact to such permittee and, in such notice, require that the records be revised and kept in the prescribed form. If such permittee fails to comply within 30 days he shall pay the expenses reasonably attributable to a proper examination and tax determination at the

rate of \$30 per day of each auditor. The commissioner shall send a bill for such expenses and the permittee shall pay the amount of such bill within 10 days.

(5) If any permittee fails to file a report when due he shall be required to pay a late filing fee of \$10. A report shall be considered filed in time if it is mailed in a properly addressed envelope with first class postage duly prepaid, which envelope is officially postmarked on the date due, and if the report is actually received by the commissioner within 5 days of the due date.

139.39 ADMINISTRATION AND ENFORCEMENT. (1) The commissioner shall administer and enforce ss. 139.30 to 139.44 and enforce s. 134.65. He shall adopt rules necessary to do so.

(2) The commissioner or authorized personnel of the department, and any sheriff, policeman, marshal or constable, within their respective jurisdictions, may at all reasonable hours enter the premises of any permittee or retailer and examine the books and records to determine whether the tax imposed by s. 139.31 has been fully paid and may enter and inspect any premises where cigarettes are made, sold or stored to determine whether ss. 139.30 to 139.44 are being complied with.

(3) The commissioner may suspend or revoke the permit of any permittee who violates ss. 100.30 or 139.30 to 139.44 or any rules adopted by the commissioner.

(4) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied in s. 139.31. The aggrieved taxpayer shall pay the tax when due and, if paid under protest, may at any time within 90 days from the date of payment, sue the state to recover the tax paid. If it is finally determined that any part of the tax was wrongfully collected, the department of administration shall issue a warrant on the state treasurer for the amount wrongfully collected, and the treasurer shall pay the same out of the general fund. A separate suit need not be filed for each separate payment made by any taxpayer, but a recovery may be had in one suit for as many payments as may have been made.

(5) Any person may be compelled to testify in regard to any violation of ss. 134.65 and 139.30 to 139.44 of which he may have knowledge, even though such testimony may tend to incriminate him, upon being granted immunity from prosecution in connection therewith, and upon the giving of such testimony, he shall not be prosecuted because of the violation relative to which he has testified.

139.40 SEIZURE AND CONFISCATION. (1) All cigarettes owned, possessed, kept, stored, made, sold, distributed or transported in violation of this chapter, and all personal property used in connection therewith is unlawful property and subject to seizure by the commissioner or any peace officer.

(2) If cigarettes which do not bear the proper tax stamps or on which the tax has not been paid are so seized they may be sold to qualified buyers by the commissioner, without notice, and after deducting the costs of the sale and the keeping of the property, the proceeds of the sale shall be paid into the state treasury. When the commissioner finds that such cigarettes may deteriorate or become unfit for sale or that such sale would otherwise be impractical he may order them destroyed or give them to a charitable or penal institution for free distribution to patients or inmates.

(3) If cigarettes on which the tax has been paid and which bear the proper tax stamps are seized they shall be returned to the true owner if ownership can be ascertained and such owner or his agent is not involved in the violation resulting in such seizure. If such ownership cannot be ascertained or if the owner or his agent was guilty of a violation of any of the provisions of ss. 139.30 to 139.44, which resulted in the seizure of such

cigarettes, they may be sold or otherwise disposed of as provided in sub. (2).

(4) If personal property other than cigarettes is so seized the commissioner shall advertise the same for sale in the official state paper once a week for 2 weeks. If no claimant, either of lien or ownership has notified the commissioner within 10 days after the last publication of such advertisement, the property shall be sold. If such sale is not practical the property may be destroyed. If a claimant of a lien or ownership notifies the commissioner within the prescribed time, the commissioner may apply to a court of record in the county where the property was seized for an order directing disposition of said property or the proceeds thereof. If a sale of such seized property is ordered, all liens, if any, may be transferred from the property to the proceeds of such sale. Neither the property seized nor the proceeds from the sale thereof shall be turned over to any claimant of lien or ownership unless such claimant first establishes that the property was not used in connection with any violation of ss. 139.30 to 139.44 or that, if so used, it was done without his knowledge or consent and without his knowledge of such facts as should have given him reason to believe it would be put to such use. If no claim of lien or ownership is so established the property may be ordered destroyed. In case of sale, the net proceeds after deducting costs, expenses and established claims shall be paid into the state treasury.

139.41 PLACE TO PLACE DELIVERY. No person shall peddle any cigarettes from house to house, where the sale is consummated and delivery made concurrently.

139.42 NUISANCE. Any building or place of any kind where cigarettes are sold, possessed, stored or manufactured without a lawful permit in violation of ss. 139.30 to 139.41 is declared a public nuisance and may be closed and abated as such.

139.43 STATE-WIDE CONCERN. This section shall be construed as an enactment of state-wide concern for the purpose of providing a uniform regulation of the sale of tobacco products.

139.44 PENALTIES. (1) Any person who falsely or fraudulently makes, alters or counterfeits any stamp or procures or causes the same to be done, or who knowingly utters, publishes, passes or tenders as true any false, altered or counterfeit stamp, or who affixes the same to any package or container of cigarettes, or who possesses with the intent to sell any cigarettes in containers to which false, altered or counterfeit stamps have been affixed shall be imprisoned for not less than one year nor more than 10 years.

(2) Any permittee who makes or verifies any false or fraudulent report or who attempts to evade the tax imposed by s. 139.31, or who aids in or abets the evasion or attempted evasion of that tax shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned not less than 90 days nor more than one year or both.

(3) Any permittee who fails to keep the records required by ss. 139.30 to 139.42 shall be fined not less than \$100 nor more than \$500 or imprisoned not more than 6 months or both.

(4) Any person who refuses to permit the examination or inspection authorized in s. 139.38 (2) shall be fined not more than \$500 or imprisoned not more than 90 days or both. Such refusal shall be cause for immediate suspension or revocation of permit by the commissioner.

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

(6) Any person who violates any of the rules of the department shall be fined not less than \$100 nor more than \$500 or be imprisoned not more than 6 months or both.

(7) In addition to the penalties imposed for violation of ss. 139.30 to 139.41 or any of the rules of the department, the permit of any person convicted shall be automatically revoked and he shall not be granted another permit for a period of 2 years following such revocation.

SECTION 5. 139.50 and 139.51 of the statutes are repealed.

SECTION 6. This act shall take effect on July 1, 1965.

SECTION 7. This bill is declared to be an emergency appropriation bill, recommended by the joint committee on finance, in accordance with the requirements of section 16.47 (2) of the statutes.

Approved May 20, 1965.
