

CHAPTER 139

BEVERAGE, CIGARETTE AND OLEOMARGARINE TAXES

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SUBCHAPTER I

BEVERAGE TAXES

139.01 Definitions. In ss. 139.01 to 139.25 unless the context or the subject matter otherwise requires:

(1) "Brewer" means any person who manufactures fermented malt beverages for sale or transportation.

(2) "Bottler" means any person other than a brewer who places fermented malt beverages in bottles or similar containers.

(3) "License," and "fermented malt beverages" have the same meaning as in s. 66.054, and "licensed premises" are premises described in licenses issued by cities, villages or towns under the authority of said section.

(4) "Intoxicating liquors" includes all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half of one per cent or more of alcohol by volume, which are fit for use for beverage purposes, but does not include "fermented malt beverages" as defined in s. 66.054.

(5) A "manufacturer" is a person, other than a rectifier, who manufactures or distills intoxicating liquors, including selling at wholesale such intoxicating liquors manufactured or distilled by the licensee at the premises designated in the license.

(6) A "rectifier" is a person who rectifies, purifies or refines distilled spirits or wines by any

process other than by original and continuous distillation from mash, wort or wash, through continuous closed vessels or pipes, until the manufacture thereof is complete, or who has in his possession any still or leach tub or keeps any other apparatus for the purpose of refining in any manner distilled spirits or the other liquors, or who after rectifying and purifying distilled spirits, by mixing such spirits or liquors with any materials, manufactures any spurious, imitation or compound liquors for sale, and any person who, without rectifying, purifying or refining distilled spirits, by mixing such spirits with any materials, manufactures any spurious, imitation or compound liquors for sale under the name of "whiskey," "brandy," "gin," "rum," "spirits," "cordials" or any other name, and who is also a distiller or is under substantially the same management or control as a distiller. A rectifier may sell at wholesale intoxicating liquors rectified by him without any other license than that of a rectifier.

(7) "Wholesaler" as applied to a seller of fermented malt beverages has the same meaning as in s. 66.054, and as applied to a seller of intoxicating liquors is any person other than a manufacturer or rectifier who sells such liquors to licensed retailers or other permittees for the purpose of resale.

(8) "Retailer" as applied to a seller of fermented malt beverages has the same meaning as in s. 66.054, and as applied to a seller of intoxicating liquors is any person who sells such liquors to consumers.

(9) "Sell" or "sold" or "sale" or "selling" includes the transfer, gift, barter, trade or exchange of intoxicating liquor or fermented malt beverages; offering or exposing intoxicating liquor or fermented malt beverages for transfer, gift, barter, trade or exchange; possession of intoxicating liquor or fermented malt beverages with intent to transfer, give, barter, trade or exchange the same; or any shift, device, scheme or transaction whatever whereby intoxicating liquor or fermented malt beverages may be obtained; but excludes the solicitation of orders for, or the sale for future delivery.

(10) "Secretary" means the secretary of revenue.

139.02 Fermented malt beverages tax.

(1) TAX IMPOSED; RATE; LIMITATION. An occupational tax is imposed upon the removal for consumption or sale or selling of fermented malt beverages on or before October 31, 1969, at the rate of \$1 per barrel of 31 gallons and at a proportionate rate for any other quantity or fractional parts thereof and on and after November 1, 1969, at the rate of \$2 per barrel of 31 gallons and at a proportionate rate for any other quantity or fractional parts thereof. The November 1, 1969, rate increase shall not apply to floor stocks of fermented malt beverages at the close of business on October 31, 1969, of retailers and wholesalers other than brewers. Not more than one occupational tax shall be required to be

paid on any one container of fermented malt beverages.

(2) TAX CREDIT TO ELIGIBLE PRODUCERS.

(a) Each eligible producer shall receive a credit in the amount of 50% of the tax paid or payable by the producer under this section in any given calendar year on the first 50,000 barrels taxed under this section in that year.

(b) In this section "eligible producer" means any producer of fermented malt beverages, whether or not located in this state, producing less than 300,000 barrels of fermented malt beverages in the calendar year for which credit under par. (a) is claimed. In determining the number of barrels, all brands or labels of a producer shall be combined. All facilities for the production of fermented malt beverages owned or controlled by the same person shall be deemed a single producer.

History: 1973 c 256

139.03 Liquor tax. An occupational tax is imposed upon the selling of intoxicating liquor as follows:

(2m) The rate of such tax, effective November 5, 1971, and thereafter, is \$2.60 per wine gallon on intoxicating liquor, except wine, containing 0.5% or more of alcohol by volume, and is computed in accordance with the following table: [See Figure 139.03 (2m) following]

Figure 139.03 (2m):

Quantity in Wine Gallons	Quantity in Ounces	Tax when alcoholic content is ½% or more by volume
Up to and including 1/64 of a gallon	Up to and including 2	\$.040625
More than 1/64 of a gallon to and including 1/32 of a gallon	More than 2 to and including 4	.08125
More than 1/32 gallon to and including 1/16 of a gallon	More than 4 to and including 8	.1625
More than 1/16 gallon and including 1/10 gallon	More than 8 to and including 12.8	.26
More than 1/10 gallon to and including 1 pint	More than 12.8 to and including 16	.325
More than 1 pint to and including 1/5 gallon	More than 16 to and including 25.6	.52
More than 1/5 gallon to and including 1 quart	More than 25.6 to and including 32	.65
More than 1 quart to and including 1/2 gallon	More than 32 to and including 64	1.30
More than 1/2 gallon to and including 1 gallon	More than 64 to and including 128	2.60

(2n) The rate of such tax, effective November 5, 1971, and thereafter, is 19.5 cents per wine gallon on wine containing 14% or less of alcohol by volume, and 39 cents per wine gallon on wine containing more than 14% of alcohol by volume, but not in excess of 21% of alcohol by volume.

(3) Not more than one occupational tax shall be required to be paid on any one container of intoxicating liquor.

(5) (a) No person who enters this state from another state may have in his possession and bring into the state any intoxicating liquor or wine unless the state tax thereon is paid; but the foregoing shall not apply to intoxicating liquor or wine consigned to any person having a permit from the secretary to engage in the sale of such intoxicating liquor or wine.

(b) Any person, except a minor, who leaves a foreign country, after spending at least 48 hours in such foreign country, with the purpose of entering this state, may have in his possession and bring into the state intoxicating liquor or wine in sealed original containers in amounts not to exceed, in the aggregate, one gallon (128 ounces) without payment of the tax herein imposed. The one gallon of tax-free intoxicating liquor and wines may not be sent, shipped or carried into the state other than in the immediate possession of the person as qualified by this subsection.

(c) Any person who violates any provision of pars. (a) and (b) by having in his possession more than the amount specified may be fined not less than \$25 nor more than \$500 or imprisoned not more than 90 days or both. If any such person is convicted of a second or subsequent offense he may be fined not less than \$100 nor more than \$500 or imprisoned not more than 6 months or both.

(d) Any intoxicating liquor or wine involved in a violation of this section is declared forfeit and upon confiscation by the department of revenue shall be disposed of in accordance with s. 176.62 (2) (b).

History: 1971 c. 125, 164, 211, 336; 1973 c. 121; 1975 c. 224.

139.04 Exclusions. No tax is levied by ss. 139.02 and 139.03 in respect to:

(1) Making of wine, cider or fermented malt beverages at home solely for consumption therein and use thereof in such home by the family and guests without compensation.

(2) Furnishing by a brewer of fermented malt beverages to workmen employed in the brewery for consumption on the brewery premises without charge.

(3) Manufacture or sale of any beverage containing less than one-half of one per cent of alcohol by volume.

(4) Sale or shipment of fermented malt beverages by a brewer to a bottler or of intoxicating liquor in bulk between manufacturers, rectifiers and wineries.

(5) Sale, possession or removal of fermented malt beverages or intoxicating liquor for shipment in interstate or foreign commerce.

(6) Sale and use of wine for sacramental purposes.

(7) Sale of alcohol to industrial permittees to be used for industrial purposes.

(8) Sale of alcohol to medicinal permittees to be used for hospital or medicinal purposes.

(9) Sale of wine to industrial wine permittees to be used for industrial purposes.

History: 1973 c. 90.

139.05 Payment of malt beverages tax.

(1) The tax imposed in s. 139.02 shall be paid to the department on or before the fifteenth day of the month following the month in which such malt beverages are first sold in this state or shipped into this state.

(2) Each brewer and bottler in this state and each wholesaler of malt beverages within this state to whom malt beverages are shipped from outside this state shall on or before the fifteenth day of each month file with the secretary on forms prescribed by him a verified return containing such information as may be required to compute and show the amount of occupational tax payable by him or by the shipper for the next preceding calendar month on malt beverages.

(2a) For the purposes of subs. (1) and (2), the payments, reports, and returns therein referred to shall be considered furnished, reported, filed or made on time, and payments therein referred to shall be considered timely made, if mailed in a properly addressed envelope, with first class postage duly prepaid, which envelope is officially postmarked before midnight on the date prescribed for such furnishing, reporting, filing or making of such payment, provided such statement, report, return or payment is actually received by the secretary of revenue within 5 days of the prescribed date.

(3) The amount of the occupational tax disclosed by the return shall accompany the return and shall be paid to the department.

(4) In order to insure the payment of all state occupational taxes imposed by law on malt beverages together with all interest and penalties thereon, all persons required to make returns and payment of such tax shall first enter into a surety bond with corporate surety, both bond and surety to be approved by the secretary. Subject to the limitations hereinafter specified, the amount of the bond required of any taxpayer shall be fixed by the secretary and may be increased or

reduced by him at any time. In fixing the amount the secretary shall require a bond in total amount equal to twice the taxpayer's estimated maximum monthly excise tax, ascertained in such manner as the secretary deems proper. In any event the amount of such bond required of any one taxpayer shall not be less than \$1,000 nor more than \$100,000. These bonds shall be filed with the secretary.

(5) No person shall receive malt beverages in this state which have been shipped directly to him from outside this state by any person other than a holder of a permit issued by the secretary. The secretary may issue such permits to out-of-state shippers which allow the permittee to ship malt beverages to and only to holders of a wholesaler's license issued under s. 66.054 (5) (b). Such permits shall be issued free of charge. The application for the permit and the permit shall be in such form and contain such provisions as to the secretary seem proper and necessary to effectuate the purpose of ss. 139.01 to 139.25 and shall include, but without limitation by reason of this special mention, a provision that the permittee in consideration of the issuance of a permit agrees:

(a) To comply with and be bound by the provisions of this section pertaining to the making and filing of a bond and the making and filing of returns, the payment of taxes and the keeping of records;

(b) That he will permit and be subject to all of the powers granted by s. 139.08 (4) to the secretary or his duly authorized employes for inspection and examination of his premises and his records; and

(c) To pay the expenses reasonably attributable to such inspections and examinations made within the United States. If any such permittee violates any provision of his application or of ss. 139.01 to 139.25, the secretary may revoke or suspend such permit for such period of time as he determines.

(6) If the occupational tax is not paid when due, there is added to the amount of the tax interest at the rate of one per cent per month or fraction of a month from the date the tax became due until paid. Nothing herein contained shall be construed to relieve any person otherwise liable from liability for payment of the occupational tax.

(7) (a) If any present or future law or regulation effective in any state prohibits a person from shipping into such state a fermented malt beverage produced outside thereof except upon condition that the person shipping such fermented malt beverage into such state first obtain a license therefor from such state and if such license or a renewal thereof may be refused for violation of any law of such state relating to

fermented malt beverages, it is unlawful to ship into this state or to purchase or sell within this state any fermented malt beverage produced in such state, unless and until the brewer thereof is the holder of a valid subsisting license as provided in this subsection.

(b) Such license shall be issued by the secretary for the period of one year and must be renewed annually. The application for such license shall be verified and shall contain an agreement on the part of the brewer that the brewer shall observe all laws of this state relating to fermented malt beverages, and such other information and statements as the secretary may require. Any such brewer who has, directly or indirectly, violated any law of this state relating to fermented malt beverages shall not be entitled to such a license. No fee shall be required for any such license. The secretary may require the applicant to furnish and file a bond to be approved by the secretary payable to the state in an amount not less than \$1,000 nor more than \$5,000 conditioned upon the faithful compliance by the applicant with the undertakings set forth in the application for the license.

(c) The secretary may suspend or revoke any such license for any false statement made in the application therefor and for any prior or subsequent violation by the licensee, directly or indirectly, or by any person affiliated with or in any way subject to the direction or control of the licensee, of any of the laws of this state relating to fermented malt beverages.

(d) Any such brewer and any other person who ships or causes or permits to be shipped into this state any such fermented malt beverage, and any person who knowingly receives within this state from outside this state any such fermented malt beverage, at a time when the brewer thereof is not the holder of a valid and subsisting license as herein provided, is guilty of a misdemeanor.

(e) The conditions and requirements of this subsection are in addition to and not in lieu of the conditions and requirements of subs. (1) to (6).

(f) If any law or regulation of any state specifies uniform or substantially uniform requirements with respect to any ingredient of fermented malt beverages produced in such state and fermented malt beverages produced outside thereof but sold within such state and if such state or its officials or agencies enforce or give effect to such provisions as against any malt beverage produced outside of such state without concurrently and to the same extent enforcing and giving effect to such provisions as against all malt beverages produced and sold within such state, and if the foregoing is found and determined by the secretary after a public hearing, it shall thereafter be a misdemeanor for any person with knowledge of such finding and

determination to ship into or receive or sell within this state any malt beverage produced in such state unless and until the secretary finds and determines, after a public hearing, that such discriminatory treatment has been discontinued.

139.06 Liquor tax stamps; exceptions. (1)

The taxes imposed in s. 139.03 shall be paid, at or before the time of sale, delivery or gift of intoxicating liquor except as provided in sub.

(2), by affixing, in such manner as the secretary prescribes by rule, to each bottle in which intoxicating liquor is placed, received, stored, warehoused, shipped, delivered or sold, tax stamps of the proper amount purchased from the secretary.

(2) (a) The taxes on wine containing not in excess of 21 % of alcohol by volume shall be paid to and a monthly return filed with the department on or before the 15th of the month following the month in which tax liability is incurred. Tax liability is incurred by the shipper when wine is shipped into the state. In the case of wine produced or bottled within the state and wine imported directly from a foreign country into the state by a Wisconsin permittee or winery licensee, tax liability is incurred by the permittee or winery licensee at the time of first sale within the state.

(b) All persons required to make return and payment of wine taxes, shall first enter into surety bond with corporate surety to secure payment of tax with bond and surety to be approved by the department. Such bond shall be twice the department's estimate of the taxpayer's maximum monthly tax liability but shall not be less than \$1,000 nor more than \$100,000. The bonds shall be filed with the department.

(c) To further secure the payment of the taxes on wine, the department shall require all persons liable for the return and payment of such taxes to maintain deposit of the department's estimate of tax liabilities in an amount equal to 150 % of the estimated maximum monthly tax liability. Such deposit payment shall be paid to the department no later than 30 days after January 1, 1974 or no later than 30 days after the date of the permit, whichever is later. This deposit shall be deposited in the general fund as taxes collected for apportionment purposes. Twelve months after such deposit is received from each person the department shall refund 25 % of such deposit. At the end of each succeeding 12-month period the department shall refund 25 % of the original deposit until 100 % of each deposit has been refunded. In the event that any permittee or winery licensee has an unpaid tax liability at the time that a refund would be due him the

department shall make no refund until such liability has been paid in full.

(3) In shipping intoxicating liquor in bulk for the purpose of bottling or rectifying to a rectifier located within the state, the manufacturer shall not be required to place stamps upon the container in which shipment is made, but shall securely affix thereto a label or statement, in such form as is prescribed by the secretary, reciting that the shipment is made for the purpose of bottling or rectifying. Each manufacturer making such shipments shall file with the secretary on or before the fifteenth day of each calendar month a report for the preceding calendar month, in the form the secretary prescribes, showing the dates and quantities of shipments and the name and address of each consignee. Stamps shall be affixed by said rectifier on all containers on which a tax is required before sale or delivery to any permittee or licensee within this state.

(4) When intoxicating liquor is stored in a public warehouse licensed as provided in ch. 176, by a Wisconsin manufacturer or rectifier as a pledge for the loan of money, it is not necessary to affix to the containers either front labels or tax stamps until the liquor is sold or removed from the warehouse. When it becomes necessary for a pledgee to sell such intoxicating liquor in good faith pursuant to the terms of the pledge, and not for the purpose of avoiding the provisions of ss. 139.01 to 139.25 or ch. 176, it shall be sold to a Wisconsin manufacturer, rectifier or wholesaler for the purpose of affixing front labels and tax stamps. All such sales shall be reported to the secretary by the pledgee.

(5) Vendors of intoxicating liquor without this state having Wisconsin permits may purchase tax stamps from the secretary and affix the proper amount thereof in the manner prescribed by him to containers of intoxicating liquor, except wine containing not in excess of 21 % alcohol by volume, to be sold in the state and the affixing thereof shall constitute payment of such tax so that the recipient of such intoxicating liquor within this state and all persons who deal with the same thereafter shall not be required to affix stamps thereon.

(6) No retailer shall sell or remove any intoxicating liquor, except wine containing not in excess of 21 % alcohol by volume, from any container, unless it has affixed thereto tax stamps of the proper amount. Every manufacturer, rectifier and wholesaler who is liable for the payment of the tax on sales made for resale or consumption within this state is required to affix stamps of the proper amount on every container containing intoxicating liquor, except wine containing not in excess of 21 % alcohol by volume, including intoxicating liquor imported

from without the state, which is sold, delivered or given to any purchaser or consumer within this state, unless the proper amount of stamps has been previously affixed thereto.

(7) Except as otherwise herein provided, no person shall sell intoxicating liquor, except wine containing not in excess of 21% alcohol by volume, without having affixed to the container the stamps required. A manufacturer or rectifier may have upon his premises intoxicating liquor in unstamped containers, but the same, except wine containing not in excess of 21% alcohol by volume, shall not be removed from his premises except for shipment in interstate commerce or for shipment in bulk to a rectifier without stamps being affixed thereto.

(8) No person shall sell, give or lend any stamps; no person shall purchase, accept, receive or borrow any stamps from any person. Sales and transfers of stamps may be made only by the commissioner. He shall not sell or issue any stamps to any person other than a licensed manufacturer, rectifier or wholesaler. This subsection does not prevent the pledging of any stamps legally secured to any banking institution in Wisconsin as security for a loan.

History: 1973 c. 121.

139.061 Return payment of liquor tax. (1) In lieu of the method prescribed by s. 139.06 for payment of the tax on intoxicating liquor by stamp, the secretary may by rule provide for the payment of such tax by a monthly return filed with the secretary on or before the 15th day of the month following the month in which such intoxicating liquors are first sold in this state or shipped into this state. Payment of the tax shall accompany the return.

(2) In the event of the institution of such return method of payment of the tax on intoxicating liquor, all persons required to make returns and payment of such tax, shall first enter into a surety bond with corporate surety to secure payment of the tax, both bond and surety to be approved by the secretary. Such bond shall be equal to twice the taxpayer's estimated maximum monthly tax liability but shall not be less than \$1,000 nor more than \$100,000. The bonds shall be filed with the secretary.

(3) To further secure the payment of the tax on intoxicating liquor, the secretary may require all persons liable for payment of such tax to maintain advance payment of estimated tax liabilities in an amount equal to 1 1/2 times the estimated maximum monthly tax liability. Such advance payments shall be paid to the secretary.

(4) The exercise by the secretary of the authority vested in him by this section shall be without prejudice to his authority to rescind such action and repeal the rule by which such

authority shall have been exercised, in which event the taxes on intoxicating liquor shall be paid by stamps as provided in s. 139.06.

139.07 Failure to pay liquor tax. If the tax imposed in s. 139.03 is not paid when due, interest at the rate of one per cent per month or fraction of a month shall accrue from the date the tax became due until paid. If any person liable for such tax files a false or fraudulent return, there shall be added to the tax an amount equal to the tax evaded or attempted to be evaded.

139.08 Powers and duties of the secretary of revenue. (1) ADMINISTRATION; PERSONNEL, STAMPS. The secretary of revenue shall administer ss. 139.01 to 139.25. He shall design, procure and sell the stamps herein provided for and shall prescribe the manner in which stamps are affixed and canceled. He shall collect and keep a record of all taxes collected. He shall keep a record of the sale of all stamps which shall show the dates of the sale thereof and the names of the purchasers.

(2) RULES. The secretary of revenue shall adopt rules necessary to carry out the secretary's duties under this chapter.

(3) POLICE POWERS. The department of revenue shall enforce ss. 66.054, 139.01 to 139.25 and ch. 176. The duly authorized employes of the department of revenue have all necessary police powers to prevent violations of ss. 66.054, 139.01 to 139.25 and ch. 176.

(4) INSPECTION FOR ENFORCEMENT. Duly authorized employes of the department of justice and the department of revenue and any sheriff, policeman, marshal or constable, within their respective jurisdictions, may at all reasonable hours enter any licensed premises, and examine the books, papers and records of any brewer, manufacturer, bottler, rectifier, wholesaler or retailer, for the purpose of inspecting the same and determining whether the tax imposed by ss. 139.01 to 139.25 has been fully paid, and may inspect and examine, according to law, any premises where fermented malt beverages or intoxicating liquors are manufactured, sold, exposed for sale, possessed or stored, for the purpose of inspecting the same and determining whether the tax imposed by said sections has been fully paid, and whether said sections, s. 66.054 and ch. 176, are being complied with. Any refusal to permit such examination of such premises shall constitute sufficient reason for the refusal of the secretary to furnish to such person so refusing any stamps. Such refusal shall constitute sufficient grounds under s. 66.054 (17) or 176.121 for revocation or suspension of any license or permit granted for the sale of any

fermented malt beverages or intoxicating liquors and in addition shall be deemed a misdemeanor, punishable under s. 139.25 (5).

History: 1975 c. 39, 199

139.09 Registration. Every brewer, bottler, manufacturer, rectifier, wholesaler or retailer liable for payment of the occupational tax imposed in ss. 139.01 to 139.25 shall upon making application therefor be assigned a registration number by the secretary. The form of the application shall be prescribed by the secretary.

139.10 Refunds by state treasurer. (1) On the certificate of the secretary the state treasurer shall refund to any purchaser or any banking institution in Wisconsin the money paid for any unused stamps returned, the tax paid on intoxicating liquor or on whole cases or full kegs of fermented malt beverages which are spoiled or unfit to drink and the tax paid on fermented malt beverages sold to the armed forces of the United States, or the secretary may make allowance of the amount of the tax.

(2) When the tax has been paid on intoxicating liquor supplied to hospitals (for hospital or medicinal purposes), or on alcohol supplied to institutions of learning or museums for non-beverage purposes, this purchaser shall, upon application to the secretary, be entitled to a refund of the tax.

(3) The secretary shall prescribe the method of proof and the forms of application for refund or allowance.

139.11 Records and reports. (1) **PRESERVATION OF RECORDS.** Every person who manufactures, rectifies, distributes, imports, transports, stores, warehouses or sells intoxicating liquor or fermented malt beverages shall keep complete and accurate records of all such liquor or malt beverages purchased, sold, manufactured, rectified, brewed, fermented, distilled, produced, stored, warehoused, imported or transported within this state. Such records shall be of a kind and in the form prescribed by the secretary and shall be safely preserved for 2 years in such manner as to insure permanency and accessibility for inspection by the secretary.

(2) **REPORT.** Each brewer, bottler, manufacturer, rectifier and wholesaler shall on or before the 15th day of each calendar month make a verified return to the secretary of all fermented malt beverages or intoxicating liquor manufactured, received, sold, delivered or shipped by him during the preceding calendar month. Such return shall be made upon forms furnished by the secretary and shall contain such information as

he deems necessary for the collection and enforcement of the tax.

(3) **SECRETARY'S POWERS.** When the secretary finds that the records kept by any brewer, bottler, manufacturer, rectifier, wholesaler or retailer are in such condition that an unusual amount of time is required to determine therefrom the amount of tax due, he may give notice of such fact to such person and may require the records to be kept in such form as he prescribes. If such requirements are not complied with within 30 days after the date of the notice, the brewer, bottler, manufacturer, rectifier, wholesaler or retailer shall pay the expenses reasonably attributable to the determination of tax at the rate of \$30 per day for each auditor. The secretary shall render a bill therefor by registered mail to the person charged with payment at the conclusion of the audit, which bill shall constitute notice of assessment and demand of payment thereof. The brewer, bottler, manufacturer, rectifier, wholesaler or retailer shall, within 10 days after the mailing of the bill, pay its amount, and such payment shall be credited to the appropriation made in s. 20.566 (1) (a).

139.12 Collection not to be restrained. No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied in ss. 139.01 to 139.25. 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 such payment, sue the state to recover the tax so paid, the summons and complaint to be served by delivering a copy as provided in s. 801.11 (3). If it is determined that the tax, or any part thereof, was wrongfully collected, the department of administration shall issue a warrant on the state treasurer for the amount adjudged to have been wrongfully collected, and the treasurer shall pay the warrant 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 have been made.

History: Sup. Ct. Order, 67 W (2d) 774; 1975 c. 218.

139.13 Distribution of revenues. Of all occupational taxes collected on intoxicating liquors, in the 1971-72 fiscal year, and of all occupational taxes collected on intoxicating liquors in the 1972-73 fiscal year and in fiscal years thereafter, 4% shall be allotted for administration and enforcement of the beverage tax laws and for the cost of administering alcohol studies. Of the balance, 38.48% shall be entered in the municipal and county shared tax account and distributed under subch. I of ch. 79.

History: 1971 c. 125.

139.18 Presumptions from possession.

(1) The possession of any fermented malt beverages on any licensed premises, other than upon the premises of a brewer or bottler, shall be deemed prima facie evidence that such products are kept with intent to sell and that such products are subject to the tax herein imposed.

(2) The possession of unstamped intoxicating liquor, other than wine or unadulterated apple cider, except upon the premises of a manufacturer, rectifier or wholesaler, or any licensed public warehouse shall be deemed prima facie evidence that such liquor is possessed with the intent to sell the same contrary to law.

139.20 Compulsory testimony. Any person may be compelled to testify in regard to any violation of this chapter 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, such person shall not be prosecuted for or because of the violation relative to which he has testified.

139.22 Confiscation. Whenever a duly authorized employe of the department of revenue or the department of justice or any sheriff, policeman, marshal or constable, within his or her respective jurisdiction, discovers any fermented malt beverages upon any premises other than the premises of a brewer or bottler, or any intoxicating liquor upon any premises other than the premises of a manufacturer, rectifier, winery or wholesaler, and upon which the tax has not been paid or which was possessed, kept, stored, manufactured, sold, distributed or transported in violation of ss. 139.01 to 139.25 and chs. 66 and 176, the employe or any such officer may forthwith seize said fermented malt beverages or intoxicating liquors. Any such fermented malt beverages or intoxicating liquors so seized shall be held by the department of revenue and disposed of through the department of administration under s. 176.62 (2) (b).

History: 1975 c. 39, 199.

139.25 Penalties. (1) **COUNTERFEIT STAMP.** Any person who falsely or fraudulently makes, forges, alters or counterfeits any stamp prescribed by s. 139.06, or procures or causes to be falsely or fraudulently made, forged, altered or counterfeited any such stamp, or who knowingly possesses, utters, publishes, passes or tenders as true any false, altered, forged or counterfeited stamp, or affixes the same to any container, or uses any container upon which the stamp or stamps have been canceled, for the purpose of placing therein for sale, any intoxicating liquor without placing thereon stamps in the amount

and of the kind and character herein provided, except for shipment in interstate commerce, or for shipment by a manufacturer to a rectifier shall be imprisoned in the state prison not less than one year nor more than 10 years.

(2) **FALSE REPORTS.** Any person required to make, render, sign or verify any report who makes any false or fraudulent return, or who attempts to evade the tax imposed by this chapter, or any person who aids or abets in the evasion or attempted evasion of such tax, shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned for not less than 90 days nor more than one year, or both.

(3) **FAILURE TO FILE REPORTS.** Failure to file a report when due shall subject the person to a \$10 late filing fee.

(4) **FAILURE TO KEEP RECORDS.** Failure to comply with s. 139.11 (1) shall carry a penalty of revocation by the secretary of revenue of the license issued together with a fine of not less than \$100 nor more than \$500 for each offense.

(5) **MISCELLANEOUS.** Any person who violates any provision of ss. 139.01 to 139.22 for which specific penalty is not provided shall be fined not more than \$500 nor less than \$50, or imprisoned not more than 90 days nor less than 10 days or both, and any license or permit issued to him shall be subject to revocation. The license of any licensee convicted of evading payment of the tax on intoxicating liquor, or any attempt to evade payment of such tax, shall be deemed forfeited immediately upon conviction.

(6) **SECOND OFFENSES.** If any person is convicted of a second offense under the provisions of ss. 139.01 to 139.22, he shall, in addition to the penalties herein provided, forfeit the right to purchase any stamps from the secretary, and all rights conferred upon him by any license issued to him by any city, village or town shall without notice be deemed forthwith forfeited.

SUBCHAPTER II

CIGARETTE TAXES

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 department of revenue.

(3) "Secretary" means the secretary of revenue.

(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. All cigarettes received in this state for sale or distribution within this state, except cigarettes actually sold as provided in sub. (3), shall be subject to such tax. Any person licensed under chs. 100 and 139 to have untaxed cigarettes in his

possession which are lost, stolen, destroyed or which have mysteriously disappeared shall be liable for and shall pay the tax thereon. The tax shall be at the following rates:

(a) On cigarettes weighing not more than 3 pounds per thousand, 8 mills on each cigarette.

(b) On cigarettes weighing more than 3 pounds per thousand, 16 mills on each cigarette.

(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.

History: 1971 c. 125

139.32 Payment of taxes. (1) The tax imposed by s. 139.31 shall be paid by purchase of stamps from the secretary. 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. First sale does not include a sale by a manufacturer to a distributor or by a distributor to a permittee who has obtained department approval as provided for in sub. (8) (a) 2. The tax shall be paid only once on each package or container.

(2) The secretary 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 secretary.

(4) In lieu of stamps the secretary 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 secretary may purchase stamps at a discount of 2.4% on or before September 30, 1971. With respect to stamps purchased on or after October 1, 1971, the discount shall be 2.1%.

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

(7) If the tax imposed by s. 139.31 is not paid when due, interest shall accrue at the rate of one per cent per month or a fraction of a month from the date the tax became due until paid.

(8) It is unlawful for any person to possess in excess of 400 cigarettes unless the required stamps are properly affixed as provided in sub. (1) and s. 139.33 (4).

(a) This subsection shall not apply to the following:

1. Manufacturers, distributors or warehouse operators possessing valid permits issued by the secretary.

2. Any permittee under s. 139.34 having department approval or person authorized to acquire, possess or sell unstamped cigarettes under s. 139.31 (3) provided that said permittee or person maintains a separate inventory thereof and records pertaining thereto in such manner and form as the department prescribes by rule.

3. Common carriers licensed by the interstate commerce commission to carry such commodities in interstate commerce who are in possession of proper bills of lading covering each such shipment. The department may by rule require that copies of all such bills of lading, clearly indicating thereon the quantities of cigarettes transported, be furnished to it.

(b) Any person violating this subsection shall be punished as provided in s. 139.44 (8).

History: 1971 c. 125.

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. 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).

(3) No person other than a licensed distributor shall import into this state more than 400 cigarettes on which the occupational tax imposed by s. 139.31 has not been paid and the container of which does not bear proper stamps. Within 3 days such person shall file with the department a declaration of such cigarettes imported and shall remit therewith the amount of the tax on such cigarettes as herein imposed. The secretary shall then issue a receipt for such taxes so paid identifying the taxpayer and the cigarettes, except that members of the armed forces shall not be required to report or pay the tax on cigarettes in their possession if such cigarettes are issued to them by the U. S. government or any of its subdivisions or were purchased in any armed forces post exchange or service store.

(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) (a) It is unlawful for any person to 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 the proper permit to perform such operations from the department of revenue. The application for a permit and the permit shall be in the form prescribed by the department and the application form shall require such information as is necessary to administer this section.

(b) No permit shall be granted to any person not of good moral character. This section shall apply to all officers, directors, agents and stockholders holding 5% or more of the stock of any corporation applying for a permit hereunder.

(c) Within the meaning of this section, a person may be regarded as or found to be a person not of good moral character when he:

1. Has been convicted of a misdemeanor, not involving the motor vehicle code, at least 3 times;

2. Has been convicted of a felony, unless pardoned;

3. Is addicted to the use of a controlled substance under ch. 161;

4. Has income which comes principally from gambling, or who has been convicted of 2 or more gambling offenses;

5. Has been guilty of crimes relating to prostitution; or

6. Has been guilty of crimes relating to loaning money or anything of value to persons holding licenses or permits pursuant to s. 66.054 or ch. 176.

(d) Upon denial of a permit the department of revenue shall immediately notify such person in writing of the denial and the reasons therefor.

(e) A denial of a permit by the department of revenue shall be subject to judicial review under ch. 227.

(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. No permit shall be issued to a person who owns or operates such a retail outlet unless a substantial part of his sales of cigarettes are at wholesale.

(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 secretary 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.

History: 1971 c. 219; 1973 c. 198; 1975 c. 39 s. 732 (2m).

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 secretary to permit holding manufacturers and distributors.

(2) RECORDS. The secretary 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 secretary 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.

139.37 Salesmen. (1) (a) No person shall sell or take orders for cigarettes for resale in this state for any manufacturer or permittee without

first obtaining a salesman's permit from the department of revenue. No manufacturer or permittee shall authorize any person to sell or take orders for cigarettes in this state without first having such person secure a salesman's permit. The fee for such permit is \$2. Each application for a permit shall disclose the name and address of the employer and such permit shall remain effective only while the salesman represents such named employer. If such salesman is thereafter employed by another manufacturer or permittee the salesman shall obtain a new salesman's permit. Each manufacturer and permittee shall notify the department within 10 days after the resignation or dismissal of any such salesman holding a permit.

(b) No permit shall be granted to any person not of good moral character.

(c) Within the meaning of this section, a person may be regarded as or found to be a person not of good moral character when he:

1. Has been convicted of a misdemeanor not involving the motor vehicle code, at least 3 times;

2. Has been convicted of a felony, unless pardoned;

3. Is addicted to the use of a controlled substance under ch. 161;

4. Has income which comes principally from gambling, or who has been convicted of 2 or more gambling offenses;

5. Has been guilty of crimes relating to prostitution; or

6. Has been guilty of crimes relating to loaning money or anything of value to persons holding licenses or permits pursuant to s. 66.054 or ch. 176.

(d) The department of revenue shall immediately notify any person who is denied a permit in writing of the denial and the reasons therefor.

(e) A denial of a permit by the department of revenue is subject to judicial review under ch. 227.

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

History: 1971 c. 219; 1973 c. 198; 1975 c. 39 s. 732 (2m); 1975 c. 199.

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 secretary 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 secretary. 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 render a true and correct invoice of every sale of cigarettes at wholesale and shall on or before the 15th day of each calendar month make a verified report to the secretary of all cigarettes purchased, sold, received, warehoused or withdrawn during the preceding calendar month.

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

(4) If the secretary 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 secretary 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 secretary within 5 days of the due date.

139.39 Administration and enforcement.

(1) The secretary shall administer and enforce ss. 139.30 to 139.44 and 134.65. The secretary shall adopt rules necessary to administer and enforce the secretary's duties.

(2) Authorized personnel of the department of justice and the department of revenue, 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 secretary may suspend or revoke the permit of any permittee who violates ss. 100.30 or 139.30 to 139.44 or any rules adopted under sub. (1).

(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.

History: 1975 c. 39, 199

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 secretary 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 secretary, 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 secretary 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 secretary shall advertise the same for sale by publication of a class 2 notice under ch. 985. If no claimant, either of lien or ownership, has notified the secretary within 10 days after last insertion of such notice, 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 secretary within the prescribed time, the secretary 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. Sections 139.30 to 139.44 shall be construed as an enactment of state-wide concern for the purpose of providing a uniform regulation of the sale of cigarettes.

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. 139.39 (2) may 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 secretary.

(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.

(8) Penalties for violation of s. 139.32 (8) shall be as follows:

(a) If the number of cigarettes does not exceed 20,000, a fine of not more than \$200 or imprisonment for not more than 6 months or both.

(b) If the number of cigarettes exceeds 20,000, a fine of not more than \$1,000 or imprisonment for not more than one year in the county jail or both.

SUBCHAPTER III

OLEOMARGARINE REGULATIONS

139.60 Oleomargarine regulations. (1) (a) For the purposes of this section "oleomargarine" or "margarine" includes oleomargarine, margarine, butterine and other similar substances, fats and fat compounds sufficiently adaptable to the ordinary uses of butter, to lead readily to use as an alternative to butter, but this

section shall not apply to lard, cream cheese, cheese food compounds, nor to any other dairy product made exclusively of milk or milk solids with or without added vitamins, if such product is sold or distributed in such manner and form as will clearly distinguish it from butter. Nor shall this section apply to shortenings not churned or emulsified in milk or cream or having a melting point of 112 degrees Fahrenheit or more as determined by the capillary tube method unless there is sold or given away with such shortening any compound which, when mixed with such shortening, makes oleomargarine, butterine or similar substances. Colored oleomargarine or margarine shall be made of domestic fats or oils and shall not be made of imported oils which include, without restriction because of enumeration, whale oil, coconut oil and palm oil.

(b) "Colored oleomargarine" or "colored margarine" is oleomargarine or margarine having a tint or shade containing more than 1-6/10 degrees of yellow or of yellow and red collectively but with an excess of yellow over red, as measured in terms of Lovibond tintometer scales or its equivalent.

(3) No person shall sell, offer or expose for sale at retail any oleomargarine or margarine unless:

(a) Such oleomargarine or margarine is packaged;

(b) The net weight of the contents of any package sold in a retail establishment is one pound;

(c) There appears on the label of the package 1) the word oleomargarine or margarine in type or lettering at least as large as any other type or lettering on such label in a color of print which clearly contrasts with its background, and 2) a full accurate statement of the ingredients contained in such oleomargarine or margarine; and

(d) Each part of the contents of the package is contained in a wrapper or separate container which bears the word "oleomargarine" or "margarine" in type or lettering not smaller than 20-point type.

(4) The serving of colored oleomargarine or margarine at a public eating place as a substitute for table butter is prohibited unless it is ordered by the customer.

(5) The serving of oleomargarine or margarine to students, patients or inmates of any state institutions as a substitute for table butter is prohibited, except that such substitution may be ordered by the institution superintendent when necessary for the health of a specific patient or inmate, if directed by the physician in charge of the patient or inmate.

(6) Any person who violates any provision of this section may be fined not less than \$100 nor more than \$500 or imprisoned not more than 3 months or both; and for each subsequent offense may be fined not less than \$500 nor more than \$1,000 or imprisoned in the county jail not less than 6 months nor more than one year.

History: 1971 c. 125; 1973 c. 90; 1975 c. 41.