



State of Wisconsin
2023 - 2024 LEGISLATURE

LRBs0285/1
KP:cdc

**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 835**

February 7, 2024 - Offered by Senator FEYEN.

1 **AN ACT** *to renumber* 139.75 (1); *to amend* 139.75 (12), 139.76 (1), 139.78 (1),
2 139.82 (1), 139.82 (2) (a), 139.82 (6) and 139.82 (8); and *to create* 139.75 (1d),
3 139.75 (1p), 139.75 (5u), 139.75 (6c), 139.75 (6g), 139.76 (1p), 139.78 (1p),
4 139.795 and 139.815 of the statutes; **relating to:** remote sellers of cigars and
5 pipe tobacco.

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

6 **SECTION 1.** 139.75 (1) of the statutes is renumbered 139.75 (1h).

7 **SECTION 2.** 139.75 (1d) of the statutes is created to read:

8 139.75 (1d) “Actual cost” means the total price of cigars or pipe tobacco charged
9 by the manufacturer or other seller to an unrelated distributor or remote retail seller.
10 The total price includes all charges by the manufacturer or other seller that are
11 necessary to complete the sale. The total price does not include a reduction for any

1 cost or expense, regardless of whether the cost or expense is separately stated on an
2 invoice, that is incurred by the manufacturer or other seller, including fees, delivery,
3 freight, transportation, packaging, handling, or marketing costs, federal excise
4 taxes, import fees, or duties. The total price does not include a reduction for the value
5 or cost of discounts or free promotional or sample products. For purposes of this
6 subsection, a manufacturer or other seller is related to a distributor or remote retail
7 seller if the 2 parties have significant common purposes and substantial common
8 membership or, directly or indirectly, substantial common direction or control.

9 **SECTION 3.** 139.75 (1p) of the statutes is created to read:

10 139.75 (1p) “Cigar” means any roll of tobacco wrapped in leaf tobacco or in any
11 substance containing tobacco but does not include a cigarette.

12 **SECTION 4.** 139.75 (5u) of the statutes is created to read:

13 139.75 (5u) “Pipe tobacco” means any tobacco that, because of its appearance,
14 type, packaging, or labeling, is suitable for use and likely to be offered to or purchased
15 by consumers as tobacco to be smoked in a pipe.

16 **SECTION 5.** 139.75 (6c) of the statutes is created to read:

17 139.75 (6c) “Remote retail sale” means any sale of cigars or pipe tobacco to a
18 consumer that satisfies any of the following:

19 (a) The consumer submits the order for the sale by telephone, a method of voice
20 transmission, mail, or the Internet or other online service, or the seller is otherwise
21 not in the physical presence of the consumer when the order or request for purchase
22 is made.

23 (b) The cigars or pipe tobacco are delivered to the consumer by common carrier,
24 private delivery service, or other method of remote delivery, or the seller is not in the

1 physical presence of the consumer when the consumer obtains possession of the
2 cigars or pipe tobacco.

3 **SECTION 6.** 139.75 (6g) of the statutes is created to read:

4 139.75 (6g) “Remote retail seller” means a person located inside or outside of
5 this state who makes remote retail sales.

6 **SECTION 7.** 139.75 (12) of the statutes is amended to read:

7 139.75 (12) “Tobacco products” means cigars; pipe tobacco; cheroots; stogies;
8 periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco;
9 snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut
10 and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings
11 of tobacco and other kinds and forms of tobacco prepared in such manner as to be
12 suitable for chewing or smoking in a pipe or otherwise, or both for chewing and
13 smoking; but “tobacco products” does not include cigarettes, as defined under s.
14 139.30 (1m).

15 **SECTION 8.** 139.76 (1) of the statutes is amended to read:

16 139.76 (1) An Except as provided in sub. (1p), an excise tax is imposed upon the
17 sale, offering or exposing for sale, possession with intent to sell or removal for
18 consumption or sale or other disposition for any purpose of tobacco products by any
19 person engaged as a distributor of them at the rate, for tobacco products, not
20 including moist snuff and, vapor products, cigars, and pipe tobacco, of 71 percent of
21 the manufacturer’s established list price to distributors without diminution by
22 volume or other discounts on domestic products and, for moist snuff, at the rate of
23 100 percent of the manufacturer’s established list price to distributors without
24 diminution by volume or other discounts on domestic products. ~~The tax imposed~~
25 ~~under this subsection on cigars shall not exceed an amount equal to 50 cents for each~~

1 ~~cigar~~. On products imported from another country, not including moist snuff and,
2 vapor products, cigars, and pipe tobacco, the rate of tax is 71 percent of the amount
3 obtained by adding the manufacturer's list price to the federal tax, duties and
4 transportation costs to the United States. On moist snuff imported from another
5 country, the rate of the tax is 100 percent of the amount obtained by adding the
6 manufacturer's list price to the federal tax, duties, and transportation costs to the
7 United States. The Except as provided in sub. (1p), the tax attaches at the time the
8 tobacco products are received by the distributor in this state. The tax shall be passed
9 on to the ultimate consumer of the tobacco products. All tobacco products received
10 in this state for sale or distribution within this state, except tobacco products actually
11 sold as provided in sub. (2), shall be subject to such tax.

12 **SECTION 9.** 139.76 (1p) of the statutes is created to read:

13 **139.76 (1p)** An excise tax is imposed upon the sale, offering or exposing for sale,
14 possession with intent to sell, or removal for consumption or sale or other disposition
15 for any purpose of cigars and pipe tobacco by any person engaged as a distributor or
16 remote retail seller of them at the rate of 71 percent of the actual cost to the
17 distributor or remote retail seller. The tax imposed under this subsection on cigars
18 shall not exceed an amount equal to 50 cents for each cigar. The tax attaches at the
19 time the cigars or pipe tobacco are received by the distributor in this state, except
20 that for cigars and pipe tobacco sold by a remote retail seller, the tax attaches at the
21 time the remote retail seller makes a remote retail sale of cigars or pipe tobacco to
22 a consumer. The tax shall be passed on to the ultimate consumer of the cigars and
23 pipe tobacco. All cigars and pipe tobacco received in this state for sale or distribution
24 within this state, except tobacco products actually sold as provided in sub. (2), shall
25 be subject to such tax.

1 **SECTION 10.** 139.78 (1) of the statutes is amended to read:

2 139.78 (1) ~~A- Except as provided in sub. (1p), a~~ tax is imposed upon the use or
3 storage by consumers of tobacco products in this state at the rate, for tobacco
4 products, not including moist snuff and, vapor products, cigars, and pipe tobacco, of
5 71 percent of the cost of the tobacco products and, for moist snuff, at the rate of 100
6 percent of the manufacturer's established list price to distributors without
7 diminution by volume or other discounts on domestic products. The tax imposed
8 under this subsection on cigars shall not exceed an amount equal to 50 cents for each
9 cigar. The tax does not apply if the tax imposed by s. 139.76 (1) on the tobacco
10 products has been paid or if the tobacco products are exempt from the tobacco
11 products tax under s. 139.76 (2).

12 **SECTION 11.** 139.78 (1p) of the statutes is created to read:

13 139.78 (1p) A tax is imposed upon the use or storage by consumers of cigars
14 and pipe tobacco in this state at the rate and basis under s. 139.76 (1p). The tax does
15 not apply if the tax imposed by s. 139.76 (1p) on the cigars or pipe tobacco has been
16 paid or if the cigars or pipe tobacco are exempt from the tax under s. 139.76 (2).

17 **SECTION 12.** 139.795 of the statutes is created to read:

18 **139.795 Permits; remote retail seller. (1)** No person may engage in the
19 business of a remote retail seller at any place of business, including a legal location
20 in any state at which records are kept or accessed by the remote retail seller, unless
21 that person has filed an application for and obtained a permit from the department
22 to engage in that business at such place.

23 **(2)** Section 139.34 (1) (b) to (f) and (9) applies to the permit under this section.

24 **SECTION 13.** 139.815 of the statutes is created to read:

1 **139.815 Remote retail sales.** No person may make remote retail sales to
2 consumers unless all of the following apply:

3 **(1)** The person obtains a remote retail seller permit under s. 139.795.

4 **(2)** The person registers with the department and collects the taxes
5 administered or imposed under s. 77.52 or 77.53.

6 **(3)** The person collects and remits the tax under s. 139.76.

7 **(4)** The person uses an independent, 3rd-party age verification service that
8 compares information available from a commercially available database or
9 aggregate of databases that are regularly used by government agencies and business
10 for age and identity verification to determine whether a prospective consumer has
11 attained the minimum age for purchasing a tobacco product under the federal Food,
12 Drug, and Cosmetic Act based on the personal information provided by the
13 prospective consumer during the ordering process.

14 **SECTION 14.** 139.82 (1) of the statutes is amended to read:

15 **139.82 (1)** Every manufacturer located out of the state shall keep records of all
16 sales of tobacco products and vapor products shipped into this state. Every
17 manufacturer located in this state shall keep records of production, sales and
18 withdrawals of tobacco products and vapor products. Every distributor and remote
19 retail seller shall keep records of purchases and sales of tobacco products and vapor
20 products. Every subjobber shall keep records of all purchases and disposition of
21 tobacco products and vapor products. Every warehouse operator shall keep records
22 of receipts and withdrawals of tobacco products and vapor products. All records shall
23 be accurate and complete and be kept in a manner prescribed by the department.
24 These records shall be preserved on the premises described in the permit in such a

1 manner as to ensure permanency and accessibility for inspection at reasonable hours
2 by authorized personnel of the department.

3 **SECTION 15.** 139.82 (2) (a) of the statutes is amended to read:

4 139.82 (2) (a) Except as provided in par. (b), every permittee shall render a true
5 and correct invoice of every sale of tobacco products and vapor products at wholesale,
6 or, if the permittee is a remote retail seller, at retail, and shall on or before the 15th
7 day of each calendar month file a verified report of all tobacco products and vapor
8 products purchased, sold, received, warehoused or withdrawn during the preceding
9 calendar month.

10 **SECTION 16.** 139.82 (6) of the statutes, as affected by 2023 Wisconsin Act 73,
11 is amended to read:

12 139.82 (6) Sections 71.78 (1), (1m), and (4) to (9) and 71.83 (2) (a) 3. and 3m.,
13 relating to confidentiality of income and franchise tax returns, apply to any
14 information obtained from any person on a cigarette tax return, report, schedule,
15 exhibit, or other document or from an audit report pertaining to the return, report,
16 schedule, exhibit, or document, except that the department shall publish on its
17 Internet site, at least quarterly, a current list of permits issued to remote retail
18 sellers, distributors, and jobbers under s. 139.34 and include on the list the name and
19 address of the permit holder and the date on which the department issued the
20 permit.

21 **SECTION 17.** 139.82 (8) of the statutes is amended to read:

22 139.82 (8) Each distributor and remote retail seller shall collect and remit the
23 excise tax imposed by s. 139.76 on tobacco products and vapor products not exempt
24 from tax under s. 139.76 (2), with the reports required to be filed under this section.

25 **SECTION 18. Effective date.**

