



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-2323/3
KP:amn

2023 ASSEMBLY BILL 910

January 4, 2024 - Introduced by Representatives SWEARINGEN, GREEN, C. ANDERSON, BALDEH, DALLMAN, MYERS, OHNSTAD, SINICKI, SUBECK and STEFFEN, cosponsored by Senators FEYEN, BALLWEG and WANGGAARD. Referred to Committee on Jobs, Economy and Small Business Development.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber* 139.75 (1); *to amend* 139.76 (1); and *to create* 139.75 (1d),
2 139.75 (1p), 139.75 (5u), 139.75 (6c), 139.75 (6g), 139.75 (9w), 139.76 (1e),
3 139.775, 139.795 and 139.815 of the statutes; **relating to:** remote sellers of
4 cigars and pipe tobacco.

Analysis by the Legislative Reference Bureau

This bill prohibits a person from making remote retail sales of cigars or pipe tobacco unless the person obtains a remote retail seller permit from the Department of Revenue; uses an independent, third-party age verification service to determine whether prospective buyers are 21 years of age; and satisfies certain other requirements specified in the bill, including, in certain circumstances, collection of the state sales and use tax. Under the bill, a “remote retail sale” of cigars or pipe tobacco is a sale for which a consumer submits an order while not in the physical presence of the seller or for which a consumer is not in the physical presence of the seller when obtaining possession of the cigars or pipe tobacco. The bill also requires a person to obtain a remote retail seller permit from DOR for each place of business at which the person engages in the business of a remote retail seller. Remote retail sellers must file a report and certain other forms specified in the bill with DOR each month, and must pay to DOR the tobacco products tax incurred by the deadline for filing those materials. The bill also specifies requirements regarding the calculation of the tobacco products tax imposed on remote retail sales of cigars and pipe tobacco.

Under current law, a person who brings or causes to be brought into the state tobacco products for the purpose of selling the tobacco products is a tobacco products

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distributor and must obtain a permit from DOR to engage in that business. Current law requires distributors to file monthly returns with DOR, and must pay to DOR the tobacco products tax incurred by the deadline for filing those returns.

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

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

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

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

3 139.75 (1d) “Actual cost” means the price paid by a remote retail seller for a
4 product.

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

6 139.75 (1p) “Cigar” means any roll of tobacco wrapped in leaf tobacco or in any
7 substance containing tobacco but does not include a cigarette.

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

9 139.75 (5u) “Pipe tobacco” means any tobacco that, because of its appearance,
10 type, packaging, or labeling, is suitable for use and likely to be offered to or purchased
11 by consumers as tobacco to be smoked in a pipe.

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

13 139.75 (6c) “Remote retail sale” means any sale of cigars or pipe tobacco to a
14 consumer that satisfies any of the following:

15 (a) The consumer submits the order for the sale by telephone, a method of voice
16 transmission, mail, or the Internet or other online service, or the seller is otherwise
17 not in the physical presence of the buyer when the order or request for purchase is
18 made.

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1 (b) The cigars or pipe tobacco are delivered to the buyer by common carrier,
2 private delivery service, or other method of remote delivery, or the seller is not in the
3 physical presence of the buyer when the buyer obtains possession of the cigars or pipe
4 tobacco.

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

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

8 **SECTION 7.** 139.75 (9w) of the statutes is created to read:

9 139.75 (9w) “Stock keeping unit number” means a unique identifier assigned
10 by a distributor or remote retail seller to a product to track inventory.

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

12 139.76 (1) An excise tax is imposed upon the sale, offering or exposing for sale,
13 possession with intent to sell or removal for consumption or sale or other disposition
14 for any purpose of tobacco products by any person engaged as a distributor of them
15 at the rate, for tobacco products, not including moist snuff and vapor products, of 71
16 percent of the manufacturer’s established list price to distributors without
17 diminution by volume or other discounts on domestic products and, for moist snuff,
18 at the rate of 100 percent of the manufacturer’s established list price to distributors
19 without diminution by volume or other discounts on domestic products. The tax
20 imposed under this subsection on cigars shall not exceed an amount equal to 50 cents
21 for each cigar. On products imported from another country, not including moist snuff
22 and vapor products, the rate of tax is 71 percent of the amount obtained by adding
23 the manufacturer’s list price to the federal tax, duties and transportation costs to the
24 United States. On moist snuff imported from another country, the rate of the tax is
25 100 percent of the amount obtained by adding the manufacturer’s list price to the

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

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

10 139.76 (1e) The tax under sub. (1) imposed on cigars and pipe tobacco sold by
11 remote retail sellers shall apply to the actual cost of the cigars and pipe tobacco to
12 the remote retail seller, or if the actual cost is not available, the average of the actual
13 cost to the remote retail seller of cigars or pipe tobacco identified by the same stock
14 keeping unit number as the cigars or pipe tobacco over the 12 months before January
15 1 of the year in which the sale occurs.

16 **SECTION 10.** 139.775 of the statutes is created to read:

17 **139.775 Records, reports, and returns of remote retail sellers.** (1) A
18 remote retail seller shall keep all records of remote retail sales.

19 (2) A remote retail seller shall file a report with the department no later than
20 the 15th day of each month identifying the total quantity, date, and dollar value of
21 all remote retail sale shipments made during the preceding month.

22 (3) A remote retail seller that does not hold a distributor permit under s. 139.79
23 shall file a return described under s. 139.77 (1) on a form prescribed by the
24 department and shall report on the return the quantity and actual cost of each cigar
25 or pipe tobacco product shipped or transported to consumers during the preceding

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1 month and any other information required by the department. The department may
2 require remote retail sellers to electronically file returns required under this
3 subsection.

4 (4) A remote retail seller shall at the time of filing a return required under sub.
5 (3) pay to the department the taxes incurred in the preceding month.

6 **SECTION 11.** 139.795 of the statutes is created to read:

7 **139.795 Permits; remote retail seller.** (1) No person may engage in the
8 business of a remote retail seller at any place of business, including a legal location
9 in any state at which records are kept or accessed by the remote retail seller, unless
10 that person has filed an application for and obtained a permit from the department
11 to engage in that business at such place.

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

13 **SECTION 12.** 139.815 of the statutes is created to read:

14 **139.815 Remote retail sales.** No person may make remote retail sales to
15 consumers unless all of the following apply:

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

17 (2) If the person's annual gross sales into this state exceed \$100,000 in the
18 previous calendar year, the person registers with the department and collects the
19 taxes administered under s. 77.52 or 77.53 on sales sourced to this state under s.
20 77.522 for the entire current calendar year.

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

22 (4) The person uses an independent, 3rd-party age verification service that
23 compares information available from a commercially available database or
24 aggregate of databases that are regularly used by government agencies and business
25 for age and identity verification to determine whether a prospective buyer is 21 years

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1 of age based on the personal information provided by the prospective buyer during
2 the ordering process.

3 (5) If the person calculates the amount of tax incurred under s. 139.76 by using
4 the average of the actual cost to the remote retail seller of cigars or pipe tobacco
5 identified by the same stock keeping unit numbers over the 12 months before
6 January 1 of the year of sale, the person does all of the following:

7 (a) Annually, no later than December 31, provides to the department a list
8 containing the average actual costs and stock keeping unit number of each cigar or
9 tobacco product that the person offers for sale.

10 (b) If the person offers a cigar or tobacco product that is not represented on the
11 list described in par. (a), by the end of the quarter in which the person first offers the
12 product, the person provides the department with an updated list that includes the
13 stock keeping unit number of the product and the actual cost first paid for the
14 product.

15 **SECTION 13. Effective date.**

16 (1) This act takes effect on January 1, 2025.

17 (END)