

LRB-0574/1

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## 2013 - 2014 LEGISLATURE

**2013 ASSEMBLY BILL 481**

November 1, 2013 - Introduced by Representatives BIES, BERCEAU, BERNARD  
SCHABER, BEWLEY, BILLINGS, GENRICH, GOYKE,  
HESSELBEIN, HULSEY, KAHL,  
KOLSTE, KRUG, T. LARSON, MASON, MURPHY, OHNSTAD, A.  
OTT, RICHARDS,  
RIEMER, RINGHAND, SARGENT, SPIROS, TITTL and WRIGHT,  
cosponsored by  
Senators HARRIS, CARPENTER, HANSEN, LEHMAN and  
SHILLING. Referred to  
Committee on State Affairs and Government Operations.

1       **AN ACT** *to amend* 73.01 (4) (a), 134.66 (4) (a) 1., 139.30 (1m),  
2               139.75 (5d), 139.75  
3               (12), 139.76 (1), 139.78 (1), 139.78 (2), 139.803 (intro.),  
4               139.805 and 139.82 (8);  
5               and *to create* 134.66 (2) (f), 139.75 (4b), 139.75 (9n), 139.75  
6               (14), 139.76 (3),  
              139.761 and 139.78 (3m) of the statutes; **relating to:** a  
              minimum tax on tobacco  
              products, placement of cigarettes or tobacco products by  
              retailers, and  
              providing a penalty.

***Analysis by the Legislative Reference Bureau***

Under current law, the excise tax rate on tobacco products sold in this state is 71 percent of the manufacturer's list price to distributors, except that the tax rate on moist snuff sold in this state is 100 percent of the manufacturer's list price to distributors. Under current law, the maximum tax on cigars is 50 cents for each cigar.

This bill increases the tobacco products tax rate on tobacco products, not including moist snuff, to 84 percent of the manufacturer's list price to distributors and eliminates the maximum rate on cigars of 50 cents on each cigar. Under the bill, however, the excise tax rate on tobacco products sold or consumed in this state is the greater of the rate based on the manufacturer's list price or the rate determined as follows:

1. For a package of four cigars, an amount equal to the amount of the cigarette excise tax (cigarette tax) imposed on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.

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2. For single-unit tobacco products, on each single-use unit, an amount equal to the cigarette tax imposed on one cigarette.

3. For any smokeless tobacco product that consists of loose tobacco, including moist snuff, on 1.2 ounces, an amount equal to the cigarette tax imposed on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.

4. For any loose tobacco that is intended for smoking, on 0.65 ounce, an amount equal to the cigarette tax imposed on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.

5. For any other tobacco product, on each package or container, an amount equal to the cigarette tax imposed on a pack of 20 cigarettes.

Under current law the cigarette tax is 12.6 cents per cigarette (\$2.52 for a pack of 20 cigarettes). Under current law, an inventory tax is imposed on cigarettes held in inventory for sale or resale so that, if the cigarette tax rate increases, the person holding cigarettes in inventory must pay the increase on those cigarettes. The bill creates an inventory tax on tobacco products held in inventory for sale or resale so that, if the tobacco products tax rates increase, the person holding tobacco products must pay the increase on those products.

Under current law, for cigarette tax purposes, a cigarette is defined as any roll of tobacco wrapped in paper or any substance other than tobacco. Under the bill, a

cigarette is defined as any roll of tobacco weighing not more than 4.5 pounds per thousand that is wrapped in paper or any substance other than tobacco or that is wrapped in any substance containing tobacco that, because of the type of tobacco used in the filter or because of its appearance, size, packaging, pricing, or marketing, is likely to be offered to, purchased by, or consumed by individuals as a cigarette, regardless of how the roll of tobacco is labeled, but not including any roll of tobacco that is wrapped in whole tobacco leaf and does not have a filter.

Under current law, for purposes of the tax imposed on tobacco products, moist snuff is defined as any finely cut, ground, or powdered smokeless tobacco that is intended to be placed or dipped in the mouth. Under the bill, moist snuff is defined as any finely cut, ground, or powdered smokeless tobacco, or blend containing tobacco, that is intended for oral consumption without being lit.

Under current law, a retailer of cigarettes or tobacco products must obtain a license from the city, village, or town in which the sales take place. Current law also imposes certain restrictions on a retailer's sale of cigarettes or tobacco products. This bill creates a new restriction by allowing a retailer to place the cigarettes or tobacco products only in locations that are inaccessible to customers without the assistance of the retailer or the retailer's employee or agent. The bill specifies that an allowable location includes behind the counter or in a locked case. The bill's restriction does not apply to cigarettes or tobacco products sold in a vending machine or at a business where individuals under the age of 18 are prohibited from entering. Current law imposes restrictions on sales from a vending machine that this bill does not affect.

A retailer who violates the bill's restriction is subject to the same penalties that apply to violations of certain restrictions that apply under current law to retailers of cigarettes or tobacco products. Those penalties include: 1) a forfeiture of not more than \$500, if the retailer has committed a previous violation within 12 months; 2) a

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forfeiture of not less than \$200 nor more than \$500, if the retailer has not committed a previous violation within 12 months; and 3) suspension of the retailer's license for a period of time that depends on the number of previous violations committed by the retailer.

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. 73.01 (4) (a) of the statutes is amended to read:  
2                   73.01 (4) (a) Subject to the provisions for judicial review  
3                   contained in s. 73.015,  
4                   the commission shall be the final authority for the hearing and  
5                   determination of all  
6                   questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985  
7                   stats., and ss.  
8                   70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993  
9                   stats., ss. 76.39 (4)  
10                   (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22,  
11                   78.40, 78.555,  
12                   139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.761,  
13                   139.78, 341.405,  
14                   and 341.45, subch. XIV of ch. 71, and subch. VII of ch. 77. Whenever  
15                   with respect  
16                   to a pending appeal there is filed with the commission a stipulation  
17                   signed by the  
18                   department of revenue and the adverse party, under s. 73.03 (25), or  
the department  
of transportation and the adverse party agreeing to an affirmance,  
modification, or  
reversal of the department of revenue's or department of  
transportation's position  
with respect to some or all of the issues raised in the appeal, the  
commission shall  
enter an order affirming or modifying in whole or in part, or canceling  
the assessment  
appealed from, or allowing in whole or in part or denying the  
petitioner's refund  
claim, as the case may be, pursuant to and in accordance with the  
stipulation filed.  
No responsibility shall devolve upon the commission, respecting the  
signing of an  
order of dismissal as to any pending appeal settled by the department  
of revenue or

19 the department of transportation without the approval of the  
commission.

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1 SECTION 2. 134.66 (2) (f) of the statutes is created to read:

2 134.66 (2) (f) A retailer may place cigarettes or tobacco  
products only in  
3 locations that are inaccessible to customers without the assistance of  
the retailer or  
4 the retailer's employee or agent, including behind the counter or in a  
locked case.  
5 This paragraph does not apply to cigarettes or tobacco products sold  
from a vending  
6 machine or at a business where individuals who are less than 18 years  
old are  
7 prohibited from entering.

8 SECTION 3. 134.66 (4) (a) 1. of the statutes is amended to  
read:

9 134.66 (4) (a) 1. In this paragraph, "violation" means a  
violation of sub. (2) (a),  
10 (am), (cm), ~~or (e)~~, or (f) or a local ordinance which strictly conforms to  
sub. (2) (a), (am),  
11 (cm), ~~or (e)~~, or (f).

12 SECTION 4. 139.30 (1m) of the statutes is amended to read:

13 139.30 (1m) "Cigarette" means any roll of tobacco weighing  
not more than 4.5  
14 pounds per thousand that is wrapped in paper or any substance other  
than tobacco  
15 or that is wrapped in any substance containing tobacco that, because  
of the type of  
16 tobacco used in the filter or because of its appearance, size, packaging,  
pricing, or  
17 marketing, is likely to be offered to, purchased by, or consumed by  
individuals as a  
18 cigarette, regardless of how the roll of tobacco is labeled, but not  
including any roll  
19 of tobacco that is wrapped in whole tobacco leaf and does not have a  
filter.

20 SECTION 5. 139.75 (4b) of the statutes is created to read:

21 139.75 (4b) "Dry pipe tobacco" means tobacco that is labeled  
as pipe tobacco  
22 but, because of its moisture content and pricing, is likely to be offered  
to, purchased  
23 by, or consumed by individuals as tobacco for rolling cigarettes.

24 SECTION 6. 139.75 (5d) of the statutes is amended to read:

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1 139.75 (5d) "Moist snuff" means any finely cut, ground, or  
powdered smokeless  
2 tobacco, or blend containing tobacco, that is intended ~~to be placed or~~  
~~dipped in the~~  
3 ~~mouth~~ for oral consumption without being lit, not including any single

-unit tobacco  
product.

SECTION 7. 139.75 (9n) of the statutes is created to read:

139.75 (9n) "Single-unit tobacco product" means any tobacco product other than a cigarette or cigar that is offered in discrete single-use tablets, lozenges, pouches, pills, or other single dose or single unit, or in packages of such single-use doses or units.

SECTION 8. 139.75 (12) of the statutes is amended to read:

139.75 (12) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; single-unit tobacco products; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and ~~other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking~~ any other product containing, or made or derived from, tobacco that is intended for human consumption, regardless of whether it is chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by other means; but "tobacco products" does not include cigarettes, as defined under s. 139.30 (1m), or any tobacco product that the federal Food and Drug Administration has approved for sale as a tobacco cessation or tobacco dependence product, or for another medical purpose, and that is being marketed and sold solely for the approved purpose.

SECTION 9. 139.75 (14) of the statutes is created to read:

139.75 (14) "Wet pipe tobacco" means tobacco that is intended for smoking in a pipe and that is not suitable or practical for use in rolling cigarettes because of its moisture content and pricing.

SECTION 10. 139.76 (1) of the statutes is amended to read:

139.76 (1) ~~An~~ Except as provided in sub. (3), an excise tax is imposed upon the sale, offering or exposing for sale, possession with intent to sell or removal for consumption or sale or other disposition for any purpose of tobacco

products by any  
person engaged as a distributor of them at the rate, for tobacco  
products, not  
including moist snuff, of ~~71~~ 84 percent of the manufacturer's  
established list price  
to distributors without diminution by volume or other discounts on  
domestic  
products and, for moist snuff, at the rate of 100 percent of the  
manufacturer's  
established list price to distributors without diminution by volume or  
other discounts  
on domestic products. ~~The tax imposed under this subsection on cigars  
shall not  
exceed an amount equal to 50 cents for each cigar.~~ On products  
imported from  
another country, not including moist snuff, the rate of tax is ~~71~~ 84  
percent of the  
amount obtained by adding the manufacturer's list price to the federal  
tax, duties  
and transportation costs to the United States. On moist snuff  
imported from another  
country, the rate of the tax is 100 percent of the amount obtained by  
adding the  
manufacturer's list price to the federal tax, duties, and transportation  
costs to the  
United States. The tax attaches at the time the tobacco products are  
received by the  
distributor in this state. The tax shall be passed on to the ultimate  
consumer of the  
tobacco products. All tobacco products received in this state for sale or  
distribution  
within this state, except tobacco products actually sold as provided in  
sub. (2), shall  
be subject to such tax.

SECTION 11. 139.76 (3) of the statutes is created to read:

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139.76 (3) Beginning on the effective date of this  
subsection .... [LRB inserts  
date], a person who is subject to the tax imposed under sub. (1) shall  
pay the greater  
of the amount determined under sub. (1) or the following:

(a) For a package of 4 cigars, an amount equal to the amount  
of the tax imposed  
under s. 139.31 (1) (a) on a pack of 20 cigarettes, and at a  
proportionate rate for any  
other quantity. No cigars with a wholesale price of less than \$1 per  
cigar may be sold  
in this state in a package containing fewer than 5 such cigars.

(b) For single-unit tobacco products, on each single-use unit,  
an amount equal  
to the amount of the tax imposed under s. 139.31 (1) (a) on one

cigarette. No

single-unit tobacco products may be sold in this state in packages containing fewer than 20 single-use units.

(c) For any smokeless tobacco product that consists of loose tobacco, including moist snuff, or that is otherwise not a product described under par. (b), on 1.2 ounces, an amount equal to the tax imposed under s. 139.31 (1) (a) on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.

(d) For any loose tobacco that is intended for smoking, including dry pipe tobacco, but not including wet pipe tobacco, on 0.65 ounces, an amount equal to the tax imposed under s. 139.31 (1) (a) on a pack of 20 cigarettes, and at a proportionate rate for any other quantity.

(e) For any tobacco product other than that listed in pars. (a) to (d), on each package or container, an amount equal to the tax imposed under s. 139.31 (1) (a) on a pack of 20 cigarettes. For purposes of this paragraph, the tax applies to the smallest, discrete package or container in any larger package or container intended for sale to consumers that contains multiple smaller packages or containers.

SECTION 12. 139.761 of the statutes is created to read:

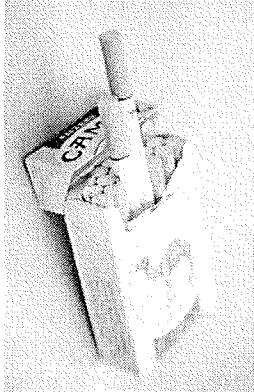


# A Closer Look at the Tax Loophole

A loophole in Wisconsin law allows some tobacco products to be treated differently than cigarettes, making these fruit-flavored tobacco products cheaper and more accessible to Wisconsin youth.

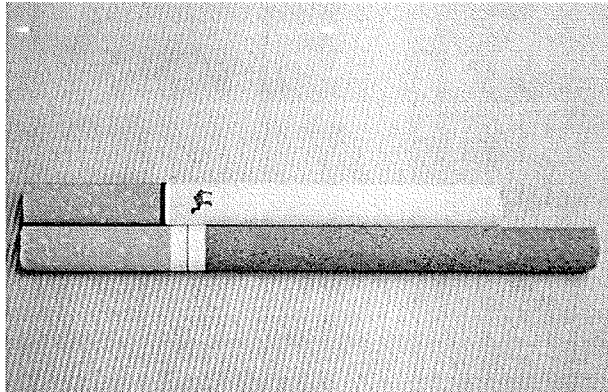
Functionally little cigars are cigarettes. However, because they are wrapped in brown paper, they have been misclassified in law as "other tobacco products."

## 20 Cigarettes



Cigarette Tax: \$2.52 a pack

## 20 Little Cigars



Tobacco Tax: Approx. \$0.78\*

\*The exact tobacco tax will differ based on wholesale prices

All cigarettes are taxed at \$2.52 per pack. Why should little cigars and other cigarette-like products be treated differently?



**These tobacco products are addictive and harmful.  
When they are less expensive, they appeal to children.**