

State of Wisconsin



2015 Assembly Bill 628

Date of enactment: **March 22, 2016**

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2015 WISCONSIN ACT 275

AN ACT *to amend* 134.66 (3) (intro.); and *to create* 134.65 (6), (7) and (8) of the statutes; **relating to**: a first class city suspending, revoking, or refusing to renew cigarette and tobacco products retailer licenses.

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

SECTION 1. 134.65 (6), (7) and (8) of the statutes are created to read:

134.65 (6) Any 1st class city may revoke, suspend, or refuse to renew any license issued under this section, as provided in sub. (7).

(7) (a) Any duly authorized employee of a 1st class city issuing licenses under this section may file a sworn written complaint, supported by reports from a law enforcement agency, with the clerk of the city alleging at least 2 separate instances of one or more of the following about a person holding a license issued under this section by the city:

1. The person has violated s. 134.66 (2) (a), (am), (cm), or (e), or a municipal ordinance adopted under s. 134.66 (5).

2. The person's premises are disorderly, riotous, indecent, or improper.

3. The person has knowingly permitted criminal behavior, including prostitution and loitering, to occur on the licensed premises.

4. The person has been convicted of any of the following:

a. Manufacturing, distributing, or delivering a controlled substance or controlled substance analog under s. 961.41 (1).

b. Possessing with intent to manufacture, distribute, or deliver, a controlled substance or controlled substance analog under s. 961.41 (1m).

c. Possessing with intent to manufacture, distribute, or deliver, or manufacturing, distributing, or delivering a controlled substance or controlled substance analog under a substantially similar federal law or a substantially similar law of another state.

d. Possessing any of the materials listed in s. 961.65 with intent to manufacture methamphetamine under that section or under a federal law or a law of another state that is substantially similar to s. 961.65.

5. The person knowingly allows another person who is on the licensed premises to do any of the actions described in subd. 4.

(b) Upon the filing of the complaint, the city governing body shall issue a summons, signed by the clerk and directed to any peace officer in the city. The summons shall command the person complained of to appear before the city governing body on a day and place named in the summons, not less than 3 days and not more than 10 days from the date of issuance, and show cause why his or her license should not be revoked, suspended, or not renewed. The summons and a copy of the complaint shall be served on the person complained of at least 3 days before the date on which the person is commanded to appear. Service shall be in the manner provided in ch. 801 for service in civil actions in circuit court.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(c) 1. If the person does not appear as required by the summons, the allegations of the complaint shall be taken as true, and if the city governing body finds the allegations to be sufficient grounds for revocation or nonrenewal, the license shall be revoked or not renewed. The city clerk shall give notice of the revocation or nonrenewal to the person whose license is revoked or not renewed.

2. If the person appears as required by the summons and answers the complaint, both the complainant and the person complained of may produce witnesses, cross-examine witnesses, and be represented by counsel. The person complained of shall be provided a written transcript of the hearing at his or her expense. If upon the hearing the city governing body finds the allegations of the complaint to be true, and if the city governing body finds the allegations to be sufficient grounds for suspension, revocation, or nonrenewal, the license shall be suspended for not less than 10 days nor more than 90 days, revoked, or not renewed.

3. The city clerk shall give notice of each suspension, revocation, or nonrenewal to the person whose license is suspended, revoked, or not renewed.

4. If the city governing body finds the allegations of the complaint to be untrue, the complaint shall be dismissed without cost to the person complained of.

(d) When a license is revoked under this subsection, the revocation shall be recorded by the city clerk and no other license may be issued under this section to the person whose license was revoked within the 12 months after the date of revocation. No part of the fee paid for any license that is revoked under this subsection may be refunded.

(e) The action of any city governing body in suspending, revoking, or not renewing any license under this subsection, or the failure of any city governing body to suspend, revoke, or not renew any license under this subsection for good cause, may be reviewed by the circuit court for the county in which the license was issued, upon the request of any applicant or licensee. The procedure on review shall be the same as in civil actions instituted

in the circuit court. The person desiring review shall file pleadings, which shall be served on the city governing body in the manner provided in ch. 801 for service in civil actions and a copy of the pleadings shall be served on the applicant or licensee. The city governing body, applicant, or licensee shall have 20 days to file an answer to the complaint. Following filing of the answer, the matter shall be deemed at issue and hearing may be had within 5 days, upon due notice served upon the opposing party. The hearing shall be before the court without a jury. Subpoenas for witnesses may be issued and their attendance compelled. The findings and order of the court shall be filed within 10 days after the hearing and a copy of the findings and order shall be transmitted to each of the parties. The order shall be final unless appeal is taken to the court of appeals.

(8) The uniform licensing of cigarette and tobacco products retailers is a matter of statewide concern. A city, village, or town may adopt an ordinance regulating the issuance, suspension, revocation, or renewal of a license under this section only if the ordinance strictly conforms to this section. If a city, village, or town has in effect on the effective date of this subsection [LRB inserts date], an ordinance that does not strictly conform to this section, the ordinance does not apply and may not be enforced.

SECTION 2. 134.66 (3) (intro.) of the statutes is amended to read:

134.66 (3) DEFENSE; SALE TO MINOR. (intro.) Proof of all of the following facts by a retailer, manufacturer, distributor, jobber, or subjobber, an agent, employee, or independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber, or an agent or employee of an independent contractor who sells cigarettes or tobacco products to a person under the age of 18 is a defense to any prosecution, or a complaint made under s. 134.65 (7), for a violation of sub. (2) (a):

SECTION 3. Effective date.

(1) This act takes effect on the first day of the 2nd month beginning after publication.
