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**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

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<b>2015 Senate Bill 528</b>	<b>Senate Substitute Amendment 1</b>
<i>Memo published:</i> February 8, 2016 <i>Contact:</i> Katie Bender-Olson, Senior Staff Attorney (266-2988)	

Under current law, in order to sell cigarettes or tobacco products at retail, a person must be licensed by the city, village, or town (“municipality”) where the sales take place, and a municipality may suspend or revoke a license under certain limited circumstances. Senate Bill 528 and Senate Substitute Amendment 1 create a new complaint-driven procedure under which a cigarette and tobacco products retailer license may be revoked, suspended, or not renewed.<sup>1</sup>

### **2015 SENATE BILL 528**

Senate Bill 528 creates a complaint-driven procedure to allow a municipality to suspend, revoke, or refuse to renew a cigarette and tobacco products retailer license.

Under the bill, the procedure would be initiated upon filing of a sworn written complaint by any resident or duly authorized employee of the licensing municipality with the municipal clerk. The complaint must allege one or more of the following about the person holding a cigarette and tobacco products retailer license:

- That the licensee violated statutory or municipal regulations relating to any of the following:
  - Sale or provision of cigarettes or tobacco products to minors.
  - Placement of cigarette and tobacco products vending machines.
  - Sales of cigarettes without proper tax stamps.

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<sup>1</sup> Current law provides similar complaint-driven procedures relating to the revocation, suspension, and nonrenewal of alcohol beverages licenses. [See s. 125.12, Stats.]

- That the premises of the licensee are disorderly, riotous, indecent, or improper.
- That the licensee failed to maintain the licensed premises in accordance with sanitation standards.
- That the licensee has permitted known criminals or prostitutes to loiter on the licensed premises.
- That the licensee has been convicted of any of the following:
  - Manufacturing, distributing, or delivering a controlled substance or controlled substance analog.
  - Possessing with intent to manufacture, distribute, or deliver a controlled substance or controlled substance analog.
  - Possessing materials with intent to manufacture methamphetamine.
- That the licensee knowingly allows another person to do any of the above actions related to controlled substances and methamphetamine on the licensed premises.

Upon filing of a complaint, the municipal governing body must issue and serve a summons and copy of the complaint to the licensee, commanding the licensee to appear before the municipal governing body to show cause why the cigarette and tobacco products license should not be revoked, suspended, or not renewed. The bill prescribes the time during which the appearance must be made and allows a licensee to produce and cross-examine witnesses and to be represented by counsel.<sup>2</sup>

If a licensee does not appear as required by the summons, the allegations of the complaint are to be taken as true, and if the municipal governing body finds the allegations to be sufficient grounds for revocation or nonrenewal, the license must be revoked or not renewed. If a licensee appears as required and answers the complaint, and, upon a hearing, the municipal governing body finds the allegations to be true and to be sufficient grounds for suspension, revocation, or nonrenewal, the license must be suspended for not less than 10 days nor more than 90 days, revoked, or not renewed.

If a municipal governing body finds that the allegations of a complaint are untrue, the complaint must be dismissed without cost to the licensee. If a complaint is found to be malicious and without probable cause, the costs must be paid by the complainant. The municipal governing body may require the complainant to provide security for such costs before issuing a summons.

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<sup>2</sup> To the extent the complaint alleges sales of cigarettes or tobacco products to minors, the bill provides that a licensee may rely on a defense of reasonable reliance on presentation of fraudulent identification in the same manner as provided under current law.

The municipal clerk must give notice of any suspension, revocation, or nonrenewal to the person whose license is suspended, revoked, or not renewed. If a license is revoked, the revocation must be recorded by the clerk and no other cigarette and tobacco products license may be issued to the person whose license was revoked within the 12 months after the revocation, and no portion of any fee paid for a license that is revoked may be refunded.

An action of a municipal governing body relating to a complaint brought under the procedure created by the bill may be reviewed by the circuit court for the county in which the license was issued.

### **SENATE SUBSTITUTE AMENDMENT 1**

Senate Substitute Amendment 1 generally retains the complaint-driven procedure, created by the bill, to allow a municipality to suspend, revoke, or refuse to renew a cigarette and tobacco products retailer license.

However, the amendment limits the application of the bill to a first-class city (currently, only the City of Milwaukee). In addition, the amendment makes the following changes to the bill:

- Provides that only a duly authorized employee of the city may file a sworn complaint. Under the amendment, a city resident is not able to file a sworn complaint to initiate the procedure created by the bill.
- Requires a sworn complaint to be supported by reports from a law enforcement agency.
- Requires a sworn complaint to allege at least two separate instances of offenses by a licensee. Under the bill, the complaint must allege one or more instances.
- Removes the offense relating to failure to maintain sanitation standards.
- Replaces the offense relating to loitering by known criminals or prostitutes with the following: “knowingly permitted criminal behavior, including prostitution and loitering, to occur on the licensed premises.”
- Removes provisions relating to malicious complaints and the option to require a complainant to provide security for costs.
- Provides that the bill, if enacted, takes effect on the first day of the second month beginning after publication.

### **BILL HISTORY**

Senate Substitute Amendment 1 was offered by Senator Darling on January 15, 2016. The Senate Committee on Elections and Local Government recommended adoption of the amendment on February 3, 2016, on a vote of Ayes, 5; Noes, 0. The committee then recommended passage of the bill, as amended, on a vote of Ayes, 5; Noes, 0.

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