

Assembly Bill 250

January 19, 2022

Testimony from Rep. Spiros

Hello, and thank you Chairman Swearingen and members of the Assembly Committee on State Affairs for allowing me to testify on Assembly Bill 250 related to the Department of Revenue's enforcement authority.

This bill was crafted at the request of the Department of Revenue to assist them in licensing, regulation, and enforcement of the sale of tobacco and alcohol. There will be a substitute amendment coming to this bill that is a compromise between the department and the interest groups. The substitute amendment keeps many components of the initial bill, but eliminates and clarifies some concerns from interest groups.

First, the bill addresses the requirements for selling cigarettes and tobacco by requiring DOR to create an application for licenses. Municipalities will use this form as the application to approve licenses and then must submit a list annually to DOR of all of the licenses approved. Also under the bill, an individual may not be issued a retail license to sell tobacco products if they are a habitual law offender or have been convicted of a felony.

Second, the bill addresses alcoholic beverages and vapor devices. The substitute amendment will define the term "electronic vaping devices" and require an individual who sells them to obtain a tobacco license. A definition of "fermented malt beverages" will also be federalized to include hard seltzers. AB 250 will require DOR to publish a list of retail licensees on their website and makes changes to the application process by requiring applicants to pay for their criminal history search. Finally, the bill prohibits the use, possession, or sale of an alcohol vapor device.

Third, the bill addresses a current law that no employees of the Lottery Division of DOR are allowed to purchase a lottery ticket or share. This bill would allow them to purchase a ticket only if the purchase is part of an official lottery investigation. It also adds penalties for counterfeit or illegally obtained lottery tickets and transfers of tickets to avoid withholdings.

Fourth, the bill creates a penalty for sales suppression devices and phantomware. These are devices that can be used for falsifying or duplicating electronic records on point-of-sale systems. Generally these devices are used to evade paying taxes.

As you can see, there are a lot of components to this bill, but overall the substitute amendment to AB 250 is meant to assist DOR license, regulate, and enhance enforcement of tobacco and alcohol. The agency worked with both our offices and interest groups to craft this bill and it has bi-partisan support.

Again, thank you again for allowing me the opportunity to testify in support of this bill. Secretary Barca and DOR liaisons will be available to answer your questions.



STATE REPRESENTATIVE
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Testimony in Support of Assembly Bill 250

To: Members of the Assembly Committee on State Affairs
From: Rep. Drake
Date: January 19, 2022

Chairman Swearingen and members of the Assembly Committee on State Affairs:

Thank you for hearing Assembly Bill 250 in committee today and I wish to extend my thanks to State Representative Spiros, State Senator Wanggard, Senator Taylor, Secretary Barca, and the co-sponsors included for making this a bi-partisan legislative proposal. Assembly Bill 250 contains several provisions that will enhance revenue enforcement and ensure additional safety measures for Wisconsinites.

Secretary Barca and his office have been instrumental in sharing the importance of having these provisions and has educated me in some of the issues this state faces. One of these provisions are ensuring zappers and alcohol mist machines, which turn alcohol beverage into a mist for inhalation are banned in state statute. Zappers are devices used to remove receipts at establishments to avoid paying the full amount of sales tax to the state. The alcohol mist machines are often used to fill balloons with this mist for consumers to inhale, which are dangerous to the public and have no legal use.

Another provision listed is ensuring vaping has the same state statutes for tobacco licenses as well. Based on data from the CDC, more than one in four high school students vape and there are currently little to no provisions or penalties to address this practice. This legislation works to correct that and ensure the safety of our youth. In addition, this legislation asks for the authority to publish website lists of municipal alcohol and tobacco licensees. This provision is something that I have heard directly during a public safety hearing with community members in the 11th Assembly district. Alcohol law is complex with a variety of restrictions on what types of businesses can hold different permits and licenses. Publishing a list of local licensees is helpful for the department and municipal governments alike.

These are just few of the many provisions that seek to ensure the safety of Wisconsinites and address bad actors who seek to evade tax invasion and/or conduct illegal activity regarding these matters. Again, I wish to thank Chairman Swearingen, and members of the Assembly Committee on State Affairs for hearing this bill today, as one of the authors I respectfully ask for your support. Thank you!

Respectfully,

Rep. Drake
State Representative
11th Assembly District

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Tony Evers
Governor

Peter W. Barca
Secretary of Revenue

Secretary Peter Barca Testimony on AB 250
January 19, 2021 | Safety and Revenue Enforcement Package

Thank you, Chairman Swearingen and Members of the Assembly State Affairs Committee, for hosting a hearing on AB 250 today. I am testifying in support of AB 250, the Safety and Revenue Enforcement Package. We are grateful to Representatives Spiros and Drake and Senators Wanggaard and Taylor for being our lead sponsors on this bill.

This bill contains several provisions that will enhance the safety of Wisconsinites and ensure effective tools for revenue enforcement. I have included a short description of each item following this testimony, but I would like to highlight a few major provisions of this bill:

We have banned several devices within this bill that are dangerous to the public or have no legal use. Zappers are devices used to scrub receipts at establishments to avoid remitting the full amount of sales tax to the state. We also seek to ban alcohol mist machines, which turn alcohol beverage into a mist for inhalation. The mist is often placed into a balloon for consumers to inhale. These are dangerous devices, and we have already confiscated two mist machines. This statutory ban makes it abundantly clear that this is not an acceptable practice in Wisconsin.

We also seek to clarify some common Lottery related crimes within AB 250. The lack of specificity in state statute has led to different interpretations between jurisdictions that results in disparate treatment of folks who commit these crimes. For example, we are proposing to add "counterfeit" to help clarify that possessing a fake ticket is a crime.

In addition, we have asked for the authority to publish on our website lists of municipal alcohol and tobacco licensees. Alcohol licensee information is already publicly accessible and can be accessed by anyone by request. We currently do not have a comprehensive list of tobacco license holders statewide. For public health and safety reasons, we feel it is important for this information to be available in an easily accessible format. As you are certainly aware, alcohol law is complex with a variety of restrictions on what types of businesses can hold different combinations of permits and licenses. Some businesses are permitted by the state, and some are licensed at the local level. Publishing a list of local licensees is helpful for the department and municipal governments alike. Having an easily searchable public database makes it easier for our Alcohol and Tobacco Agents and local police to enforce the law around these restrictions more effectively.

We are proud of the work that led to the bill before you today. The goal with this bill was to have it be a bipartisan success. Our authors and stakeholders on these issues have been open minded about getting to a solution that works for all of us, and it has ultimately produced a better bill because of that input and effort.

We are thankful to Chairman Swearingen for holding this hearing today at a particularly busy time for all of you. We hope that AB 250 earns the committee's unanimous, bipartisan support. I would like to offer myself and my staff to answer any of your questions at this time.

Safety and Revenue Enforcement Package
2021 Substitute Amendment SB 285/AB 250

11/8/2021

Lottery Law Enforcement Officers

Sections 1 – 2, 12, 50 – 54, 58 - 59

Background: Currently, Lottery investigators are responsible for ensuring retailer and player compliance with Chapter 565, initiating investigation of lottery related crimes, and ensuring the integrity of the Lottery. Under current law, these positions are not required to be sworn officers. This makes enforcement of lottery statutes dependent on other agencies (state and local law enforcement agencies) that do not have as complete a grasp of Lottery statutes. Providing the option for Lottery Investigators to be sworn law enforcement officers will make it easier to conduct investigations in the event local law enforcement declines to participate or other state entities make it difficult. They could also handle criminal acts up front when players come to cash in fraudulent tickets, or they discover stolen or altered tickets.

Description:

This amendment extends Lottery Chapter 565 enforcement authority to special agents at the Department of Revenue. It does not add additional staff or expenditure authority. We anticipate converting two Lottery staff members to sworn status for the purpose of enforcement of Lottery Chapter 565 related violations.

Clarify Disclosure of Tax Return information in connection with official duties of DOR/DOJ employees & upon receipt of Grand Jury Subpoena

Sections: 3 – 8, 10, 13 – 18, 41 – 42, 49

Background: All tax return information is highly protected by the IRS and Wisconsin DOR by state statute. There are a few instances in which DOR and DOJ employees need to be able to disclose information in the course of their regular job duties. Examples of this include instances of law enforcement actions, verifying audit information, grand jury subpoenas, and collection activity. To ensure that taxpayers and employees are protected from unauthorized disclosure of tax return information, this needs to be clarified.

Description: Clarify that DOR and DOJ employees may, in connection with their official duties, disclose information from a tax return such that it is necessary for the enforcement of Wisconsin tax laws and upon request from a state or federal grand jury subpoena. The clarification also authorizes DOJ employees to disclose tax return information with other law enforcement investigators participating in DOJ investigations.

[Plainfield Man Sentenced for Felony Tax Evasion Charges \(wi.gov\)](https://www.justice.gov/usao-wdwi/pr/madison-man-sentenced-42-months-cares-act-access-device-frauds)

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Zappers

Sections: 9, 11

Background: Zappers are designed to evade sales tax. They are software-based devices that can "zap" or remove items from a receipt after the customer has made their purchase. This helps the retailer who uses these devices to avoid sales tax on the full amount of purchases. The transaction will appear fully on the customer's sales receipt, and the customer will pay sales

tax on the entire purchase. However, the retailer will keep a second set of books, which eliminates the purchases that have been zapped. They will use this second set of books to report sales tax, and thus keep sales tax paid for zapped items, and avoid paying taxes on the items that were "zapped." There is no legal use for zappers.

Description: This bill creates specific income & franchise tax and sales & use tax penalties for any person who creates, designs, manufactures, sells, purchases, leases, installs, updates, repairs, services, transfers, uses, or possesses an automated sales suppression device, zapper, or phantom ware.

Income & Franchise Penalty: Apply existing Class H penalties for tax evasion and create additional penalty that is up to 6 years imprisonment, maximum fine of \$100,000 plus taxes, penalties, and forfeiture of profits associated with sale or use of device.

Sales & Use Penalty: Create automatic Class G felony, regardless of amount of tax dollars stolen, plus provide for 10-year revocation of seller's permit.

Prohibiting Alcohol Vapor/Mist Machines

Sections: 19, 24

Background: Alcohol Vapor/Mist Machines turn liquor into a mist for inhalation into the lungs. The mist is often blown inside a balloon and then inhaled by the purchaser. It is the position of the department that these machines are illegal.

Description: This bill clarifies that mist/vapor machines are illegal to use, offer for use, possess, sell, or offer for sale.

Hard Seltzer Taxation Fix

Sections: 20 - 21

Background: Sec. 125.02(6), Wis. Stats., provides that "fermented malt beverages" means any beverage made by the alcohol fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing 0.5 percent or more of alcohol by volume.

Hard seltzers and similar products are classified by the Alcohol & Tobacco Tax and Trade Bureau (TTB) as "beer" through administrative rule, in addition to the statutory definition of "malt beverage." As a result, for federal purposes hard seltzers and similar products are classified as "beer" or "flavored beer" for tax and regulatory purposes. The TTB is the federal agency responsible for classifying alcohol beverages and has the tools and resources to determine the alcohol content and ingredients contained in alcohol beverages submitted for federal label approval.

As a result, treatment of hard seltzers and other similar products under Chapter 125 as an intoxicating liquor is not reflective of current practice. It is presumed that these products are being sold statewide under fermented malt beverage retail licenses and distributed under fermented malt beverage wholesaler permits, rather than counterpart intoxicating liquor licenses or permits. In addition, current Wisconsin brewers are also rapidly exploring new brewing methods and chemical compositions for beverages they produce. For example, some brewers are producing beer made without hops, or gluten free beers produced with traditional malt alternatives. Without an update to the current definition of fermented malt beverages in sec. 125.02(6), Wis. Stats., a significant number of retailers, wholesalers, and manufacturers of alcohol beverages across the State of Wisconsin could be in violation of the law.

Description: The Department recommends revising the statutory definition of "fermented malt beverage" in state statute to adopt the TTB definition of beer under 27 CFR 25.11.

Create statewide database of local alcohol licensees **Section: 22**

Background: Retail licenses to sell alcohol are issued at the municipal level in Wisconsin. There are many restrictions on who can be issued local alcohol beverage licenses within each tier. Because DOR and other municipalities don't have easy access to each other's licensees, illegal licenses have been issued.

Description: Authorizes DOR to develop a statewide, public facing database of local alcohol licensees for ease of use by local governments and the state.

Pass Background Check Fees onto Applicants **Section: 23**

Background: Currently, DOR pays \$7 to DOJ for every background check it conducts. Background checks are required for all types of state-issued alcohol beverage permits. Municipalities currently pass on these fees to applicants.

Description: This proposal allows DOR to pass on the \$7 background check fee onto applicants for all state-issued alcohol beverage permits.

Clarify possession of still is illegal **Section: 25**

Background: While Chapter 125 provides circumstances and guidelines to create home brewed beer and wine, homemade intoxicating liquor is illegal. Therefore, beyond a collector, there is no legal purpose for possessing a still under current law. Possession of a still is also illegal under federal law (26 USC 5601(a)(1)) unless the owner has a collector permit.

Description: This bill clarifies that possession of a still is illegal but exempts those that are properly permitted by the federal government; an exemption that does not exist in current law.

Denied or Revoked Permit Process **Section: 26**

Background: Currently, there is no minimum amount of time that an applicant for a state-issued alcohol beverage permit (manufacturers, wholesalers) must wait before re-applying if the applicant's permit is denied, revoked, or not renewed. This creates a revolving door for unqualified applicants to cost DOR valuable staff time and money. Further, DOR must also incur the cost for background checks since applicants aren't required to pay those.

Description: The bill prescribes a 12-month length of time for an applicant to re-apply for an alcohol beverage permit, if DOR refused to issue, refused to renew, or revoked a previous permit.

Creates definition of electronic smoking devices and requires retailers selling such products to obtain a local license **Section 27 – 29, 65**

Background: Currently, there is no licensure requirement for businesses that sell only vapor products. This means that there is an enforcement gap in the taxation of such products because DOR agents and local police do not have inspection authority on these premises to confirm proper tax remittance.

Description: The bill creates a comprehensive definition of electronic smoking device so retailers know exactly when a license is required for the retail sale of such products. This bill also

includes electronic smoking devices into the existing municipal licensure structure for tobacco and tobacco products.

Create basic requirements for tobacco and electronic smoking device licenses and permits and establish a tobacco and electronic smoking device retail license database
Sections: 29 – 40,

Description: Currently, there are few legal requirements on who is eligible to acquire a municipal retail cigarette/tobacco license. In addition, there isn't a state requirement for municipalities to use DOR's application for a cigarette/tobacco products retailer license, as there is for retail alcohol beverage licenses.

Description: This provision mirrors the requirements in Chapter 125 for alcohol beverage licenses and permits and applies them to municipal cigarette/tobacco licenses and permits. It requires municipalities to use DOR's application to report cigarette/tobacco retailer licenses and gives DOR authority to build a local cigarette/tobacco license database like the alcohol beverage license database described above.

Allowing Lottery Investigators to purchase lottery tickets only when a part of an official Lottery Investigation or compliance check
Sections: 56 - 57

Background: Employees of the Lottery Division of DOR are not allowed under any circumstances to purchase lottery tickets. Lottery has investigators who inspect Lottery retailers for compliance with state law. Currently, agents must use non-lottery employees to make purchases to investigate retailers that may be violating state law.

Description: This provision clarifies that Lottery Investigators may purchase Lottery tickets as a part of an official Lottery investigation or compliance check in accordance with their official duties.

Increase penalties for possession of and retail sale, and tax evasion of untaxed cigarettes
Sections: 43 - 48

Background: The penalties for unlawful possession of untaxed cigarettes have not kept pace with the increase in cigarette taxes. Penalties for possession of unstamped cigarettes have remained largely unchanged since 1983, while the cigarette tax has increased eight times since 1983 increasing from 20 cents per pack (\$2.00 per carton) in 1981 to \$2.52 per pack (\$25.20 per carton) today.

Current penalties aren't enough to deter excise tax evasion, and do not provide penalties that correlate to the severity of the offense in terms of the amount of tax evaded.

Description: Updates and increases penalties associated with unlawful possession of cigarettes and excise tax evasion.

Current Law

Wis Stat 139.44(8)

6,000 or less	\$200 or less	6 months or less	Misdemeanor
6,000 – 36,000	\$1,000 or less	1 year or less	Misdemeanor
36,000+	\$10,000 or less	3.5 years or less	Class I Felony

Proposed under Sub to AB 250/SB 285

Up to 200	\$200 or less	6 months or less	Misdemeanor
200 – 3,000	\$1,000 or less	1 year or less	Misdemeanor
3,000 – 5,000	\$10,000 or less	3.5 years or less	Class I Felony
5,000 – 10,000	\$10,000 or less	6 years or less	Class H Felony
10,000+	\$25,000 or less	12 years or less	Class F Felony

Clarify Lottery related crimes

Sections: 55, 60, 61 - 63

Background: The Lottery Division has specific offenses happen often. These offenses are being interpreted differently from jurisdiction to jurisdiction. The result is some jurisdictions proceeding with charges, while others do not move forward with charges due to them not interpreting the statute to fit the offense.

Description: This proposal adds the clarifying language to encourage consistent interpretation from jurisdiction to jurisdiction.

Illegally obtained is added for examples of theft such as a retailer tells a customer the ticket is not a winner and then claims it themselves. Another example is a clerk steals a ticket and wins on it and it gets cashed. This ticket would have been illegally obtained. Currently Ch 565 does not address this most common offense and different jurisdictions charge it as simple theft, retail theft, theft in a business setting, and base it on the low dollar amount of the cost of ticket at times.

If someone gets paid out on a ticket and then the retailer or the player takes that same ticket to the Lottery and tries to get the Lottery to pay it again, that is addressed within the addition of "the prize has been previously claimed". Players will mail these in and say the retailer didn't already pay them.

Counterfeit is added for someone who creates a winning ticket either from on their own or from a non-winning ticket. Currently we only have "altered" or "forged" which have been questioned by jurisdictions if they are fitting for a "fake" ticket.

Include tobacco tax evasion and illegal possession of cigarettes within definition of racketeering

Section: 64

Background: In many instances, DOR agents have found that cigarette smuggling is a part of a broader criminal enterprise.

Cases: Feds to seek 3-year prison sentence for Capitol Petro owner for selling synthetic marijuana | Courts | madison.com

Description: This proposal includes tobacco tax evasion and possession of illegal cigarettes under the definition of racketeering.