

LENA C. TAYLOR

Wisconsin State Senator • 4th District

HERE TO SERVE YOU!

Senate Committee on Financial Institutions and Revenue

Public Hearing - SB 258

May 25, 2021

Chair Kooyenga, Vice-Chair Jagler and members of the Senate Committee on Financial Institutions and Revenue, thank you for today's public hearing on SB 285, regarding Department of Revenue enforcement and providing a penalty.

This bill, as you can see, has a number of fixes, provisions, or enhancers regarding products that require a greater degree of scrutiny and accountability, particularly as it relates to insuring public health. For instance, I had no idea that there isn't a universal application form that a person must submit in order to sell cigarettes or tobacco products. I believe that it is good to have a central form created by DOR, so that these licenses are consistent across the state.

As with most things, the bill is not perfect. I do believe the bill needs more clarity around the verbiage regarding that a retail license to sell cigarettes or tobacco may be issued only if, the applicant has not been a habitual law offender or been convicted of a felony. We need to clearly say what constitutes a habitual law offender. I also don't know that all types of felony convictions should prevent you from being a cigarette and tobacco retailer. However, I understand the intent is to thoroughly vet who receives these licenses.

Fees for criminal background searches are common sense measures. We needed to fix the laws that prevent lottery employees from buying a lottery ticket, even when it's a part of an investigation. We also needed to ensure that a lottery winner can't transfer a winning ticket to avoid financial obligations like child support.

On the issue of alcohol, yes we need to outlaw stills that are not properly licensed and yes we should ensure that prohibit things like "automated sales suppression device" that falsifies the electronic records of electronic cash registers and other point-of-sale systems.

SB 285 is a compilation of concerns raised by members of the business community and residents. We have worked to address many of the issues raised and I hope that you will support this bill. Thank you for your time.



Tony Evers
Governor

Peter W. Barca
Secretary of Revenue

Secretary Peter Barca Testimony on SB 285
May 25, 2021 | Safety and Revenue Enforcement Package

Thank you Chairman Kooyenga and Members of the Senate Revenue and Financial Institutions Committee for hosting a hearing on SB 285 today. I am testifying in support of SB 285, the Safety and Revenue Enforcement Package. Thank you to Senators Wanggaard and Taylor and Representatives Spiros and Drake for taking an interest in our issues.

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. Manufacture of homemade intoxicating liquor in Wisconsin and the United States is illegal. We have clarified that it is illegal in Wisconsin to possess a still without proper documentation from the federal government that it is for historical purposes only. Finally, we 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 SB 285. The lack of specificity in state statute has led to there being 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.

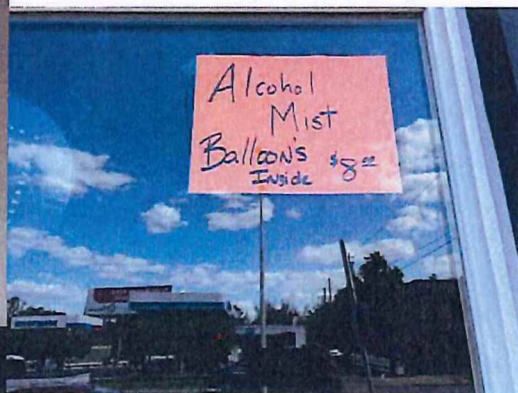
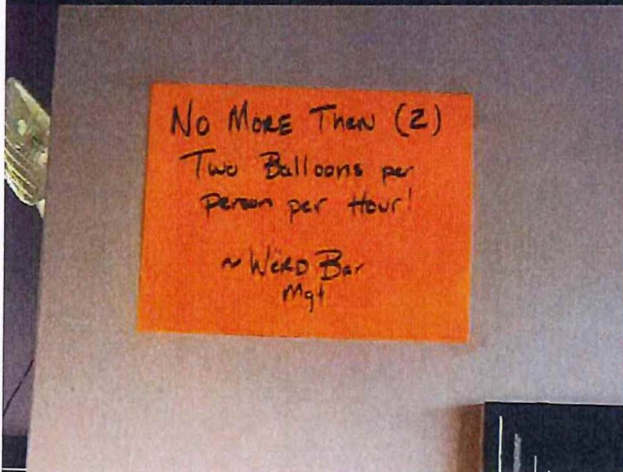
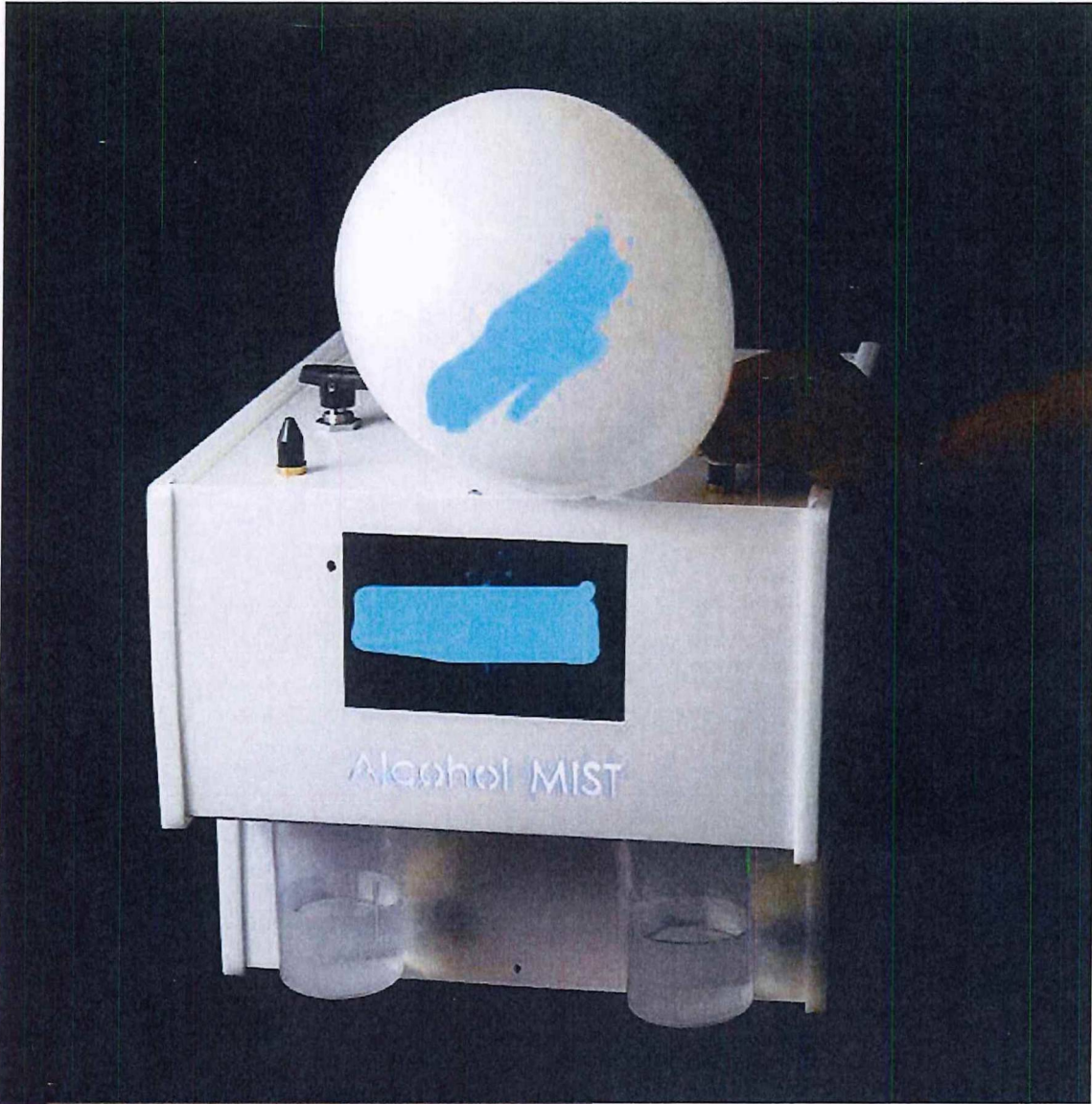
We have asked for the authority to publish on our website lists of municipal alcohol and tobacco licensees. This information is already publicly accessible and can be accessed by anyone by request. We currently do not have a comprehensive list of tobacco license holders statewide. For public health and 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 interest restrictions. 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 to effectively and fully enforce the law around these interest restrictions.

Finally, we seek to implement citation authority for alcohol beverage related violations. Our ten Alcohol and Tobacco Enforcement Agents conduct hundreds of inspections of alcohol beverage manufacturers, wholesalers, and retailers annually. Some of these are

routine premise checks to issue permits, others are related to complaints or issues on that premise. If an ATU Agent arrives on scene and finds a violation for a common but illegal infraction – such as bottle refilling, tied house violations, or underage drinking, they must call in a local police officer to write a municipal citation. This requires the municipality to have adopted all violations in Chapter 125 into their municipal ordinances. Many have not adopted some of the common trade practice violations and recourse is not available to agents at the time of inspection. Adding citation authority to Chapter 125 for state agents will be beneficial to the state, municipalities, and the industry. Our agents will be efficient with their time and that of local police. Licensing committees and clerks will have a clear record of violations and will have an opportunity to consider this when making licensing decisions. Most violations don't require more than a small fine for a business to come into compliance. This protects members of the alcohol industry that are good actors and following the law. It also provides equity across the tiers of the system who are solely under state permitting discretion.

We are thankful to Chairman Kooyenga for holding this hearing today at a particularly busy time for all of you. We hope that SB 285 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.

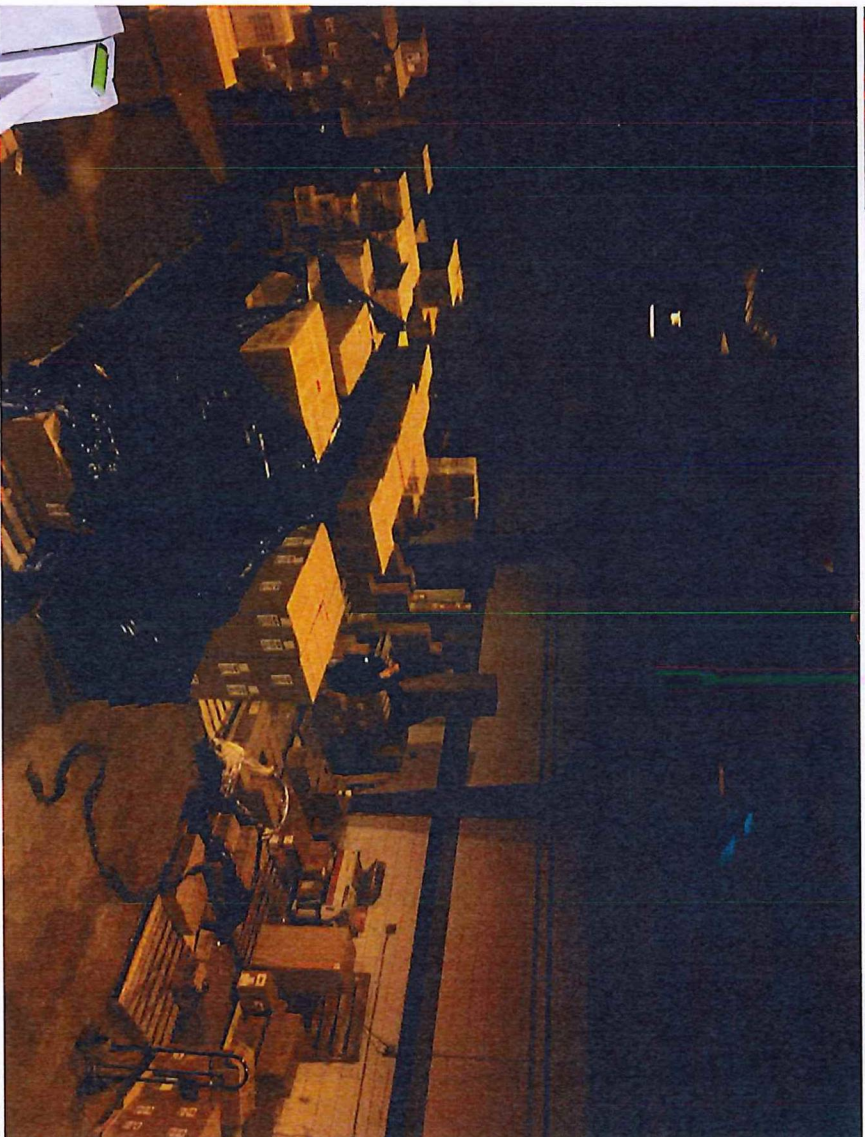
Mist Machine



Untaxed/Contraband Tobacco Products

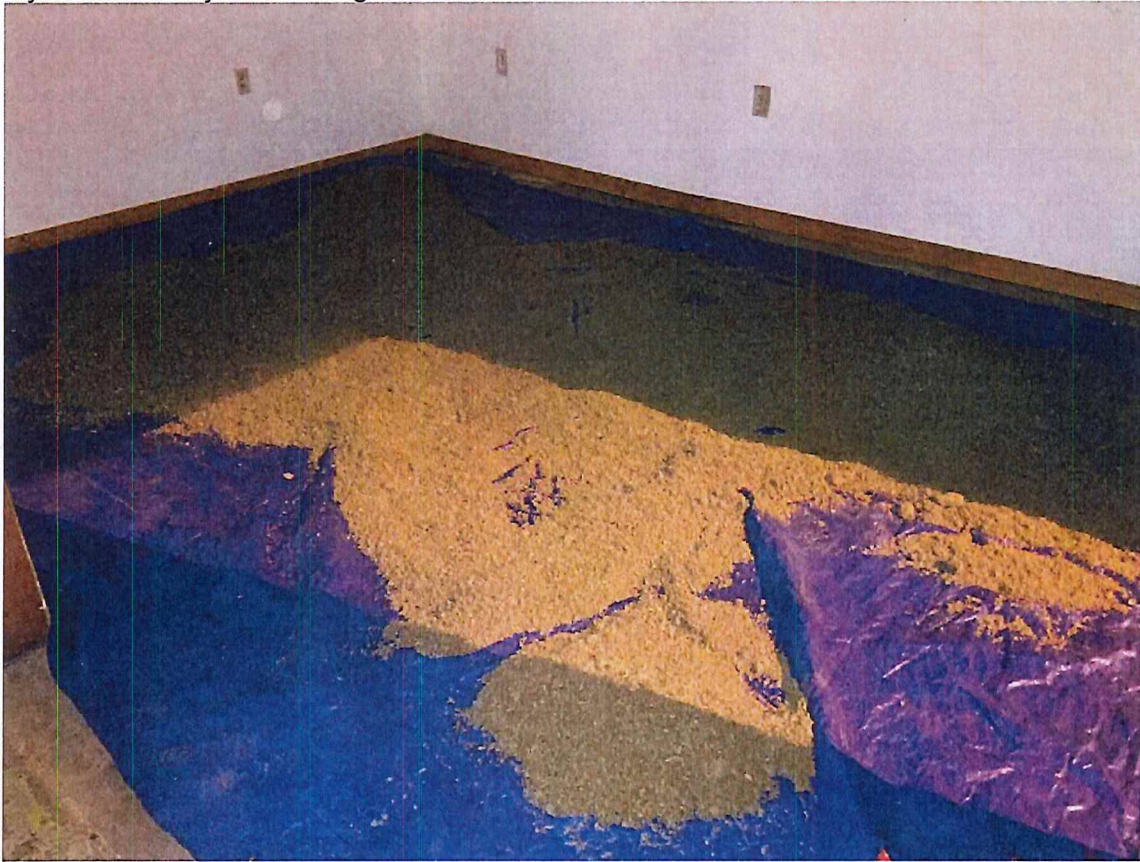


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Synthetic Marijuana being manufactured in the same warehouse











Senate Bill 285

May 25, 2021

Testimony from Rep. Spiros

Hello, and thank you Chairman Kooyenga and members of the Senate Committee on Financial Institutions and Revenue for allowing me to testify on Senate Bill 285 related to the Department of Revenue's enforcement authority.

This bill was crafted with the Department of Revenue and at their request to assist them in licensing, regulation, and enforcement of the sale of tobacco and alcohol. The bill essentially can be broken down into 5 components: cigarettes and tobacco products, alcoholic beverages and devices, lottery, taxes, and phantomware.

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, SB 285 addresses alcoholic beverages and vapor devices. This legislation establishes Chapter 125 citation authority for forfeitures for alcohol beverage violations. The bill also requires DOR to publish a list of retail licensees on their website. The bill also makes changes to the application process by requiring applicants to pay for their criminal history search. Additionally, if a person is denied the permit, they may not reapply for 12 months. Finally, the bill prohibits the use, possession, or sale of an alcohol vapor device and prohibits a person from having a still unless they hold an intoxicating liquor manufacturer's or rectifier's permit from DOR or the still has been registered under federal law.

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

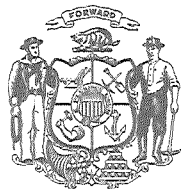
if the purchase is part of an official lottery investigation. It also adds penalties for counterfeit or illegally obtained lottery tickets and transfers of tickets to avoid withholdings.

Fourth, SB 285 addresses when DOR and DOJ employees may disclose tax return information. This is only to be done when necessary for the enforcement of Wisconsin tax laws or as part of a DOJ investigation and can only include information relevant to the matter at hand. It also increases the penalties for evading excise taxes and the unlawful possession of cigarettes.

Finally, 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 SB 285 is meant to assist DOR license, regulate, and enhance enforcement of tobacco and alcohol. The agency worked with both our offices 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.



Van H. Wanggaard

Wisconsin State Senator

Senate Committee on Financial Institutions and Revenue

Public Hearing, Tuesday, May 21, 2021

Senate Bill 285

Senator Van Wanggaard, 21st Senate District

Chairman Kooyenga and members of the Committee, thank you for taking the time to hear my testimony on Senate Bill 285 relating to the Wisconsin Department of Revenue enforcement powers and providing penalties.

In short, this bill makes various changes to state tax laws to assist the Department of Revenue (DOR) in the licensing, regulation, and enforcement of the sale of tobacco and alcohol in Wisconsin. This bill was drafted in coordination with and at the request of DOR. I was a first-hand witness to the changes that need to be made during several "ride-alongs" that I had the pleasure of participating in with Secretary Barca, and DOR enforcement agents.

Among the various provisions included are:

1. Prohibiting the use of "Zappers" or other sales suppression devices and phantomware;
2. Establishing Ch. 125 citation authority for forfeitures related to alcohol beverage violations;
3. Clarifying state lottery related crimes;
4. Prohibiting the use, possession or selling of alcohol vapor devices; and
5. Increasing penalties for evading excise taxes and unlawful possession of cigarettes.

I would like to point out something that was made clear during my ride-alongs. Cigarette enforcement and tobacco smuggling is a huge problem for both law enforcement and DOR agents. The provisions for tobacco enforcement will not only result in collecting the correct amount in tobacco tax, it will also help curtail underage smoking. I want to make clear that although this bill makes several changes to alcohol enforcement, this bill does NOT:

- (1) ban or outlaw home brewing,
- (2) create an "alcohol czar", or
- (3) do anything else that should be deemed controversial.

Again, SB 285 simply clarifies and enhances enforcement in the alcohol arena.

Thank you for your attention and consideration of my testimony. At this point, I would like to turn it over to Secretary Barca to explain the various changes in greater detail and answer any questions that Committee members may have.

Serving Racine and Kenosha Counties - Senate District 21

Safety and Revenue Enforcement Package
2021 SB 285/AB 250

LRB 0775/1
5/21/2021

This bill is a series of changes recommended by the Department of Revenue (DOR) to bolster our administrative and enforcement efforts of various tax laws.

Zappers

Sections: 7, 9

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 a specific additional 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: 16, 19

Background: Alcohol Vapor/Mist Machines turn liquor into a mist for inhalation. 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.

Clarify possession of still is illegal

Section: 20

Background: While Chapter 125 provides circumstances and guidelines to create home brewed beer and wine, homemade intoxicating liquor is illegal. Therefore, there is no legal purpose for 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 in Wisconsin unless properly permitted by the federal government.

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

Sections: 1 – 6, 8, 10 – 15, 30, 35

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. In order 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)

<https://www.justice.gov/usao-wdwi/pr/madison-man-sentenced-42-months-cares-act-access-device-frauds>

Chapter 125 Citation Authority

Sections: 21, 37 – 39

Background: DOR Excise Tax Agents run into common, minor violations of Chapter 125 (WI Alcohol Beverage Laws) on a regular basis during inspections and investigations of manufacturers, wholesalers, and retailers. Currently, agents must compile violations over the course of time and request criminal charges be filed by a District Attorney, where the result of convictions of such charges often results in a monetary fine. This process results in limited consequences for alcohol beverage industry members who do not comply with the law and allows repeat offenders to continue offending for a much longer period before effective action can be taken to address the situation. This proposal has previously been offered by the alcohol beverage industry.

Description: Gives DOR Excise Tax Agents Citation authority for minor, but common, violations of Chapter 125.

- Creates a fee schedule for each violation, including higher charges for repeat offenses.
- Creates and administrative proceeding for challenging citations within the Divisions of Hearings and Appeals of DOA.

Create statewide database of local alcohol licensees

Section: 17

Background: Retail licenses to sell alcohol are issued at the municipal level in Wisconsin. Municipalities are not compelled to provide their list of licensees to the state. There are many restrictions on who can be issued local alcohol 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.

Allowing Lottery Investigators to purchase lottery tickets only when a part of an official Lottery Investigation or compliance check **Sections: 40 - 41**

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.

Denied or Revoked Permit Process **Section: 23**

Background: Currently, there is no minimum amount of time that an applicant for a state issued alcohol or tobacco permit (manufacturers, distributors) must wait before re-applying if the applicant is denied, had their permit revoked, or not renewed. This creates a revolving door for unqualified applicants to cost DOR valuable staff time and money. Further, DOR must also front 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 a permit for alcohol or tobacco, if DOR refused to issue, refused to renew, or revoked a previous permit.

Increase penalties for possession of and retail sale, and tax evasion of untaxed cigarettes **Sections: 32 - 34**

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 [SB 285](#)

3,000 or less	\$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

Create basic requirements for tobacco licenses and permits and establish a tobacco retail license database **Sections: 24 - 28**

Description: Currently, there are few legal requirements on who is eligible to acquire a local tobacco retail license or state issued tobacco manufacturer or distributor permit. 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 tobacco licenses and permits. It requires municipalities to use the DOR approved tobacco retailer license and gives DOR authority to build a local tobacco license database like the alcohol beverage database described above.

Pass Background Check Fees onto Applicants **Section: 18**

Background: Currently, DOR pays \$7 for every background check it conducts to DOJ. Background checks are required for all types of state-issued alcohol 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 permits.

Clarify Lottery related crimes **Sections: 42 – 44**

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: 45**

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.