



2015 SENATE BILL 528

January 8, 2016 - Introduced by Senators DARLING, HARRIS DODD, CARPENTER and KAPENGA, cosponsored by Representatives GOYKE, J. OTT, JACQUE, SKOWRONSKI, MACCO, RODRIGUEZ, ZEPNICK, BROSTOFF, SINICKI, JOHNSON, KAHL, OHNSTAD, RIEMER, WACHS, BARNES, BOWEN and HUTTON. Referred to Committee on Elections and Local Government.

1 **AN ACT** *to renumber* 134.65 (1); *to amend* 134.65 (1m), 134.66 (1) (g) and 134.66
2 (3) (intro.); and *to create* 134.65 (1d) and 134.65 (6) and (7) of the statutes;
3 **relating to:** suspending, revoking, or refusing to renew cigarette and tobacco
4 products retailer licenses.

Analysis by the Legislative Reference Bureau

This bill allows a municipality that has issued a cigarette or tobacco products retailer license to suspend, revoke, or refuse to renew the license under certain circumstances, and establishes a procedure for doing so.

Under current law, local municipalities issue licenses to retailers to sell cigarettes or tobacco products. Current law provides that a license is valid for one year unless sooner revoked. Under current law, a retailer's license is terminated upon conviction of its second or subsequent violation of selling cigarettes or tobacco products without a license, if the retailer is found guilty of failing to exercise due care. Current law also provides that a court must suspend a retailer's license if the court finds the retailer guilty of two or more violations of certain restrictions relating to sales to minors within a 12-month period.

This bill allows a municipality to suspend, revoke, or refuse to renew a cigarette and tobacco products retailer license if the retailer does any of the following: 1) violates certain restrictions relating to the sale of cigarettes and tobacco; 2) keeps premises that are disorderly, riotous, indecent, or improper; 3) has failed to maintain the premises according to sanitation standards; 4) has permitted known criminals or prostitutes to loiter on the premises; 5) has been convicted of manufacturing,

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distributing, or delivering, or possessing with the intent to manufacture, distribute, or deliver, a controlled substance; or 6) knowingly allows another person on the licensed premises to manufacture, distribute, or deliver, or possess with the intent to manufacture, distribute, or deliver, a controlled substance.

Under the bill, a resident or authorized employee of the municipality that issued the retailer license may file a sworn complaint with the municipal clerk, alleging one of these grounds for suspension, revocation, or nonrenewal. The person holding the retailer license is then entitled to a hearing before the municipal governing body. The municipal governing body must find the allegations of the complaint to be true and find that there are sufficient grounds for suspension, revocation, or nonrenewal before suspending, revoking, or refusing to renew the license. If a retailer's license is revoked following a hearing, the retailer may not obtain another such license for 12 months. The municipal governing body's decision to suspend, revoke, or not renew a license, or its decision not to act, may be reviewed by the circuit court for the county in which the license was issued.

Under current law, it is a defense to any prosecution for selling cigarettes or tobacco products to a minor if the retailer can show that the purchaser falsely represented that he or she was at least 18 years of age, presented an identification card, and appeared to be at least 18, and that the sale was made in good faith. The bill provides that this is also a defense to a complaint, made under the procedures described in this bill, that alleges the retailer sold cigarettes or tobacco products to a minor.

For further information see the *local* 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.** 134.65 (1) of the statutes is renumbered 134.65 (1h).

2 **SECTION 2.** 134.65 (1d) of the statutes is created to read:

3 134.65 **(1d)** In this section, "municipality" means a city, village, or town.

4 **SECTION 3.** 134.65 (1m) of the statutes is amended to read:

5 134.65 **(1m)** A city, village, or town clerk may not issue a license under sub. ~~(1)~~
6 (1h) unless the applicant specifies in the license application whether the applicant
7 will sell, exchange, barter, dispose of, or give away the cigarette or tobacco products
8 over the counter or in a vending machine, or both.

9 **SECTION 4.** 134.65 (6) and (7) of the statutes are created to read:

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

3 (7) (a) Any resident or duly authorized employee of a municipality issuing
4 licenses under this section may file a sworn written complaint with the clerk of the
5 municipality alleging one or more of the following about a person holding a license
6 issued under this section by the municipality:

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

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

10 3. The person has failed to maintain the premises in accordance with the
11 standards of sanitation prescribed by the department of health services.

12 4. The person has permitted known criminals or prostitutes to loiter on the
13 licensed premises.

14 5. The person has been convicted of any of the following:

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

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

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

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

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

3 (b) Upon the filing of the complaint, the municipal governing body shall issue
4 a summons, signed by the clerk and directed to any peace officer in the municipality.
5 The summons shall command the person complained of to appear before the
6 municipal governing body on a day and place named in the summons, not less than
7 3 days and not more than 10 days from the date of issuance, and show cause why his
8 or her license should not be revoked, suspended, or not renewed. The summons and
9 a copy of the complaint shall be served on the person complained of at least 3 days
10 before the date on which the person is commanded to appear. Service shall be in the
11 manner provided in ch. 801 for service in civil actions in circuit court.

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

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

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

3 4. If the municipal governing body finds the allegations of the complaint to be
4 untrue, the complaint shall be dismissed without cost to the person complained of.
5 If the municipal governing body finds the complaint to be malicious and without
6 probable cause, the costs shall be paid by the complainant. The municipal governing
7 body may require the complainant to provide security for such costs before issuing
8 the summons under par. (b).

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

14 (e) The action of any municipal governing body in suspending, revoking, or not
15 renewing any license under this subsection, or the failure of any municipal governing
16 body to suspend, revoke, or not renew any license under this subsection for good
17 cause, may be reviewed by the circuit court for the county in which the license was
18 issued, upon the request of any applicant, licensee, or resident of the municipality.
19 The procedure on review shall be the same as in civil actions instituted in the circuit
20 court. The person desiring review shall file pleadings, which shall be served on the
21 municipal governing body in the manner provided in ch. 801 for service in civil
22 actions and a copy of the pleadings shall be served on the applicant or licensee. The
23 municipal governing body, applicant, or licensee shall have 20 days to file an answer
24 to the complaint. Following filing of the answer, the matter shall be deemed at issue
25 and hearing may be had within 5 days, upon due notice served upon the opposing

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1 party. The hearing shall be before the court without a jury. Subpoenas for witnesses
2 may be issued and their attendance compelled. The findings and order of the court
3 shall be filed within 10 days after the hearing and a copy of the findings and order
4 shall be transmitted to each of the parties. The order shall be final unless appeal is
5 taken to the court of appeals.

6 **SECTION 5.** 134.66 (1) (g) of the statutes is amended to read:

7 134.66 (1) (g) "Retailer" means any person licensed under s. 134.65 ~~(1)~~ (1h).

8 **SECTION 6.** 134.66 (3) (intro.) of the statutes is amended to read:

9 134.66 (3) DEFENSE; SALE TO MINOR. (intro.) Proof of all of the following facts
10 by a retailer, manufacturer, distributor, jobber, or subjobber, an agent, employee, or
11 independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber,
12 or an agent or employee of an independent contractor who sells cigarettes or tobacco
13 products to a person under the age of 18 is a defense to any prosecution, or a
14 complaint made under s. 134.65 (7), for a violation of sub. (2) (a):

15 (END)