



State of Wisconsin
2023 - 2024 LEGISLATURE

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JK/AG/JM/KP:cde

2023 SENATE BILL 268

May 2, 2023 - Introduced by Senators WANGGAARD, TAYLOR, COWLES and JAMES, cosponsored by Representatives SPIROS, DRAKE, MACCO, STEFFEN, GUNDRUM, OHNSTAD, O'CONNOR, CONSIDINE, SUBECK, DONOVAN, BALDEH, PALMERI, GOYKE, CONLEY, C. ANDERSON, WITTKE, GREEN and SUMMERFIELD. Referred to Committee on Universities and Revenue.

1 **AN ACT** *to renumber* 565.02 (8) (e); *to renumber and amend* 125.02 (6), 134.65
2 (1), 134.65 (1m) and 565.02 (8) (f); *to amend* 40.02 (48) (am) 19., 40.02 (48) (c),
3 71.78 (1), 71.78 (4) (b), 71.78 (5), 71.78 (6), 72.06, 73.031, 77.61 (5) (b) 2., 77.61
4 (5) (c), 77.61 (5) (d), 78.80 (3), 125.04 (3) (h), 125.04 (4), 134.65 (title), 134.65 (1r),
5 134.65 (4), 134.65 (5m), 134.65 (8), 134.66 (1) (g), 139.11 (4) (a) (intro.), 139.38
6 (6), 139.44 (2), 139.44 (8) (a), 139.44 (8) (b) and (c), 139.82 (6), 230.36 (1m) (b)
7 2. (intro.), 230.36 (2m) (a) 9., 565.17 (5) (a), 565.40 (title), 565.50 (2), 565.50 (3)
8 and 946.82 (4); and *to create* 71.78 (1g), 71.78 (4) (v), 71.83 (6), 73.03 (51b),
9 77.61 (5) (am), 77.61 (5) (b) 15., 125.02 (1c), 125.02 (6) (b), 125.04 (8m), 125.09
10 (8), 125.12 (7), 134.65 (1a), 134.65 (1g), 134.65 (1m) (a) 1. and 2., 134.65 (1m)
11 (b), 134.65 (2m), 134.65 (3m), 139.44 (2m), 139.44 (8) (am), 139.44 (8) (d), 565.01
12 (6c), 565.02 (9) (intro.), 565.17 (5) (d), 565.40 (4), 565.50 (2m) and 565.50 (4) of

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1 the statutes; **relating to:** Department of Revenue enforcement and providing
2 a penalty.

Analysis by the Legislative Reference Bureau

This bill makes the following changes related to the Department of Revenue's enforcement and administration of the laws under its purview:

License to sell cigarettes or tobacco products

The bill creates requirements relating to retail licenses to sell cigarettes or tobacco products.

Under current law, a person must obtain an annual license from the person's city, village, or town (municipality) before selling cigarettes or tobacco products. Under the bill, DOR must create an application form for such licenses. The form must include the applicant's history relevant to the applicant's fitness to hold a license; the kind of retailer license for which the applicant is applying; the premises where cigarettes or tobacco products will be sold or stored; if the applicant is a corporation, the identity of the corporate officers and agent; if the applicant is a limited liability company, the identity of the company members or managers and agent; the applicant's trade name, if any; whether the applicant will sell, exchange, barter, dispose of, or give away the cigarette or tobacco products over the counter or in a vending machine, or both; and any other information required by DOR.

The bill requires an applicant for a retail license to sell cigarettes or tobacco products to use the form created by DOR. An applicant must also sign the application and notify the municipality of any changes in information to the application within 30 days of the change. In addition, the bill requires the municipality to keep all submitted applications for at least four years.

Under the bill, 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, unless pardoned, and the applicant has submitted the proof required by DOR under current law relating to the collection of sales and use tax. If the applicant is a business entity that has been convicted of a crime, the business entity may not receive a retail license unless it has terminated its relationship with the individuals whose actions directly contributed to the conviction.

The bill also requires municipalities that issue retail licenses to sell cigarettes or tobacco to submit a list annually to DOR with a list of those licenses and certain information relating to the licenses and licensees, which DOR must post on its website.

Finally, the bill requires a licensee to place the licensee's retail license in a frame with a transparent front and to conspicuously display the license at all times in the room or place where the licensed activity takes place.

License to sell electronic vaping devices

This bill requires a person who sells electronic vaping devices to obtain a cigarette and tobacco products retailer license. Specifically, the bill requires a retailer who sells or offers for sale electronic vaping devices to obtain an annual

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license from the clerk of the city, village, or town where the retailer is located. The bill defines an “electronic vaping device” as a device that may be used to deliver any aerosolized or vaporized liquid or other substance for inhalation, regardless of whether the liquid or other substance contains nicotine.

Definition of fermented malt beverages

The bill expands the definition of fermented malt beverages.

Under current law, alcohol beverages that do not meet the definition of fermented malt beverages are considered intoxicating liquor. Fermented malt beverages are defined as 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.

This bill expands the definition of a fermented malt beverage to include any beverage that is recognized under federal regulations as beer, except sake or similar products.

Publishing a list of retail licenses

The bill requires DOR to publish a list of retail licensees on DOR’s website.

Under current law, DOR issues alcohol beverage permits, and municipalities issue alcohol beverage licenses. Each municipality must annually provide DOR with a list of the municipality’s retail licensees, including name, address, and type of license. The bill requires DOR to publish this list on DOR’s website.

Criminal history search fee

The bill requires an applicant for an alcohol beverages permit issued by DOR to pay to DOR the criminal history search fee associated with the application.

Under current law, DOR may not issue an alcohol beverages permit to an applicant that has a disqualifying criminal record. The Department of Justice charges a fee for a criminal history search. This bill requires the permit applicant to pay this criminal history search fee incurred by DOR.

Tax return information disclosure

The bill authorizes employees of DOR and DOJ to disclose tax return information under certain circumstances.

Under the bill, DOR employees may, in connection with their official duties, disclose tax return information to the extent that the disclosure is necessary to obtain information for the enforcement of Wisconsin’s tax laws. The disclosure must be strictly limited to, and used solely for the purposes of, obtaining information necessary for an audit, collection, inspection, or investigation by the DOR employee.

The bill authorizes DOJ employees to disclose, in connection with their official duties, the tax return information, other than copies of information, they are authorized to access under current law to a law enforcement investigator participating in a DOJ investigation. The disclosure must be strictly limited to, and used solely for the purposes of, obtaining information necessary for a DOJ investigation.

The bill also specifies that federal and Wisconsin grand juries are authorized to access tax return information upon DOR’s receipt of a grand jury subpoena.

SENATE BILL 268***Lottery***

Under current law, no employee of the Lottery Division of DOR may purchase a lottery ticket or lottery share. The bill allows such an employee to purchase a lottery ticket or a lottery share, if the purchase is made on behalf of the Lottery Division of DOR as part of an official lottery investigation.

Also under current law, if a person alters or forges a lottery ticket, or utters or transfers an altered or forged lottery ticket, the person is guilty of a Class I felony. The bill adds that if a person counterfeits or illegally obtains a lottery ticket, or utters or transfers a counterfeit or illegally obtained lottery ticket, the person is also guilty of a Class I felony. The bill also provides that any person who claims a lottery prize from a winning lottery ticket or share and then transfers the same winning lottery ticket or share to another person is guilty of a Class I felony.

Under current law, a person who possesses an altered or forged lottery ticket or share with intent to defraud is guilty of a misdemeanor, subject to a fine of not more than \$10,000 or imprisonment for not more than nine months or both. The bill adds that a person who possesses a counterfeit, illegally obtained, or previously redeemed lottery ticket is also guilty of a misdemeanor, subject to a fine of not more than \$10,000 or imprisonment for not more than nine months or both.

Under current law, lottery winnings are subject to withholdings for state taxes, child support, spousal support, maintenance or family support, assessments, fines, restitution, and surcharges. Under the bill, if a person transfers a winning lottery ticket to another person or claims a lottery prize from a transferred ticket with the intent to avoid these withholdings, the person is guilty of a misdemeanor, subject to a fine of not more than \$10,000 or imprisonment for not more than nine months or both.

Finally, the bill provides the special agents of DOR with all necessary police and peace officer powers to prevent and enforce violations of the lottery law, including the power to make an arrest under conditions set forth under current law for a law enforcement officer to make an arrest. Under current law, a law enforcement officer may arrest a person if the officer has a warrant for the person's arrest or has reasonable grounds to believe that this state or another state has issued a warrant for the person's arrest. In addition, a law enforcement officer may arrest a person if the officer has reasonable grounds to believe that the person is committing or has committed a crime.

Possession of alcohol vapor devices

The bill prohibits a person from using, possessing, or selling an alcohol vapor device, which is a device that turns an alcohol beverage into a vapor or mist to be inhaled.

Penalties for evading excise taxes and unlawful possession of cigarettes

The bill increases the penalties for evading the excise taxes imposed on cigarettes, tobacco products, and electronic vaping devices.

Under current law, a person who attempts to evade these taxes, or who aids in or abets the evasion or attempted evasion of these taxes, may be fined not more than \$10,000 or imprisoned for not more than nine months, or both.

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Under the bill, a person who evades or attempts to evade these taxes, or who aids in or abets the evasion or attempted evasion of these taxes, is guilty of the following:

1. A Class A misdemeanor if the amount of the tax is no more than \$2,500.
2. A Class I felony if the amount of the tax is more than \$2,500, but no more than \$5,000.
3. A Class H felony if the amount of the tax is more than \$5,000, but no more than \$10,000.
4. A Class G felony if the amount of the tax is more than \$10,000, but no more than \$100,000.
5. A Class F felony if the amount of tax is more than \$100,000.

The bill also increases the penalties for the unlawful possession of cigarettes.

Under current law, a person who unlawfully possesses up to 6,000 cigarettes is subject to a fine of not more than \$200 or imprisonment for not more than six months, or both. A person who unlawfully possesses more than 6,000 cigarettes but no more than 36,000 cigarettes is subject to a fine of not more than \$1,000 or imprisonment for not more than one year in county jail, or both. A person who unlawfully possesses more than 36,000 cigarettes is guilty of a Class I felony.

Under the bill, the penalties are increased as follows:

1. A person who unlawfully possesses no more than 200 cigarettes may be fined not more than \$200 or imprisoned for not more than six months, or both.
2. A person who unlawfully possesses more than 200 cigarettes but no more than 3,000 cigarettes may be fined not more than \$1,000 or imprisoned for not more than one year, or both.
3. A person who unlawfully possesses more than 3,000 cigarettes but no more than 5,000 cigarettes is guilty of a Class I felony.
4. A person who unlawfully possesses more than 5,000 cigarettes but no more than 10,000 cigarettes is guilty of a Class H felony.
5. A person who unlawfully possesses more than 10,000 cigarettes is guilty of a Class F felony.

The bill also amends the definition of “racketeering activity” for purposes of the Wisconsin Organized Crime Control Act to include the attempt, conspiracy to commit, or commission of the felonies created under the bill related to evading excise taxes and unlawful possession of cigarettes.

Alcohol beverage permit reapplication

The bill provides that, if DOR refuses to issue, refuses to renew, or revokes an alcohol beverages permit, the applicant or permit holder may not reapply to DOR for the permit for a period of six months.

Notice of change filed by alcohol beverage licensee or permittee

Under current law, within ten days of any change in a fact set out in an application for a license or permit to sell alcohol beverages, the licensee or permittee must file with the issuing municipality or DOR, as applicable, a written description of the changed fact. This bill extends the deadline for this filing from ten days to 30 days.

SENATE BILL 268***Sales suppression devices and phantomware***

Under the bill, any person who creates, designs, manufactures, sells, purchases, leases, installs, updates, repairs, services, transfers, uses, or possesses in this state or accesses from this state phantomware or an automated sales suppression device, unless for a legitimate purpose, is guilty of a Class D felony. The bill also authorizes DOR to revoke any permit, license, or certificate issued by DOR for up to 10 years for violating this prohibition.

Under the bill, an “automated sales suppression device” is a software program that falsifies the electronic records of electronic cash registers and other point-of-sale systems. The bill defines “phantomware” as a programming option embedded in the operating system of an electronic cash register, or hardwired into an electronic cash register, that can be used to create a virtual second electronic cash register or eliminate or manipulate transaction records. Automated sales suppression devices and phantomware are typically used to evade the payment of taxes.

For further information see the state 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.** 40.02 (48) (am) 19. of the statutes is amended to read:

2 40.02 **(48)** (am) 19. ~~An excise tax investigator~~ A special agent employed by the
3 department of revenue who is authorized to act under s. 73.031.

4 **SECTION 2.** 40.02 (48) (c) of the statutes is amended to read:

5 40.02 **(48)** (c) In s. 40.65, “protective occupation participant” means a
6 participating employee who is a police officer, fire fighter, an individual determined
7 by a participating employer under par. (a) or (bm) to be a protective occupation
8 participant, county undersheriff, deputy sheriff, state probation and parole officer,
9 county traffic police officer, conservation warden, state forest ranger, field
10 conservation employee of the department of natural resources who is subject to call
11 for forest fire control or warden duty, member of the state traffic patrol, state motor
12 vehicle inspector, University of Wisconsin System full-time police officer, guard or

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1 any other employee whose principal duties are supervision and discipline of inmates
2 at a state penal institution, ~~excise tax investigator~~ special agent employed by the
3 department of revenue who is authorized to act under s. 73.031, person employed
4 under s. 60.553 (1), 61.66 (1), or 62.13 (2e) (a), or special criminal investigation agent
5 employed by the department of justice.

6 **SECTION 3.** 71.78 (1) of the statutes is amended to read:

7 71.78 (1) DIVULGING INFORMATION. Except as provided in subs. (1g), (4), (4m),
8 (10), and (11), no person may divulge or circulate or offer to obtain, divulge, or
9 circulate any information derived from an income, franchise, withholding, fiduciary,
10 partnership, or limited liability company tax return or tax credit claim, including
11 information which may be furnished by the department as provided in this section.
12 This subsection does not prohibit publication by any newspaper of information
13 lawfully derived from such returns or claims for purposes of argument or prohibit
14 any public speaker from referring to such information in any address. This
15 subsection does not prohibit the department from publishing statistics classified so
16 as not to disclose the identity of particular returns, or claims or reports and the items
17 thereof. This subsection does not prohibit employees or agents of the department of
18 revenue from offering or submitting any return, including joint returns of a spouse
19 or former spouse, separate returns of a spouse, individual returns of a spouse or
20 former spouse, and combined individual income tax returns, or from offering or
21 submitting any claim, schedule, exhibit, writing, or audit report or a copy of, and any
22 information derived from, any of those documents as evidence into the record of any
23 contested matter involving the department in proceedings or litigation on state tax
24 matters if, in the department's judgment, that evidence has reasonable probative
25 value.

SENATE BILL 268**SECTION 4**

1 **SECTION 4.** 71.78 (1g) of the statutes is created to read:

2 71.78 (1g) PERMISSIBLE DISCLOSURE BY DEPARTMENT EMPLOYEES. An employee of
3 the department may, in connection with the employee's official duties, disclose
4 information derived from a return or claim specified in sub. (1) to the extent that the
5 disclosure is necessary to obtain information for the enforcement of the tax laws of
6 this state. The information that may be disclosed under this subsection shall be
7 strictly limited to, and used solely for the purposes of, obtaining information
8 necessary for an audit, collection, inspection, or investigation by the employee.

9 **SECTION 5.** 71.78 (4) (b) of the statutes is amended to read:

10 71.78 (4) (b) The attorney general and department of justice employees. A
11 department of justice employee may, in connection with the employee's official
12 duties, disclose information, other than copies of information, examined under this
13 paragraph to a law enforcement investigator participating in a department of justice
14 investigation of suspected criminal conduct. The information that may be disclosed
15 under this paragraph shall be strictly limited to, and used solely for the purposes of,
16 obtaining information necessary for a department of justice investigation.

17 **SECTION 6.** 71.78 (4) (v) of the statutes is created to read:

18 71.78 (4) (v) A federal grand jury or grand jury of this state, upon receipt by
19 the department of a grand jury subpoena.

20 **SECTION 7.** 71.78 (5) of the statutes is amended to read:

21 71.78 (5) AGREEMENT WITH DEPARTMENT. Copies of returns and claims specified
22 in sub. (1) and related schedules, exhibits, writings or audit reports shall not be
23 furnished to the persons listed under sub. (4), except persons under sub. (4) (e), (k),

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1 (n), (o) ~~and~~, (q), and (v) or under an agreement between the department of revenue
2 and another agency of government.

3 **SECTION 8.** 71.78 (6) of the statutes is amended to read:

4 71.78 (6) RESTRICTION ON USE OF INFORMATION. The use of information obtained
5 under sub. (4) or (5) is restricted to the discharge of duties imposed upon the persons
6 by law or by the duties of their office or by order of a court as provided under sub. (4)
7 (f) or (v).

8 **SECTION 9.** 71.83 (6) of the statutes is created to read:

9 71.83 (6) AUTOMATED SALES SUPPRESSION DEVICES AND PHANTOMWARE. (a)
10 *Definitions.* In this subsection:

11 1. “Automated sales suppression device” means a software program, including
12 programs accessed through the Internet or by any other means, that falsifies the
13 electronic records, including transaction data and transaction reports, of electronic
14 cash registers and other point-of-sale systems.

15 2. “Electronic cash register” means a device that keeps a register or supporting
16 documents by means of an electronic device or computer system designed to record
17 transaction data for the purpose of computing, compiling, or processing retail sales
18 transaction data or transaction reports.

19 3. “Phantomware” means a programming option embedded in the operating
20 system of an electronic cash register, or hardwired into an electronic cash register,
21 that can be used to create a virtual second electronic cash register or eliminate or
22 manipulate transaction records that may or may not be preserved in digital formats
23 to represent the true or manipulated record of transactions in the electronic cash
24 register.

SENATE BILL 268**SECTION 9**

1 4. “Transaction data” includes items purchased by a customer, the price for
2 each item, a taxability determination for each item, a segregated tax amount for each
3 of the taxed items, the amount of cash or credit tendered, the net amount returned
4 to the customer in change, the date and time of the purchase, the name, address, and
5 identification number of the vendor, and the receipt or invoice number of the
6 transaction.

7 5. “Transaction report” means a report that includes the sales, taxes collected,
8 media totals, and discount voids at an electronic cash register that is printed on cash
9 register tape at the end of a day or shift or a report documenting every action at an
10 electronic cash register that is stored electronically.

11 (b) *Automated sales suppression devices and phantomware.* Any person who
12 creates, designs, manufactures, sells, purchases, leases, installs, updates, repairs,
13 services, transfers, uses, or possesses in this state or accesses from this state
14 phantomware or an automated sales suppression device, unless for a legitimate
15 purpose, is guilty of a Class D felony.

16 **SECTION 10.** 72.06 of the statutes is amended to read:

17 **72.06** Sections 71.78 (1), (1g), (1m), and (4) to (9) and 71.83 (2) (a) 3. and 3m.
18 apply to any information obtained from any person by the department on a death tax
19 return, report, schedule, exhibit or other document or from an audit report
20 pertaining to the tax return.

21 **SECTION 11.** 73.03 (51b) of the statutes is created to read:

22 **73.03 (51b)** To revoke all permits, licenses, and certificates that the
23 department has issued to a person for up to 10 years for violating s. 71.83 (6) (b).

24 **SECTION 12.** 73.031 of the statutes is amended to read:

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1 **73.031 Arrest powers; authority.** A special agent of the department of
2 revenue who has been certified as a law enforcement officer by the law enforcement
3 standards board and who is on duty may arrest a person ~~if the special agent believes,~~
4 ~~on reasonable grounds, that a warrant for the person's arrest has been issued in this~~
5 ~~state, that a felony warrant has been issued in another state, that the person is~~
6 ~~violating or has violated under the conditions set forth in s. 968.07. Pursuant to s.~~
7 ~~175.38, special agents may investigate violations of s. 945.03 (2m) ~~or~~, 945.04 (2m),~~
8 ~~or that the person is violating or has violated s. 945.05 (1m) in a case in which the~~
9 department determines that the video gambling machine involved is likely to be used
10 in connection with a violation of s. 945.03 (2m) or 945.04 (2m) ~~or if a crime has been~~
11 ~~committed in the presence of the special agent. The special agent shall cause the~~
12 ~~person arrested and the documents and reports pertaining to the arrest to be~~
13 ~~delivered to the chief of police or sheriff in the jurisdiction where the arrest is made.~~
14 ~~The special agent shall be available as a witness for the state. A special agent acting~~
15 under this section is an employee of the department and is subject to its direction,
16 benefits and legal protection.

17 **SECTION 13.** 77.61 (5) (am) of the statutes is created to read:

18 77.61 (5) (am) Notwithstanding par. (a), an employee of the department may,
19 in connection with the employee's official duties, disclose information derived from
20 a return specified in par. (a) to the extent that the disclosure is necessary for the
21 enforcement of the tax laws of this state. The disclosure shall be limited to the
22 information relevant to a particular matter in connection with an audit, collection,
23 inspection, or investigation.

24 **SECTION 14.** 77.61 (5) (b) 2. of the statutes is amended to read:

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1 77.61 (5) (b) 2. The attorney general and department of justice employees. A
2 department of justice employee may, in connection with the employee's official
3 duties, disclose information derived under this subdivision to a law enforcement
4 investigator participating in a department of justice investigation. The disclosure
5 shall be limited to the information relevant to a particular matter in connection with
6 the department of justice investigation.

7 **SECTION 15.** 77.61 (5) (b) 15. of the statutes is created to read:

8 77.61 (5) (b) 15. A federal grand jury or grand jury of this state, upon receipt
9 by the department of a grand jury subpoena.

10 **SECTION 16.** 77.61 (5) (c) of the statutes is amended to read:

11 77.61 (5) (c) Copies of sales tax or use tax returns, schedules, exhibits, writings
12 or audit reports shall not be furnished to the persons listed under par. (b), except
13 persons under par. (b) 5. or 15. or under an agreement between the department and
14 another agency of government.

15 **SECTION 17.** 77.61 (5) (d) of the statutes is amended to read:

16 77.61 (5) (d) The use of information obtained under par. (b) or (c) is restricted
17 to the discharge of duties imposed upon the persons by law or by the duties of their
18 office or by order of a court as specified under par. (b) 6. or 15.

19 **SECTION 18.** 78.80 (3) of the statutes is amended to read:

20 78.80 (3) Sections 71.78 (1), (1g), and (4) to (9) and 71.83 (2) (a) 3., relating to
21 confidentiality of income and franchise tax returns, apply to any information
22 obtained from any person on a motor vehicle fuel, general aviation fuel or alternate
23 fuels tax return, report, schedule, exhibit, or other document or from an audit report
24 pertaining to the same.

25 **SECTION 19.** 125.02 (1c) of the statutes is created to read:

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1 125.02 (1c) “Alcohol vapor device” means any device that provides for the use
2 of air or oxygen bubbled through an alcohol beverage to produce a vapor or mist that
3 allows the user to inhale this alcoholic vapor through the mouth or nose.

4 **SECTION 20.** 125.02 (6) of the statutes is renumbered 125.02 (6) (intro.) and
5 amended to read:

6 125.02 (6) (intro.) “Fermented malt beverages” means any of the following:

7 (a) Any beverage made by the alcohol fermentation of an infusion in potable
8 water of barley malt and hops, with or without unmalted grains or decorticated and
9 degerminated grains or sugar containing 0.5 percent or more of alcohol by volume.

10 **SECTION 21.** 125.02 (6) (b) of the statutes is created to read:

11 125.02 (6) (b) Any beverage recognized by the federal department of the
12 treasury as beer under 27 CFR 25.11, except sake or similar products.

13 **SECTION 22.** 125.04 (3) (h) of the statutes is amended to read:

14 125.04 (3) (h) *Subsequent changes.* Within ~~10~~ 30 days of any change in any fact
15 set out in an application for a license or permit to sell alcohol beverages, the licensee
16 or permittee shall file with the issuing authority a written description of the changed
17 fact.

18 **SECTION 23.** 125.04 (4) of the statutes is amended to read:

19 125.04 (4) LIST OF LICENSEES. By July 15 annually, the clerk of a municipality
20 issuing licenses shall mail to the department a list containing the name, address, and
21 trade name of each person holding a license issued by that municipality, other than
22 a manager’s or operator’s license or a license issued under s. 125.26 (6), the type of
23 license held, and, if the person holding the license is a corporation or limited liability
24 company, the name of the agent appointed under sub. (6). The department shall
25 annually publish this list on the department’s website.

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1 **SECTION 24.** 125.04 (8m) of the statutes is created to read:

2 125.04 **(8m)** PAYMENT OF CRIMINAL HISTORY FEES. Any fees incurred by the
3 department under s. 165.82 (1) (am) for purposes of verifying a permit applicant's
4 eligibility under sub. (5) (a) 1. and (b) shall be paid by the applicant to the department
5 upon application for the permit.

6 **SECTION 25.** 125.09 (8) of the statutes is created to read:

7 125.09 **(8)** ALCOHOL VAPOR DEVICES. No person may use or offer for use, possess,
8 or sell or offer for sale in this state an alcohol vapor device.

9 **SECTION 26.** 125.12 (7) of the statutes is created to read:

10 125.12 **(7)** REAPPLICATION FOR PERMIT AFTER REVOCATION. If the department
11 revokes any permit issued under this chapter, the applicant or permit holder may not
12 reapply for the permit for a period of 6 months after the date of the revocation.

13 **SECTION 27.** 134.65 (title) of the statutes is amended to read:

14 **134.65** (title) **Cigarette, electronic vaping devices, and tobacco**
15 **products retailer license.**

16 **SECTION 28.** 134.65 (1) of the statutes is renumbered 134.65 (1d) and amended
17 to read:

18 134.65 **(1d)** No person shall in any manner, or upon any pretense, or by any
19 device, directly or indirectly sell, expose for sale, possess with intent to sell,
20 exchange, barter, dispose of or give away any cigarettes, electronic vaping devices,
21 or tobacco products to any person not holding a license as herein provided or a permit
22 under ss. 139.30 to 139.41 or 139.79 without first obtaining a license from the clerk
23 of the city, village or town wherein such privilege is sought to be exercised.

24 **SECTION 29.** 134.65 (1a) of the statutes is created to read:

25 134.65 **(1a)** In this section:

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1 (a) “Cigarette” has the meaning given in s. 139.30 (1m).

2 (b) “Electronic vaping device” means a device that may be used to deliver any
3 aerosolized or vaporized liquid or other substance for inhalation, regardless of
4 whether the liquid or other substance contains nicotine, including an e-cigarette,
5 e-cigar, e-pipe, vape pen, or e-hookah. “Electronic vaping device” includes a
6 component, part, or accessory of the device, and includes a liquid or other substance
7 that may be aerosolized or vaporized by such device, regardless of whether the liquid
8 or other substance contains nicotine. “Electronic vaping device” does not include a
9 battery or battery charger when sold separately. “Electronic vaping device” does not
10 include drugs, devices, or combination products authorized for sale by the U.S. food
11 and drug administration, as those terms are defined in the Federal Food, Drug, and
12 Cosmetic Act.

13 (c) “Tobacco products” has the meaning given in s. 139.75 (12).

14 (d) “Vending machine” has the meaning given in s. 139.30 (14).

15 **SECTION 30.** 134.65 (1g) of the statutes is created to read:

16 134.65 (1g) (a) The department of revenue shall create an application form for
17 licenses issued under sub. (1d). The form shall require all of the following
18 information from an applicant:

19 1. The applicant’s history relevant to the applicant’s fitness to hold a license
20 under sub. (1d).

21 2. The kind of license for which the applicant is applying.

22 3. The premises where cigarettes, electronic vaping devices, or tobacco
23 products will be sold or stored.

24 4. If the applicant is a corporation, the identity of the corporate officers and
25 agent.

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1 5. If the applicant is a limited liability company, the identity of the company
2 members or managers and agent.

3 6. The applicant's trade name, if any.

4 7. Whether the applicant will sell, exchange, barter, dispose of, or give away
5 the cigarettes, electronic vaping devices, or tobacco products over the counter or in
6 a vending machine, or both.

7 8. Any other information required by the department of revenue.

8 (b) The department of revenue shall make the form prepared under this
9 subsection available to all cities, villages, and towns.

10 (c) An applicant for a license under sub. (1d) shall use the form prepared under
11 this subsection.

12 (d) An application for a license under sub. (1d) shall be signed by the applicant
13 and the applicant shall submit the application to the clerk of the city, village, or town
14 where the intended place of sale is located.

15 (e) Within 30 days of any change in any fact set forth in an application for a
16 license under sub. (1d), the applicant or licensee shall file a written description of the
17 change with the clerk of the city, village, or town where the application was
18 submitted.

19 (f) Any person may inspect applications for a license under sub. (1d). The clerk
20 of a city, village, or town where such applications are submitted shall retain all
21 applications, except that the clerk may destroy any application that is 4 or more
22 years old.

23 **SECTION 31.** 134.65 (1m) of the statutes is renumbered 134.65 (1m) (a) (intro.)
24 and amended to read:

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1 134.65 **(1m)** (a) (intro.) A city, village, or town clerk may not issue a license
2 under sub. ~~(1)~~ (1d) unless the applicant ~~specifies in the license application whether~~
3 ~~the applicant will sell, exchange, barter, dispose of, or give away the cigarette or~~
4 ~~tobacco products over the counter or in a vending machine, or both.~~ meets all of the
5 following requirements:

6 **SECTION 32.** 134.65 (1m) (a) 1. and 2. of the statutes are created to read:

7 134.65 **(1m)** (a) 1. Subject to ss. 111.321, 111.322, and 111.335, the applicant
8 has not habitually been a law offender or been convicted of a felony unless pardoned.

9 2. The applicant has submitted the proof required under s. 77.61 (11).

10 **SECTION 33.** 134.65 (1m) (b) of the statutes is created to read:

11 134.65 **(1m)** (b) The requirements under par. (a) apply to all partners of a
12 partnership, all members of a limited liability company, all agents of a limited
13 liability company or corporation, and all officers of a corporation. Subject to ss.
14 111.321, 111.322, and 111.335, if a business entity has been convicted of a crime, the
15 entity may not be issued a license under sub. (1d) unless the entity has terminated
16 its relationship with the individuals whose actions directly contributed to the
17 conviction.

18 **SECTION 34.** 134.65 (1r) of the statutes is amended to read:

19 134.65 **(1r)** A city, village, or town clerk may not require an applicant's
20 signature on an application for a cigarette, electronic vaping devices, and tobacco
21 products retailer license to be notarized. If a city, village, town, or any department
22 of this state prepares an application form for a cigarette, electronic vaping devices,
23 and tobacco products retailer license, the form may not require an applicant's
24 signature on the form to be notarized.

25 **SECTION 35.** 134.65 (2m) of the statutes is created to read:

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1 134.65 (2m) Annually, no later than July 15, the clerk of a city, village, or town
2 issuing licenses under sub. (1d) shall submit to the department of revenue, in a
3 manner prescribed by the department, a list of licenses issued by the city, village, or
4 town under sub. (1d) during the previous fiscal year. The list shall include the name,
5 address, seller's permit number, and trade name of the licensee and the type of
6 license held. The department of revenue shall publish this list annually on the
7 department's website.

8 **SECTION 36.** 134.65 (3m) of the statutes is created to read:

9 134.65 (3m) A person holding a license under sub. (1d) shall enclose the license
10 in a frame that has a transparent front that allows the license to be read clearly. The
11 licensee shall conspicuously display the license for public inspection at all times in
12 the room or place where the activity subject to licensure is carried out.

13 **SECTION 37.** 134.65 (4) of the statutes is amended to read:

14 134.65 (4) Every licensed retailer shall keep complete and accurate records of
15 all purchases and receipts of cigarettes, electronic vaping devices, and tobacco
16 products. Such records shall be preserved on the licensed premises for 2 years in such
17 a manner as to insure permanency and accessibility for inspection and shall be
18 subject to inspection at all reasonable hours by authorized state and local law
19 enforcement officials.

20 **SECTION 38.** 134.65 (5m) of the statutes is amended to read:

21 134.65 (5m) Any person who knowingly provides materially false information
22 in an application for a cigarette, electronic vaping devices, and tobacco products
23 retailer license under this section may be required to forfeit not more than \$1,000.

24 **SECTION 39.** 134.65 (8) of the statutes is amended to read:

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1 134.65 (8) The uniform licensing of cigarette, electronic vaping devices, and
2 tobacco products retailers is a matter of statewide concern. A city, village, or town
3 may adopt an ordinance regulating the issuance, suspension, revocation, or renewal
4 of a license under this section only if the ordinance strictly conforms to this section.
5 If a city, village, or town has in effect on May 1, 2016, an ordinance that does not
6 strictly conform to this section, the ordinance does not apply and may not be enforced.

7 **SECTION 40.** 134.66 (1) (g) of the statutes is amended to read:

8 134.66 (1) (g) “Retailer” means any person licensed under s. 134.65 (1) (1d).

9 **SECTION 41.** 139.11 (4) (a) (intro.) of the statutes is amended to read:

10 139.11 (4) (a) (intro.) Sections 71.78 (1), (1g), (1m), and (4) to (9) and 71.83 (2)
11 (a) 3. and 3m., relating to confidentiality of income and franchise tax returns, apply
12 to any information obtained from any person on a fermented malt beverage tax
13 return, report, schedule, exhibit, or other document or from an audit report relating
14 to any of those documents, except that the department of revenue shall publish the
15 following:

16 **SECTION 42.** 139.38 (6) of the statutes is amended to read:

17 139.38 (6) Sections 71.78 (1), (1g), (1m), and (4) to (9) and 71.83 (2) (a) 3. and
18 3m., relating to confidentiality of income and franchise tax returns, apply to any
19 information obtained from any person on a cigarette tax return, report, schedule,
20 exhibit, or other document or from an audit report pertaining to the return, report,
21 schedule, exhibit, or document, except that the department shall publish on its
22 ~~Internet site~~ website, at least quarterly, a current list of permits issued to
23 distributors and jobbers under s. 139.34 and include on the list the name and address
24 of the permit holder and the date on which the department issued the permit.

25 **SECTION 43.** 139.44 (2) of the statutes is amended to read:

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1 139.44 (2) Any person who makes or signs any false or fraudulent report ~~or who~~
2 attempts to evade the tax imposed by s. 139.31 or 139.76, ~~or who aids in or abets the~~
3 evasion ~~or attempted evasion of that tax~~ may be fined not more than \$10,000 or
4 imprisoned for not more than 9 months or both.

5 **SECTION 44.** 139.44 (2m) of the statutes is created to read:

6 139.44 (2m) Any person who evades or attempts to evade, or who aids or abets
7 the evasion or attempted evasion of, a tax imposed under s. 139.31 or 139.76 is guilty
8 of the following:

9 (a) A Class A misdemeanor if the amount of the tax is no more than \$2,500.

10 (b) A Class I felony if the amount of the tax is more than \$2,500, but no more
11 than \$5,000.

12 (c) A Class H felony if the amount of the tax is more than \$5,000, but no more
13 than \$10,000.

14 (d) A Class G felony if the amount of the tax is more than \$10,000, but no more
15 than \$100,000.

16 (e) A Class F felony if the amount of the tax is more than \$100,000.

17 **SECTION 45.** 139.44 (8) (a) of the statutes is amended to read:

18 139.44 (8) (a) If the number of cigarettes does not exceed 6,000, ~~a fine of 200,~~
19 the person may be fined not more than \$200 or ~~imprisonment~~ imprisoned for not
20 more than 6 months or both.

21 **SECTION 46.** 139.44 (8) (am) of the statutes is created to read:

22 139.44 (8) (am) If the number of cigarettes exceeds 200 but does not exceed
23 3,000, the person may be fined not more than \$1,000 or imprisoned for not more than
24 one year or both.

25 **SECTION 47.** 139.44 (8) (b) and (c) of the statutes are amended to read:

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1 139.44 (8) (b) If the number of cigarettes exceeds ~~6,000~~ 3,000 but does not
2 exceed ~~36,000~~, a fine of not more than \$1,000 or imprisonment for not more than one
3 year ~~in the county jail or both~~ 5,000, the person is guilty of a Class I felony.

4 (c) If the number of cigarettes exceeds ~~36,000~~ 5,000 but does not exceed 10,000,
5 the person is guilty of a Class ~~I~~ H felony.

6 **SECTION 48.** 139.44 (8) (d) of the statutes is created to read:

7 139.44 (8) (d) If the number of cigarettes exceeds 10,000, the person is guilty
8 of a Class F felony.

9 **SECTION 49.** 139.82 (6) of the statutes is amended to read:

10 139.82 (6) Sections 71.78 (1), (~~1g~~), (1m), and (4) to (9) and 71.83 (2) (a) 3. and
11 3m., relating to confidentiality of income and franchise tax returns, apply to any
12 information obtained from any person on a cigarette tax return, report, schedule,
13 exhibit, or other document or from an audit report pertaining to the return, report,
14 schedule, exhibit, or document, except that the department shall publish on its
15 Internet site website, at least quarterly, a current list of permits issued to
16 distributors and jobbers under s. 139.34 and include on the list the name and address
17 of the permit holder and the date on which the department issued the permit.

18 **SECTION 50.** 230.36 (1m) (b) 2. (intro.) of the statutes is amended to read:

19 230.36 (1m) (b) 2. (intro.) A conservation warden, conservation patrol boat
20 captain, conservation patrol boat engineer, member of the state patrol, state motor
21 vehicle inspector, University of Wisconsin System police officer, security officer, or
22 security person, other state facilities police officer, special tax agent, ~~excise tax~~
23 ~~investigator~~ employed by the department of revenue and authorized to act under s.
24 73.031, and special criminal investigation agent employed by the department of
25 justice at all times while:

SENATE BILL 268**SECTION 51**

1 **SECTION 51.** 230.36 (2m) (a) 9. of the statutes is amended to read:

2 230.36 **(2m)** (a) 9. A ~~excise tax investigator~~ special agent employed by the
3 department of revenue who is authorized to act under s. 73.031.

4 **SECTION 52.** 565.01 (6c) of the statutes is created to read:

5 565.01 **(6c)** “Special agent” means any employee of the department authorized
6 to act under s. 73.031.

7 **SECTION 53.** 565.02 (8) (e) of the statutes is renumbered 565.02 (9) (a).

8 **SECTION 54.** 565.02 (8) (f) of the statutes is renumbered 565.02 (9) (b) and
9 amended to read:

10 565.02 **(9)** (b) ~~If the division of criminal investigation in the department of~~
11 ~~justice chooses not to investigate a report under par. (e), coordinate~~ Coordinate an
12 investigation of the suspected gaming-related criminal activity with local law
13 enforcement officials and district attorneys.

14 **SECTION 55.** 565.02 (9) (intro.) of the statutes is created to read:

15 565.02 **(9)** (intro.) The department may do all of the following:

16 **SECTION 56.** 565.17 (5) (a) of the statutes is amended to read:

17 565.17 **(5)** (a) ~~No~~ Except as provided under par. (d), no employee in the lottery
18 division of the department or the secretary, deputy secretary, or assistant deputy
19 secretary of revenue and no member of such a person’s immediate family, as defined
20 in s. 19.42 (7), may purchase a lottery ticket or lottery share.

21 **SECTION 57.** 565.17 (5) (d) of the statutes is created to read:

22 565.17 **(5)** (d) An employee in the lottery division of the department may
23 purchase a lottery ticket or lottery share if the purchase is on behalf of the lottery
24 division of the department and is a part of an official lottery investigation. No person
25 may share or assign a lottery ticket or lottery share purchased under this paragraph

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1 and no person may claim any prize or winnings from a lottery ticket or lottery share
2 purchased under this paragraph.

3 **SECTION 58.** 565.40 (title) of the statutes is amended to read:

4 **565.40** (title) ~~Department of justice enforcement~~ **Enforcement**
5 **authority.**

6 **SECTION 59.** 565.40 (4) of the statutes is created to read:

7 565.40 (4) POLICE POWERS. The department may enforce violations of this
8 chapter, and special agents may exercise their arrest authority under s. 73.031 to
9 enforce violations of this chapter. This subsection does not deprive or relieve other
10 law enforcement or peace officers of the power and duty to enforce violations of this
11 chapter.

12 **SECTION 60.** 565.50 (2) of the statutes is amended to read:

13 565.50 (2) Any person who alters ~~or~~, forges, counterfeits, or illegally obtains a
14 lottery ticket or share or intentionally utters or transfers an altered ~~or~~, forged,
15 counterfeit, or illegally obtained lottery ticket or share is guilty of a Class I felony.

16 **SECTION 61.** 565.50 (2m) of the statutes is created to read:

17 565.50 (2m) Any person who claims a lottery prize from a winning lottery ticket
18 or share and then transfers the same winning lottery ticket or share to another
19 person is guilty of a Class I felony.

20 **SECTION 62.** 565.50 (3) of the statutes is amended to read:

21 565.50 (3) Any person who possesses an altered ~~or~~, forged, counterfeit, or
22 illegally obtained lottery ticket or share, or a winning lottery ticket or share for which
23 the prize has been previously claimed, with intent to defraud shall be fined not more
24 than \$10,000 or imprisoned for not more than 9 months or both.

25 **SECTION 63.** 565.50 (4) of the statutes is created to read:

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1 565.50 (4) Any person who transfers a lottery ticket or share to another person,
2 presents a transferred lottery ticket or share for payment of a lottery prize, or claims
3 a lottery prize from a transferred ticket or share with intent to avoid withholding
4 under s. 565.30 (4), (5), (5m), or (5r) shall be fined not more than \$10,000 or
5 imprisoned for not more than 9 months or both.

6 **SECTION 64.** 946.82 (4) of the statutes is amended to read:

7 946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961
8 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission
9 of any of the felonies specified in: chs. 945 and 961, subch. V of ch. 551, and ss. 49.49,
10 134.05, 139.44 (1), (2m), and (8), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12,
11 221.0625, 221.0636, 221.0637, 221.1004, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19
12 (4) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.302 (2), 940.305, 940.31,
13 941.20 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d),
14 or (2g), 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10,
15 943.20 (3) (bf) to (e), 943.201, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.27,
16 943.28, 943.30, 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41
17 (8) (b) and (c), 943.50 (4) (bf), (bm), and (c) and (4m), 943.60, 943.70, 943.76, 943.81,
18 943.82, 943.83, 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21 (5) (c)
19 and (e), 944.32, 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11,
20 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72,
21 946.76, 946.79, 947.015, 948.05, 948.051, 948.08, 948.12, and 948.30.

22 **SECTION 65. Effective dates.** This act takes effect on the day after publication,
23 except as follows:

24 (1) RETAIL SALE OF ELECTRONIC VAPING DEVICES. The treatment of ss. 134.65
25 (title), (1), (1g), (1r), (2m), (3m), (4), (5m), and (8), and 134.66 (1) (g), the renumbering

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1 and amendment of s. 134.65 (1m), and the creation of s. 134.65 (1m) (a) 1. and 2. and
2 (b) take effect on the 90th day after the day of publication.

3 (END)