



State of Wisconsin
2015 - 2016 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 528**

January 15, 2016 - Offered by Senator DARLING.

1 **AN ACT to amend** 134.66 (3) (intro.); and **to create** 134.65 (6) and (7) of the
2 statutes; **relating to:** a first class city suspending, revoking, or refusing to
3 renew cigarette and tobacco products retailer licenses.

Analysis by the Legislative Reference Bureau

This substitute amendment allows a first class city 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 substitute amendment allows a first class city, which currently includes only Milwaukee, 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 knowingly permitted criminal

behavior on the premises; 4) has been convicted of manufacturing, distributing, or delivering, or possessing with the intent to manufacture, distribute, or deliver, a controlled substance; or 5) 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 substitute amendment, an authorized employee of the city that issued the retailer license may file a sworn complaint with the city 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 city governing body. The city 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 city 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 substitute amendment provides that this is also a defense to a complaint, made under the procedures described in this substitute amendment, that alleges the retailer sold cigarettes or tobacco products to a minor.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 134.65 (6) and (7) of the statutes are created to read:

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

4 **(7)** (a) Any duly authorized employee of a 1st class city issuing licenses under
5 this section may file a sworn written complaint, supported by reports from a law
6 enforcement agency, with the clerk of the city alleging at least 2 separate instances
7 of one or more of the following about a person holding a license issued under this
8 section by the city:

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

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

2 3. The person has knowingly permitted criminal behavior, including
3 prostitution and loitering, to occur on the licensed premises.

4 4. The person has been convicted of any of the following:

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

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

9 c. Possessing with intent to manufacture, distribute, or deliver, or
10 manufacturing, distributing, or delivering a controlled substance or controlled
11 substance analog under a substantially similar federal law or a substantially similar
12 law of another state.

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

16 5. The person knowingly allows another person who is on the licensed premises
17 to do any of the actions described in subd. 4.

18 (b) Upon the filing of the complaint, the city governing body shall issue a
19 summons, signed by the clerk and directed to any peace officer in the city. The
20 summons shall command the person complained of to appear before the city
21 governing body on a day and place named in the summons, not less than 3 days and
22 not more than 10 days from the date of issuance, and show cause why his or her
23 license should not be revoked, suspended, or not renewed. The summons and a copy
24 of the complaint shall be served on the person complained of at least 3 days before

1 the date on which the person is commanded to appear. Service shall be in the manner
2 provided in ch. 801 for service in civil actions in circuit court.

3 (c) 1. If the person does not appear as required by the summons, the allegations
4 of the complaint shall be taken as true, and if the city governing body finds the
5 allegations to be sufficient grounds for revocation or nonrenewal, the license shall
6 be revoked or not renewed. The city clerk shall give notice of the revocation or
7 nonrenewal to the person whose license is revoked or not renewed.

8 2. If the person appears as required by the summons and answers the
9 complaint, both the complainant and the person complained of may produce
10 witnesses, cross-examine witnesses, and be represented by counsel. The person
11 complained of shall be provided a written transcript of the hearing at his or her
12 expense. If upon the hearing the city governing body finds the allegations of the
13 complaint to be true, and if the city governing body finds the allegations to be
14 sufficient grounds for suspension, revocation, or nonrenewal, the license shall be
15 suspended for not less than 10 days nor more than 90 days, revoked, or not renewed.

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

18 4. If the city governing body finds the allegations of the complaint to be untrue,
19 the complaint shall be dismissed without cost to the person complained of.

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

1 (e) The action of any city governing body in suspending, revoking, or not
2 renewing any license under this subsection, or the failure of any city governing body
3 to suspend, revoke, or not renew any license under this subsection for good cause,
4 may be reviewed by the circuit court for the county in which the license was issued,
5 upon the request of any applicant or licensee. The procedure on review shall be the
6 same as in civil actions instituted in the circuit court. The person desiring review
7 shall file pleadings, which shall be served on the city governing body in the manner
8 provided in ch. 801 for service in civil actions and a copy of the pleadings shall be
9 served on the applicant or licensee. The city governing body, applicant, or licensee
10 shall have 20 days to file an answer to the complaint. Following filing of the answer,
11 the matter shall be deemed at issue and hearing may be had within 5 days, upon due
12 notice served upon the opposing party. The hearing shall be before the court without
13 a jury. Subpoenas for witnesses may be issued and their attendance compelled. The
14 findings and order of the court shall be filed within 10 days after the hearing and a
15 copy of the findings and order shall be transmitted to each of the parties. The order
16 shall be final unless appeal is taken to the court of appeals.

17 **SECTION 2.** 134.66 (3) (intro.) of the statutes is amended to read:

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

24 **SECTION 3. Effective date.**

