
Wisconsin Legislative Council

AMENDMENT MEMO



Memo published: November 20, 2023 **Contact:** Melissa Schmidt, Principal Attorney, and Tom Koss, Staff Attorney

2023 Senate Bill 268

Senate Amendments 1 and 2

2023 SENATE BILL 268

2023 Senate Bill 268 makes several changes to the enforcement and administration of laws by the Department of Revenue (DOR). Very generally, the bill does the following:

- Amends the definition of “fermented malt beverage” (beer) to include any beverage recognized under federal regulations as beer, except sake or similar products.
- Requires DOR to annually publish on its website a list of alcohol beverage retail licenses issued by municipal clerks.
- Requires an applicant to pay fees incurred by DOR for the purpose of verifying a permit applicant’s eligibility for an alcohol beverages permit.
- Specifically prohibits the use, possession, and sale of alcohol vapor devices.
- Specifies that if DOR revokes a person’s alcohol beverages permit, the person may not reapply for six months.
- Requires a person who applies for a license or permit to sell alcohol beverages to file a written description of any change in fact within 30 days. Current law requires such a filing within 10 days.
- Defines “electronic vaping device” and subjects the devices to the same general retail licensing requirements as cigarettes and tobacco products. An electronic vaping device is defined 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, including an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The definition includes a component, part, or accessory of the device, including a liquid or other substance that may be aerosolized or vaporized by the device, regardless of whether the liquid or other substance contains nicotine. It does not include a battery or battery charger when sold separately or drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration (FDA), as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
- Creates certain requirements relating to licenses to sell cigarettes, electronic vaping devices, and tobacco products, such as specifying the information that must be included in an application for such a license.
- Creates graduated penalties for evading taxes on cigarettes, tobacco products, and electronic vaping devices, and increases penalties for the unlawful possession of cigarettes.
- Prohibits the creation, design, manufacture, sale, purchase, lease, installation, update, repair, service, transfer, use, and possession of phantomware or an automated sales suppression device, as defined by the bill, unless for a legitimate purpose, and provides DOR with the ability to revoke all permits, licenses, and certificates issued by the department for up to 10 years for violating.

- Authorizes employees of DOR and the Department of Justice to disclose tax return information under certain circumstances. Such a disclosure must be strictly limited to, and used solely for the purposes of, obtaining certain necessary information.
- Expands the arrest powers of DOR special agents who are certified as law enforcement officers.
- Provides DOR with police powers to directly enforce state lottery laws and allows DOR employees to purchase a lottery ticket or share if the purchase is made on behalf of DOR as part of an official investigation and no person claims any prize or winnings from the share.
- Prohibits certain activities relating to lottery tickets, such as counterfeiting or illegally obtaining a lottery ticket, claiming a winning lottery ticket and share and then transferring the ticket to another person, and transferring a winning lottery ticket with intent to avoid withholding of income taxes or certain other obligations.
- Amends the definition of “protective occupation participant” for purposes of obtaining duty and disability benefits to include special agents employed by DOR who are authorized to act under s. 73.031, Stats., rather than excise tax investigators. The bill makes a similar change related to positions entitled to hazard pay.

SENATE AMENDMENT 1

Senate Amendment 1 (SA 1) contains provisions related to electronic vaping devices, as defined above:

- Requires every manufacturer of an electronic vaping device sold in the state, either directly by the manufacturer or through a distributor, wholesaler, retailer or similar intermediary, to do no later than July 1, 2025, the following:
 - Certify to DOR that the manufacturer will comply with requirements contained in the bill and either of the following:
 - The manufacturer has received marketing authorization or similar order from the U.S. FDA pursuant to federal law. The manufacturer must also include a copy of the marketing authorization or similar order issued by the U.S. FDA for the electronic vaping device, or evidence that the pre-market tobacco product application for the electronic vaping device was submitted to the U.S. FDA and a final decision on the application has not otherwise taken effect.
 - The electronic vaping device was marketed in the United States on or before August 8, 2016, the manufacturer submitted a pre-market tobacco product application for the electronic vaping device to the U.S. FDA pursuant to federal law on or before September 9, 2020, and the application either remains under review by the U.S. FDA or a final decision on the application has not otherwise taken effect.
 - Submit to DOR, in the manner prescribed by the department, a form that separately lists each of the manufacturer’s electronic vaping devices that are available in this state. Together with this form, and in each year thereafter, the manufacturer must also submit a payment of \$500 for each device listed on the form.
- Requires DOR to maintain an electronic vaping device directory and make it publicly available on its website. The directory must list all electronic vaping device manufacturers and electronic vaping devices for which certification forms have been submitted. DOR must update the directory at least monthly to ensure accuracy. SA 1 contains provisions to allow manufacturers the opportunity to cure deficiencies in the directory before DOR may remove an electronic vaping device or manufacturer from the directory.

- Requires that if an electronic vaping device is removed from the directory described above, each retailer, distributor, and wholesaler that has such a device in its inventory to: (1) remove the device from its inventory no later than 21 days after the date on which the device is removed from the directory; and (2) return the device to the manufacturer for disposal. SA 1 also provides provisions related to the seizure, forfeiture, and destruction of these devices.
- Creates a \$1,000 forfeiture beginning on either March 1, 2025, or on the date that DOR first makes the directory available for public inspection, that DOR must impose for each day that an electronic vaping device is offered for sale, but is not included in the directory upon both of the following: (1) the manufacturer of an electronic vaping device that is sold in Wisconsin, but is not included in the directory; and (2) the retailer who sells or offers for sale the electronic vaping device in this state.
- Provides that it is an unfair and deceptive trade practice for any retailer, distributor, wholesaler, or manufacturer to violate the provisions related to an electronic vaping directory.
- Specifies that an electronic vaping device sold, offered for sale, or possessed for sale, in violation of the bill is contraband and is subjected to seizure, similar to the seizure of unstamped cigarettes. DOR's authorized employees have all necessary police powers to prevent violations of the provisions contained in SA 1.
- Specifies that the Attorney General may, upon DOR's request, represent the state or assist a district attorney in prosecuting any case arising from violations of the electronic vaping directory requirements.
- Provides that provisions that apply to service of process under the tobacco settlement agreement also apply to an agent for service of process under the electronic vaping directory requirements.
- Requires DOR to provide a report to the chief clerks of both houses of the Legislature no later than July 1, 2026, regarding the following: (1) the status of the electronic vaping directory maintained by DOR; (2) manufacturers and electronic vaping devices included in the directory; (3) revenue and expenditures related to the administration of the electronic vaping directory requirements; and (4) enforcement activities undertaken pursuant to the requirements of the bill.

SENATE AMENDMENT 2

Senate Amendment 2 (SA 2) amends the bill by adding the provisions contained in [2023 Assembly Bill 304 \(AB 304\)](#), relating to regulation of alcohol beverages under ch. 125, Stats. (Wisconsin's Alcohol Beverages Chapter), as amended and passed by the Assembly¹:

- Reduces the number of bureaus created within the Division of Alcohol Beverages (DAB) from three to two bureaus. SA 2 creates two bureaus dedicated to: (1) enforcement; and (2) legal services, permitting, and reporting.
- Creates within DAB a unit dedicated to education and communication, headed by an individual who reports to the DAB administrator.
- Provides the administrator of the division of income, sales and excise tax in DOR with interim authority to undertake all measures necessary to implement the changes in the bill by the effective date of each change. This includes the authority to take action in preparation for the creation of DAB and appointment of a division administrator and bureau directors.

¹ For more information on AB 304, see Legislative Council, [2023 Assembly Bill 304 and 2023 Senate Bill 332, Relating to Alcohol Beverages Regulations](#), Information Memorandum (June 2023).

- Allows a person who made homemade wine or beer in another state to transport up to 10 gallons of the wine or beer into Wisconsin for purposes of participating in a competition or exhibition that complies with state law, is held by a national organization, and has participants from more than 25 states.
- Allows an event venue to be eligible for an “above quota” liquor license created by SA 2, regardless of whether the venue has been a Class “B” beer licensed premises during the preceding 12-month period immediately preceding application for the “above quota” liquor license. Under AB 304, an event venue is ineligible from the “above quota” liquor license if the venue was a Class “B” beer licensed premises during the 12-month period preceding the application.
- Regarding delayed effective dates, retains the effective dates found in Senate Bill 268. Related to the provisions from AB 304, SA 2 provides these provisions generally have a four-month delayed effective date, taking effect on the fifth month beginning after publication, except as follows:
 - Provisions related to the transferring of authority to regulate alcohol beverages from DOR to DAB take effect on the day after publication.
 - Provisions related to extending retailer closing hours during a 2024 national political convention take effect on the day after publication.
 - The repeal of DOR’s rules regarding direct and indirect interest restrictions takes effect on the first day of the month beginning after publication.
 - Provisions related to no-fee event venue permits and the consumption of alcohol in public places have a two-year delayed effective date, taking effect on the first day of the 25th month beginning after publication.
 - Provisions related to an operator’s permit have a 12-month delayed effective date, taking effect on the first day of the 13th month beginning after publication.
 - Provisions related to fulfillment houses and common carriers have a 12-month delayed effective date, taking effect on the first day of the 13th month beginning after publication.
 - Provisions related to an annual fee of \$500 for any permit for which neither DOR nor the statutes have already established a different fee have a 12-month delayed effective date, taking effect on the first day of the 13th month beginning after publication.

BILL HISTORY

Senator Wanggaard introduced SA 1 on November 13, 2023, and Senator LeMahieu introduced SA 2 on November 14, 2023. Also on November 14, 2023, the Senate adopted SA 1 on a voice vote and adopted SA 2 on a vote of Ayes, 19; Noes, 14. The Senate passed the bill, as amended, on a vote of Ayes, 21; Noes, 11. Later that same day, the Assembly concurred on a vote of Ayes, 88; Noes, 10.

For a full history of the bill, visit the Legislature’s [bill history page](#).

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