

Van H. Wanggaard

Wisconsin State Senator

TESTIMONY ON SENATE BILL 268

Thank you Mr. Chairman and committee members for today's hearing on Senate Bill 268. Senate Bill 268 is a re-draft of last year's Assembly Bill 250, as passed by the Assembly on a voice vote, and which passed both the Assembly and Senate Committees unanimously, with two minor changes which I will detail in a little bit.

A couple of years ago, I was given the opportunity to do several "ride-alongs" with DOR enforcement agents. One thing was abundantly clear during these ride alongs – cigarette enforcement and tobacco smuggling is a huge problem in Wisconsin. This bill will allow local law enforcement and DOR agents to more easily enforce tobacco laws and lottery laws in Wisconsin.

The bill has many different parts, but it is all geared to assist DOR in the licensing, regulation and enforcement of the sale of tobacco, alcohol and lottery. I won't get into every little aspect of the bill, but among the highlights are:

- Standardizing cigarette and tobacco licenses across the state and tightening who can receive a license. Unlike last year's bill, this bill does NOT require a person to be 21 years old to have a license.
- Prohibiting the use of "zappers" or other sales suppression devices and phantomware to avoid sales tax collection. This provision has also been changed from last year, to also prohibit cloud-based sales suppression devices.
- Clarifying lottery-related crimes and allowing lottery agents to be sworn officers. This will ease the burden on local law enforcement and retailers for enforcement of lottery crimes.
- Increasing penalties for tobacco and lottery crimes and evading excise taxes.

The bill before you today is the product of a years' long effort to help improve the Department of Revenue's ability to enforce laws. We have worked with stakeholders to make them comfortable and incorporated their suggestions to improve and clarify the bill. I thank you in advance for your support.

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JOHN SPIROS

State Representative • 86th Assembly District

August 17, 2023

Testimony on Senate Bill 268

Good Morning Chairman Hutton and members of the Senate Committee on Universities and Revenue, and thank you for allowing me to submit written testimony on Senate Bill 268. The bill makes changes regarding the Department of Revenue's (DOR) enforcement authority.

This bill, nearly identical to last session's version, was crafted in coordination with and at the request of DOR to assist them in licensing, regulation, and enforcement of tobacco, alcohol, and the lottery. It breaks down into four main areas: cigarettes and tobacco products, alcohol, the lottery, and taxes.

Cigarettes and Tobacco

Senate Bill 268 creates a comprehensive definition of electronic vaping devices so retailers know exactly when a license is required for the retail sale of such products. The bill also includes electronic vaping devices into the existing municipal license structure for tobacco products. Additionally, the bill updates and increases penalties associated with unlawful possession of cigarettes and excise tax evasion. The final change relating to tobacco and cigarettes is to include tobacco tax evasion and possession of illegal cigarettes under the definition of racketeering.

Alcohol

Senate Bill 268 clarifies alcohol law by reiterating that alcohol mist/vapor devices are illegal to use, sell, and possess. The bill also revises the statutory definition of "fermented malt beverage" to fix a hard seltzer taxation issue. Additionally, it creates a statewide, public facing database of local alcohol licenses. Finally, the bill makes administrative changes to allow DOR to pass the \$7 background check fee on to applicants for all state-issued alcohol beverage permits, and prescribes a 6 month length of time for an applicant to re-apply for an alcohol beverage permit if DOR revoked a previous one.

The Lottery

Senate Bill 268 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. The bill also extends Lottery Chapter 565 enforcement authority to special agents at DOR. Additionally, it adds clarifying language to encourage consistent interpretation from jurisdiction to jurisdiction in specific lottery offenses.

Taxes

The bill creates penalties for the use of “zappers” (software-based devices to evade sales tax). It also clarifies that DOR and Department of Justice employees may, in connection with their official duties, disclose information from a tax return such that it is necessary for the enforcement of WI tax laws and upon request from a state or federal grand jury subpoena.

As previously mentioned, the bill is substantially similar to last session. The version before you today is the same bill that passed the Assembly on a voice vote last session. Aside from two changes, the bill is also the same as it was when it passed the Senate Committee on Financial Institutions and Revenue unanimously last session. The first change is the elimination of the provisions increasing the age for holding a license to sell tobacco products to 21. The second change is an expansion of the definition of sales suppression/sales tax avoidance software to include “cloud-based” software.

As you can see, there are many components to this bill, but in sum, the bill will assist DOR license, regulate, and enhance enforcement of alcohol, tobacco, and The Lottery. It has been a pleasure working with the department to craft this bi-partisan bill.

Again, thank you for allowing me the opportunity to submit written testimony in support of this bill.



STATE REPRESENTATIVE
Dora
DRAKE

Testimony in Support of SB 268/AB 273

To: Members of the Assembly Committee on State Affairs

From: Representative Drake

Date: August 17, 2023

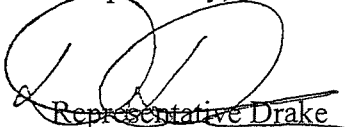
Chairman Hutton and members of the Senate Committee on Universities and Revenue:

Thank you for hearing SB 268/AB 273 in committee today and I wish to extend my thanks to State Representative Spiros, State Senator Wanggard, Senator Taylor, Secretary Barca, and the co-sponsors included for making this a bi-partisan legislative proposal. SB 268 contains several provisions that will provide the Department of Revenue additional authority regarding revenue enforcement and additional safety measures for Wisconsinites.

Secretary Barca and the Department of Revenue have been instrumental in working with various stakeholders and sharing the importance of having these provisions. One of these provisions is ensuring alcohol mist machines, which turn alcohol beverages into a mist for inhalation, are banned in state statute. The alcohol mist machines are often used to fill balloons with this mist for consumers to inhale, which are dangerous to the public and have no legal use. Another provision in the bill is to ban devices referred to as zappers. Zappers are devices that remove receipts at establishments to avoid paying the full amount of sales tax to the state. As a result, bad actors are creating two separate records to seek tax evasion or conduct illegal activity.

These are just a few of the many provisions to ensure the safety of Wisconsinites and address bad actors who seek to evade tax evasion or conduct illegal activity regarding these matters. Again, I wish to thank Chairman Hutton and members of the committee on for hearing this bill today, as one of the authors I respectfully ask for your support. Thank you!

Respectfully,



Representative Drake
11th Assembly District



Tony Evers
Governor

Peter W. Barca
Secretary of Revenue

Testimony on SB 268 – The Public Safety and Revenue Enhancement Bill
Department of Revenue Secretary Peter Barca
August 17, 2023

Thank you, Chairman Hutton, Vice-Chair James, Ranking Member Larson, and members of the Senate Committee on Universities and Revenue for hosting a public hearing on SB 268. I would also like to thank Senators Wanggaard and Taylor, and Representatives Spiros and Drake for their unwavering support of this important legislation.

I am testifying in support of SB 268, the Public Safety and Revenue Enhancement Package. SB 268 includes a series of changes recommended by the Department of Revenue to **strengthen administration of state tax laws and modernize state statutes to keep up with new and sometimes dangerous products in an evolving marketplace.**

For example, the bill creates penalties for the use or possession of “Zappers” that enable retailers to fraudulently underreport income, sales, and excise taxes, and for the use, possession, or sale of dangerous alcohol vapor machines that turn alcohol into a mist that is inhaled by the user. The bill also creates a long-overdue definition of vapor products and treats them the same as other tobacco products for purposes of permitting and licensure. SB 268 also updates the definition of fermented malt beverage to include hard seltzers to mirror the federal definition.

The bill improves administration of alcohol and tobacco regulation in several ways. First, the Department seeks to improve public access to local alcohol and cigarette/tobacco retail licenses through the creation of databases that are easily accessible on the DOR website. Second, the legislation creates consistency in cigarette/tobacco retail licenses by developing minimum qualifications and a uniform DOR application for these licenses. Lastly, SB 268 requires a six-month waiting period before alcohol permit applicants can reapply for a state permit that has been denied or revoked. There is currently no waiting period for unqualified applicants to reapply, creating a revolving door that costs valuable staff time and money.

DOR is also seeking to improve the security and integrity of the Wisconsin Lottery for both players and retailers. First, the bill would make it a Class I felony to counterfeit or illegally obtain a lottery ticket or transfer a winning ticket to another person. Second, the bill provides Lottery investigators with authority to prevent and enforce violations of Lottery laws. This will lessen pressure on local law enforcement officers and allow them to concentrate on higher priority cases. For example, the Milwaukee Police Department had to assign five officers to a CVS in Milwaukee that had seven separate incidents of Lottery ticket thefts. If Wisconsin sworn Lottery investigators had the authority to intervene, they could have freed up five MPD officers to focus on more significant crimes.

Again, thank you for working cooperatively with DOR to protect our citizens and remain good shepherds of their tax dollars. I urge you to support this bill.

I would welcome your questions or comments.

Public Safety and Revenue Enhancement Bill Summary

August 2023

This bill includes a series of changes recommended by the Department of Revenue to strengthen administrative and enforcement efforts of various tax laws.

Regulation of New Products

- Create penalties for the use, manufacture, sale or possession of "Zappers," which allow retailers to illegally underreport sales for income tax and sales tax purposes.
- Make alcohol vapor/mist machines illegal. These machines turn alcohol into a mist that is inhaled by the user.

Cigarette/Tobacco Provisions

- Create consistency in local cigarette/tobacco licenses by developing statewide minimum qualifications and a uniform DOR application for these licenses. Also, require DOR to post on its website an annual list of tobacco licensees provided by municipalities.
- Increase penalties for evading taxes on cigarettes to keep pace with increases in cigarette taxes. Penalties for possession of unstamped cigarettes have remained largely unchanged since 1983, while the cigarette tax has increased eight times.
- Include tobacco tax evasion and possession of illegal cigarettes under the definition of racketeering since cigarette smuggling is often part of a broader criminal enterprise.

Definitions

- Create a definition of vapor products and treat them the same as other tobacco products for purposes of permitting and licensure.
- Expand the definition of "fermented malt beverage" to include hard seltzer and gluten free or flavored beers to mirror the federal definition. Currently, federal law includes hard seltzers under the definition of "beer." In state statute these beverages technically fall under the definition of "intoxicating liquor," which does not reflect current practice.

Alcohol Provisions

- Require DOR to develop a statewide, public-facing database for local alcohol beverage retail licenses. Retail licenses to sell alcohol are issued by municipalities and are not tracked or aggregated statewide. This database will allow the state, municipalities, and the public to have easy access to licenses issued in their communities.
- Allow DOR to pass along the cost of background checks for alcohol beverage permits to applicants, as municipalities do now with local licenses.

- Require a six-month waiting period before state alcohol permit applicants can reapply for a state permit that has been denied or revoked. There is currently no waiting period for unqualified applicants to reapply, creating a revolving door that costs valuable staff time and money.

Lottery Provisions

- Allow Lottery Agents who are sworn law enforcement officers to take enforcement actions when Lottery laws are violated.
- Provide criminal penalties for counterfeiting or illegally obtaining a lottery ticket or transferring a lottery ticket to another person with the intent to avoid withholdings such as state taxes, family support or restitution.
- Eliminate the prohibition on Lottery employees purchasing Lottery tickets if the tickets are purchased as part of an official investigation or compliance check in accordance with their official duties. No employee may claim any winnings as a result of the purchase.

Minor Administrative Changes

- Clarify that DOR and DOJ employees may, in conjunction with their official duties, disclose information from a tax return if it is necessary for the enforcement of state tax laws or upon request from a state or federal grand jury subpoena.