



# State of Wisconsin • DEPARTMENT OF REVENUE

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*Scott Walker*  
Governor

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Secretary of Revenue

December 10, 2014

Representative Rob Hutton  
Chairman, Study Committee on Criminal Penalties  
3N State Capitol  
Madison, WI 53702

Chairman Hutton,

Thank you again for the opportunity to testify before the Study Committee on Criminal Penalties on November 12, 2014. I would like to offer the Study Committee additional written comments on the Department of Revenue's recommendations, including some revised recommendations.

DOR identified fifteen misdemeanors that the Subcommittee on Misdemeanor Classifications recommended be classified as civil forfeitures that DOR felt should be classified differently. Prior legislatures made the policy determination that these violations were serious enough to warrant criminal charges, and based on DOR's enforcement experience, we believe that determination of seriousness continues to hold in these cases. DOR recommends the following:

- Wis. Stats. §§ 125.28 (5) (d), 125.33 (7) (d), 125.54 (7) (c) 1., 125.545 (7) (a)-(b), 125.66 (4), 125.69 (4) (d), 125.69 (6) (b)-(c) should all remain unchanged from current law as unclassified misdemeanors, thereby preserving their criminal nature without adding potential jail time. Each of these misdemeanors relates to a violation of Wisconsin's alcohol beverage licensing and permitting laws. Removing criminality would lessen the deterrent effect of the statutes, as a criminal history is a substantial negative mark for anyone seeking an alcoholic beverages permit or license.
- Repeat offenses of Wis. Stat. § 134.65 (5) should be penalized with a Class A Misdemeanor, as the department suggested on November 12. The department's enforcement officers see several violations of this statute every year. This chapter applies to tobacco regulation and these violations are similar to violations to alcohol regulation statutes in Wis. Stat. § 125.04(13), which the Subcommittee classified as a Class A Misdemeanor. The department believes normalizing penalties between the alcohol and tobacco statutes would greatly improve our ability to enforce the statutes passed by the legislature.
- Wis. Stat. § 71.65 (6) should be classified as a Class A Misdemeanor, as the department suggested on November 12, because a violation requires the offender to willfully provide false information to DOR with intent to evade withholding requirements. Intentional offenses are more serious and should be criminal violations. The seriousness of this offense in particular is evidenced by the \$25,000 penalty. Reducing this misdemeanor to a civil forfeiture would make intentionally filing false information to DOR a lesser penalized crime than not filing (Wis. Stat. § 71.83 (2) (a) 1.), which may be unintentional and was classified by the Subcommittee as a Class A Misdemeanor.
- Wis. Stat. § 71.66 (1) (e) should be classified as a Class C Misdemeanor, as the department suggested on November 12, because a violation requires willful intent or fraud. Intentional offenses are more serious and should be criminal violations.
- Wis. Stat. § 71.83 (2) (a) 3m. should be classified as a Class C Misdemeanor, as the department suggested on November 12. Violation of this offense by a DOR employee violates the public trust and compromises the security of taxpayers' personal information. As such, this is a federal criminal violation, and the state should also punish this with a criminal penalty.

- Wis. Stat. § 71.83 (2) (a) 4. should be classified as a Class C Misdemeanor, as the department suggested on November 12. This crime requires coercion, which is an intentional act. Intentional offenses are more serious and should be criminal violations. Our staff sees this crime committed often as a way to avoid employee costs, such as unemployment and worker's compensation insurance, among others.
- Wis. Stat. § 78.73 (3) should be classified as a Class C Misdemeanor, as the department suggested on November 12. Currently, jail time is attached to this crime. It is also similar to Wis. Stat. § 77.52 (9), which the Subcommittee classified as Class C Misdemeanor.

Additionally, DOR originally identified ten unclassified misdemeanors that the Subcommittee classified that DOR thought should be classified in a different class of misdemeanors. DOR now recommends the following:

- DOR believes the Subcommittee's recommended classification is satisfactory for Wis. Stats. §§ 125.68 (8) (a), 139.05 (7) (d), 139.44 (3), and 77.61 (9).
- Repeat offenses of Wis. Stat. § 139.03 (5) (c) should be penalized with a Class A Misdemeanor, as the department suggested on November 12. Repeated attempts to smuggle regulated substances into Wisconsin should carry greater penalties.

While it may be outside of the scope of the Study Committee to increase penalties, the department believes the following changes merit consideration.

- Wis. Stat. § 139.25 (7) should be classified as a Class A Misdemeanor, as the department suggested on November 12. This crime requires intent to evade and fraud. Intentional offenses are more serious. Fraudulent income tax reporting is a Class H felony and income tax evasion is a Class I felony. Fraudulent excise tax reporting should also carry a serious penalty.
- Wis. Stat. § 139.25 (8) should be classified as a Class A Misdemeanor, as the department suggested on November 12. This is simply assisting someone in violating Wis. Stat. § 139.25 (7), discussed above, and should carry the same penalty.
- Wis. Stat. § 77.52 (12) should be classified as a Class A Misdemeanor, as the department suggested on November 12. This is a serious violation that is committed very often after the revocation of a seller's permit, which occurs as a final enforcement step after refusal to pay state taxes owed. Businesses that repeatedly refuse to pay the taxes owed should not be allowed to continue to operate without serious consequences.
- Wis. Stat. § 77.60 (7) should be classified as a Class A Misdemeanor, as the department suggested on November 12. This crime requires intent to evade and fraud. Intentional offenses are more serious. Fraudulent income tax reporting is a Class H felony and income tax evasion is a Class I felony. Fraudulent sales tax reporting should also carry a serious penalty.
- Wis. Stat. § 77.60 (10) should be classified as a Class A Misdemeanor, as the department suggested on November 12. This is simply assisting someone in violating Wis. Stat. § 77.60 (7), discussed above, and should carry the same penalty.

Thank you for the opportunity to express the department's views on the Subcommittee's recommendations before the Study Committee votes on their final recommendations.

Sincerely,



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