



2007 SENATE BILL 485

February 13, 2008 - Introduced by Senators WIRCH, BRESKE, S. FITZGERALD, TAYLOR, DECKER, KANAVAS and DARLING, cosponsored by Representatives VAN ROY, NYGREN, SHERIDAN, VRUWINK, OWENS, SHILLING, SUDER, MONTGOMERY, TOWNSEND, JORGENSEN, JESKEWITZ, MURSAU, HAHN, NASS, J. FITZGERALD, KREUSER, HUEBSCH, HIXSON, ZEPNICK and MASON. Referred to Committee on Transportation and Tourism.

1 **AN ACT to repeal** 125.52 (6), 125.52 (8), 125.53 (3), 125.55 (1) (b), 125.58 (4) (a)
2 1. to 4., 125.58 (4) (b), 125.68 (10) (bm), 125.68 (10) (bs), 125.68 (10) (c), 125.69
3 (1) (b) 2. and 3., 125.69 (1) (c) 1. to 3. and 125.69 (4) (c); **to renumber and**
4 **amend** 125.58 (4) (a) (intro.), 125.69 (1) (c) (intro.), 139.11 (4) and 185.043; **to**
5 **consolidate, renumber and amend** 125.55 (1) (intro.) and (a); **to amend**
6 20.566 (1) (ha), 36.11 (40), 125.01, 125.02 (22), 125.12 (5), 125.52 (1), 125.53 (1),
7 125.54 (1), 125.55 (2), 125.58 (1), 125.65 (8), 125.68 (10) (a), 125.68 (10) (b),
8 125.69 (1) (a), 125.69 (1) (b) 1., 125.69 (6) (a) and 139.11 (4) (title); **to repeal and**
9 **recreate** 139.035; and **to create** 77.61 (16), 125.04 (3) (a) 4m., 125.272, 125.51
10 (6), 125.535, 125.54 (7) (e), 125.54 (8), 125.545, 139.03 (6), 139.11 (4) (b) and
11 185.043 (2) of the statutes; **relating to:** the production, sale, and distribution
12 of intoxicating liquor, providing an exemption from emergency rule procedures,

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1 granting rule-making authority, making an appropriation, and providing a
2 penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Revenue (DOR) issues various permits related to intoxicating liquor (which includes wine), including winery permits, manufacturer's permits, rectifier's permits, wholesaler's permits, and out-of-state shipper's permits. Wine may be produced and distributed under a winery permit, manufacturer's permit, or rectifier's permit.

This bill makes changes to the way in which wine may be produced and distributed in this state, including the following:

1. *Direct shipments of wine to consumers.* Under current law, a winery located outside this state may ship wine into this state without an out-of-state shipper's permit and directly to an individual if the winery is located in a state that has a reciprocal agreement with this state pertaining to out-of-state shipments of wine to individuals in the respective states (reciprocal agreement) and if certain other conditions are met. An individual in this state may not receive more than 27 liters of wine annually from out-of-state wineries. Also, a winery located in this state that holds a winery permit, as well as a person in this state holding an intoxicating liquor manufacturer's or rectifier's permit, may ship wine from this state to individuals in another state under authorization of a reciprocal agreement if certain conditions are met. DOR is required to negotiate and, if possible, enter into reciprocal agreements with other states. Currently this state is a party to such a reciprocal agreement only with California. Current law also does not authorize intrastate shipments of wine directly to consumers.

This bill repeals the reciprocal agreement system for authorizing interstate wine shipments directly to consumers and replaces it with a new permit system available for both interstate and intrastate shipments of wine directly to consumers. The bill requires DOR to issue a new permit called a direct wine shipper's permit that authorizes the permittee to ship wine directly to an individual in this state who is of the legal drinking age, who acknowledges receipt of the wine shipped, and who is not intoxicated at the time of delivery. A direct wine shipper's permit may be issued to any person that manufactures and bottles wine on premises covered by a winery, manufacturer's, or rectifier's permit issued by DOR, a winery permit issued by another state, or a federal winery permit. Containers of wine shipped to an individual in this state must be clearly labeled to indicate that the package may not be delivered to an underage person or to an intoxicated person. No individual may resell, or use for a commercial purpose, wine that the individual receives by direct shipment under the permit. No individual in this state may receive more than 108 liters of wine annually that is shipped under authority of the permit. Holders of direct wine shippers' permits must report quarterly to DOR specified information related to wine shipments made under authority of the permit and must include the

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amount of the occupational tax in the sales price of the wine and pay the sales or use tax on the sale of the wine shipped under authority of the permit.

2. *Distribution of intoxicating liquor to other licensees and permittees, except by cooperative wholesalers.* Under current law, a winery permit authorizes a winery to manufacture and bottle wine on the winery premises for sale at wholesale to other licensees or permittees, such as retailers, other wholesalers, and manufacturers. A manufacturer's permit or rectifier's permit authorizes a manufacturer or rectifier to manufacture, bottle, and wholesale wine on the manufacturing or rectifying premises. A rectifier's permit authorizes the rectifier to sell its own intoxicating liquor to retailers.

This bill eliminates the authorization of wineries, manufacturers, and rectifiers to sell wine at wholesale and eliminates the authorization of rectifiers to sell intoxicating liquor directly to retailers. Under the bill, wineries, manufacturers, and rectifiers may not sell wine directly to retailers. A winery may only sell wine to wholesalers. A manufacturer or rectifier may only sell intoxicating liquor, including wine, to wholesalers, wineries, and other manufacturers and rectifiers.

Under current law, an out-of-state shipper's permit authorizes a person located outside this state to sell or ship intoxicating liquor into this state to a person holding a manufacturer's, rectifier's, wholesaler's, industrial alcohol, or medicinal alcohol permit.

Under this bill, a person holding an out-of-state shipper's permit may only sell or ship intoxicating liquor into this state to a person holding a wholesaler's permit or, if shipped from a manufacturer or rectifier in another state, to a person holding a manufacturer's or rectifier's permit or a winery permit.

The bill also requires each wholesaler to negotiate in good faith with any manufacturer, rectifier, or winery that seeks to sell its products through the wholesaler. All wholesalers must work diligently to ensure that distribution channels are available for the sale of intoxicating liquor products through wholesalers to retailers in this state.

3. *Distribution of wine by cooperative wholesalers.* The bill allows certain wineries holding a winery permit and certain out-of-state wineries to form a cooperative for purposes of wholesaling their wine. However, the bill requires any such cooperative to be created between October 1, 2008, and December 31, 2008, and limits the total number of these cooperatives to six.

Under the bill, a winery that produces and bottles less than 25,000 gallons of wine in a calendar year (small winery) may organize with other small wineries as a cooperative known as a small winery cooperative wholesaler (cooperative wholesaler). The principal purpose of a cooperative wholesaler is to sell and distribute wine produced and bottled by the members of the cooperative wholesaler. The membership of a cooperative wholesaler must consist exclusively of small wineries that hold direct shippers' permits and that are certified as small wineries by DOR. To form the cooperative, three or more individuals, at least one of whom must be a resident of this state and all of which must be owners of small wineries, must sign and file articles of incorporation with the Department of Financial Institutions. A cooperative wholesaler may not employ any owner or employee of its

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member wineries, but such an owner or employee may act as a volunteer to assist the cooperative wholesaler.

Under the bill, no cooperative wholesaler may operate without a wholesaler's permit issued by DOR. Within seven days after filing its articles of incorporation as a cooperative, a cooperative wholesaler must apply to DOR for a wholesaler's permit. DOR may issue only one wholesaler's permit to any cooperative wholesaler. DOR may not issue more than a total of six wholesalers' permits to cooperative wholesalers and DOR may not issue any new wholesaler's permit to a cooperative wholesaler after December 31, 2008. A cooperative wholesaler issued a wholesaler's permit is authorized to sell and distribute only wine, including blended or mixed products sold as wine. A cooperative wholesaler may not sell or distribute any product other than wine. A cooperative wholesaler may not purchase wine from any person other than a member and may not resell or distribute wine unless it has been purchased on consignment from a member. A cooperative wholesaler may only sell or distribute wine to a retailer or to another wholesaler.

Under the bill, a member of a cooperative wholesaler may not sell its wine directly to any other wholesaler or directly to a retailer; it must make its wine available to retailers and other wholesalers only through the cooperative wholesaler.

Under the bill, a cooperative wholesaler is not subject to certain provisions of current law requiring a wholesaler to physically unload intoxicating liquor at a warehouse location prior to distribution and requiring a wholesaler to annually sell and deliver intoxicating liquor to at least ten retailers that do not have any direct or indirect interest in each other or in the wholesaler. Neither a cooperative wholesaler nor its winery members are subject to certain provisions of current law restricting common ownership interests in wineries and wholesalers. Except as provided in the bill, all provisions of law that apply to a wholesaler also apply to a cooperative wholesaler.

The bill requires DOR to certify applicants as small wineries if the applicant is a winery that produces and bottles less than 25,000 gallons of wine in a calendar year, holds a direct shipper's permit, and submits any other information that DOR determines is necessary to certify that the winery is operating as a small winery and is eligible for membership in a cooperative wholesaler. In certifying a winery as a small winery, DOR must classify the winery as either a Wisconsin winery or an out-of-state winery. A cooperative wholesaler may not give preferential treatment to a member that is a Wisconsin winery or discriminate against a member that is an out-of-state winery.

The bill requires the board of directors of a cooperative wholesaler, at least once every six months, to meet in person with DOR and the University of Wisconsin Center for Cooperatives. The bill specifies various requirements related to these meetings, including that publicly available reports be prepared by DOR and the Center for Cooperatives as a result of these meetings. The bill also requires each cooperative wholesaler to annually file a report with DOR that includes specified information.

Under the bill, any winery that sells or distributes its wine directly to a retailer, rather than through a wholesaler or cooperative wholesaler, is subject to a fine of not

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more than \$10,000 and revocation of the permits issued to it by DOR. Any cooperative wholesaler that provides preferential treatment to a Wisconsin winery or discriminates against an out-of-state winery is subject to a fine of not more than \$10,000 and revocation of its wholesaler's permit.

4. *Blending or mixing wine or distilled spirits.* Current law is unclear as to whether a winery operating under a winery permit may mix or blend wine with other intoxicating liquor to produce fortified wine and whether a winery may receive shipments of bulk wine or other intoxicating liquor directly from out-of-state producers holding an out-of-state shipper's permit.

This bill clarifies that a winery operating under a winery permit may, without obtaining a rectifier's permit, possess intoxicating liquor and mix or blend intoxicating liquor to produce wine sold to wholesalers. The bill also clarifies the definition of "wine" by specifying that wine contains not more than 21 percent of alcohol by volume.

The bill specifically authorizes wholesalers to sell intoxicating liquor to wineries, manufacturers, and rectifiers for production purposes. The bill also specifies that an out-of-state shipper's permittee may sell or ship intoxicating liquor into this state directly to a winery.

5. *Face-to-face retail sales.* The bill specifies that an intoxicating liquor or fermented malt beverages retail license or permit, with limited exceptions, authorizes only face-to-face sales to consumers at the premises described in the retail license or permit.

6. *Common ownership interests.* The bill specifies that certain restrictions on common ownership interests that apply under current law to manufacturers, rectifiers, and wholesalers also apply to wineries and out-of-state shipper permittees. The bill further provides that rectifiers, wineries, and out-of-state shipper permittees may not hold any direct or indirect interest in any wholesale permit or establishment and that, except for a retail license issued to a winery, no retail licensee may hold any direct or indirect interest in any manufacturer, rectifier, winery, or out-of-state shipper permittee.

Under current law, an exception to the common ownership restrictions allows a winery to hold one retail license, which may be a "Class A" license or a "Class B" license. The bill clarifies this exception, including specifying that the retail licensed premises may be on the winery premises or on real estate owned or leased by the winery and that the winery may distribute its own wine to its own retail premises without going through a wholesaler.

7. *DOR industry reports.* The bill requires DOR to publish monthly reports containing specified information related to the intoxicating liquor industry.

8. *Effective date.* The general effective date of the bill is October 1, 2008. Notwithstanding any other provision of the bill, a winery holding a winery permit issued prior to the bill's effective date may continue to sell its wine at wholesale, in the manner authorized under current law, until June 30, 2009.

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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.** 20.566 (1) (ha) of the statutes is amended to read:

2 20.566 (1) (ha) *Administration of liquor tax and alcohol beverages enforcement.*

3 The amounts in the schedule for computer, audit, and enforcement costs incurred in

4 administering the tax under s. 139.03 (2m) and for costs incurred in enforcing the

5 3-tier system for alcohol beverages production, distribution, and sale under ch. 125.

6 All moneys received from the administration fee under s. 139.06 (1) (a) and any

7 permit fee under s. 125.535 (2) shall be credited to this appropriation.

8 Notwithstanding s. 20.001 (3) (a), at the end of each fiscal year, the unencumbered

9 balance of this appropriation account, minus an amount equal to 10% of the sum of

10 the amounts expended and the amounts encumbered from the account during the

11 fiscal year, shall lapse to the general fund.

12 **SECTION 2.** 36.11 (40) of the statutes is amended to read:

13 36.11 (40) CENTER FOR COOPERATIVES. The board shall maintain a center for

14 cooperatives at the University of Wisconsin-Madison. The center shall comply with

15 the requirements specified in s. 125.545 (5) (a).

16 **SECTION 3.** 77.61 (16) of the statutes is created to read:

17 77.61 (16) A winery that receives intoxicating liquor under s. 125.58 (1) is not

18 liable for paying the taxes imposed under this subchapter on the receipt of such

19 intoxicating liquor, if the intoxicating liquor is mixed or blended to produce wine for

20 resale.

21 **SECTION 4.** 125.01 of the statutes is amended to read:

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1 **125.01 Legislative intent.** This chapter shall be construed as an enactment
2 of the legislature's support for the 3-tier system for alcohol beverages production,
3 distribution, and sale that, through uniform statewide regulation, provides this
4 state regulatory authority over the production, storage, distribution, transportation,
5 sale, and consumption of alcohol beverages by and to its citizens, for the benefit of
6 the public health and welfare and this state's economic stability. Without the 3-tier
7 system, the effective statewide regulation and collection of state taxes on alcohol
8 beverages sales would be seriously jeopardized. It is further the intent of the
9 legislature that without a specific statutory exception, all sales of alcohol beverages
10 shall occur through the 3-tier system, from manufacturers to licensed wholesalers
11 to retailers to consumers. Face-to-face retail sales at licensed premises directly
12 advance the state's interest in preventing alcohol sales to underage or intoxicated
13 persons and the state's interest in efficient and effective collection of tax.

14 **SECTION 5.** 125.02 (22) of the statutes is amended to read:

15 125.02 (22) "Wine" means products obtained from the normal alcohol
16 fermentation of the juice or must of sound, ripe grapes, other fruits or other
17 agricultural products, imitation wine, compounds sold as wine, vermouth, cider,
18 perry, mead and sake, if such products contain ~~0.5% or more~~ not less than 0.5 percent
19 nor more than 21 percent of alcohol by volume.

20 **SECTION 6.** 125.04 (3) (a) 4m. of the statutes is created to read:

21 125.04 (3) (a) 4m. If the applicant is a cooperative organized under ch. 185, the
22 identity of the cooperative members, board of directors, and agent.

23 **SECTION 7.** 125.12 (5) of the statutes is amended to read:

24 125.12 (5) REVOCATIONS OR SUSPENSIONS OF, OR REFUSALS TO RENEW, PERMITS BY
25 THE DEPARTMENT. The department may, after notice and an opportunity for hearing,

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1 revoke, suspend or refuse to renew any retail permit issued by it for the causes
2 provided in sub. (4) and any other permit issued by it under this chapter for any
3 violation of this chapter or ch. 139, except that, for a violation of sub. (4) (ag) 6. with
4 respect to a license issued under s. 125.51 (4) (v) or a violation of s. 125.535 or
5 139.035, the department shall revoke the license or permit. A revocation, suspension
6 or refusal to renew is a contested case under ch. 227.

7 **SECTION 8.** 125.272 of the statutes is created to read:

8 **125.272 Face-to-face retail sales.** Except as provided in s. 125.26 (2m) and
9 (2s) and except with respect to caterers, a retail license issued under s. 125.25 or
10 125.26, and a retail permit issued under s. 125.27, authorizes only face-to-face sales
11 to consumers at the premises described in the retail license or permit.

12 **SECTION 9.** 125.51 (6) of the statutes is created to read:

13 **125.51 (6) FACE-TO-FACE RETAIL SALES.** Except as provided in sub. (3) (bm) and
14 (bs) and except with respect to caterers, a retail license or permit issued under this
15 section authorizes only face-to-face sales to consumers at the premises described in
16 the retail license or permit.

17 **SECTION 10.** 125.52 (1) of the statutes is amended to read:

18 **125.52 (1) AUTHORIZED ACTIVITIES.** The department shall issue manufacturers'
19 and rectifiers' permits which authorize the manufacture or rectification,
20 respectively, of intoxicating liquor on the premises covered by the permit. A person
21 holding a manufacturer's or rectifier's permit may manufacture, and bottle ~~or~~
22 ~~wholesale~~ wine, pursuant to the terms of the permit, without procuring a winery
23 permit. A manufacturer's or rectifier's permit entitles the permittee to sell
24 intoxicating liquor to wholesalers holding a permit under s. 125.54, to wineries
25 holding a permit under s. 125.53, and to other manufacturers and rectifiers holding

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1 a permit under this section, from the premises described in the permit. Holders of
2 ~~rectifiers' permits may sell intoxicating liquor rectified by the permittee to retailers~~
3 ~~without any other permit~~. No sales may be made for consumption on the premises
4 of the permittee. Possession of a permit under this section does not authorize the
5 permittee to sell tax-free intoxicating liquor and wines brought into this state under
6 s. 139.03 (5).

7 **SECTION 11.** 125.52 (6) of the statutes is repealed.

8 **SECTION 12.** 125.52 (8) of the statutes is repealed.

9 **SECTION 13.** 125.53 (1) of the statutes is amended to read:

10 125.53 (1) The department shall issue only to a manufacturing winery in this
11 state that holds a valid certificate issued under s. 73.03 (50) a winery permit
12 authorizing the manufacture and bottling of wine on the premises covered by the
13 permit for sale at wholesale to other licensees or permittees to wholesalers holding
14 a permit under s. 125.54. A winery permit also authorizes the permittee to, on the
15 winery premises and without obtaining a rectifier's permit, possess intoxicating
16 liquor and mix or blend intoxicating liquor to produce wine sold to wholesalers
17 holding a permit under s. 125.54. A permittee winery holding a permit under this
18 section may offer on the premises taste samples of wine manufactured on the
19 premises to persons who have attained the legal drinking age. A permittee under
20 this section may also have either ~~a~~ one "Class A" license or one "Class B" license,
21 but not both. The "Class A" license or "Class B" license may either be issued for the
22 winery premises or for real estate owned or leased by the winery. If a "Class A" or
23 "Class B" liquor license has also been issued to the winery, the winery may provide
24 wine manufactured, mixed, or blended on the winery premises directly to the "Class

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1 A” or “Class B” premises and may offer the taste samples on the “Class A” or “Class
2 B” premises.

3 **SECTION 14.** 125.53 (3) of the statutes is repealed.

4 **SECTION 15.** 125.535 of the statutes is created to read:

5 **125.535 Direct wine shippers’ permits. (1) AUTHORIZED ACTIVITIES.** The
6 department shall issue direct wine shippers’ permits authorizing the permittee to
7 ship wine directly to an individual in this state who is of the legal drinking age, who
8 acknowledges receipt of the wine shipped, and who is not intoxicated at the time of
9 delivery.

10 **(2) ANNUAL PERMIT FEE.** The department may, by rule, establish an annual fee,
11 not to exceed \$100, for each permit issued under this section. All fees collected under
12 this subsection shall be credited to the appropriation account under s. 20.566 (1) (ha).

13 **(3) PERSONS ELIGIBLE. (a)** A direct wine shipper’s permit may be issued under
14 this section to any person that manufactures and bottles wine on premises covered
15 by any of the following:

16 1. A manufacturer’s or rectifier’s permit under s. 125.52.

17 2. A winery permit under s. 125.53.

18 3. A winery license, permit, or other authorization issued to the winery by any
19 state from which the winery will ship wine into this state.

20 4. A federal basic permit for a winery under 27 USC 203 and 204.

21 **(b)** A winery located outside of this state is eligible for a direct wine shipper’s
22 permit under par. (a) 3. or 4. if all of the following apply:

23 1. The winery holds a valid business tax registration certificate issued under
24 s. 73.03 (50).

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1 2. The winery submits to the department, with any initial application or
2 renewal for a certificate under s. 73.03 (50) or a permit under par. (a) 3. or 4., a copy
3 of any current license, permit, or authorization issued to the winery by the state from
4 which the winery will ship wine into this state or the winery's federal basic permit.

5 (c) Notwithstanding s. 125.04 (5) (a), natural persons obtaining direct wine
6 shippers' permits are not required to be residents of this state. Notwithstanding s.
7 125.04 (5) (a) 5., a person is not required to complete a responsible beverage server
8 training course to be eligible for a permit under this section. Corporations and
9 limited liability companies obtaining direct wine shippers' permits are subject to s.
10 125.04 (6) and any other person, including any natural person or cooperative,
11 obtaining a direct wine shipper's permit shall appoint an agent, and be subject to all
12 provisions of s. 125.04 (6), in the same manner applicable to corporations and limited
13 liability companies.

14 **(4) LABELS.** Containers of wine shipped to an individual in this state under this
15 section shall be clearly labeled to indicate that the package may not be delivered to
16 an underage person or to an intoxicated person.

17 **(5) RESTRICTIONS.** No individual may resell, or use for a commercial purpose,
18 wine received by the individual that is shipped under authority of this section.

19 **(6) ANNUAL LIMIT.** No individual in this state may receive more than 108 liters
20 of wine annually shipped under authority of this section. Each individual shall be
21 responsible for compliance with this annual limit. An individual who violates this
22 annual limit is subject to s. 125.11 (1). This subsection does not apply to purchases
23 made under a permit issued under s. 125.61.

24 **SECTION 16.** 125.54 (1) of the statutes is amended to read:

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1 125.54 (1) AUTHORIZED ACTIVITIES. The department shall issue wholesalers’
2 permits authorizing the permittee to sell, from the premises described in the permit,
3 ~~intoxicating liquor at wholesale from the premises described in the permit. Except~~
4 ~~as provided under s. 125.69 (1) (b) 3., the~~ to retailers and wholesalers, as well as to
5 manufacturers, rectifiers, and wineries for production purposes. The permittee may
6 not sell intoxicating liquor for consumption on the premises. ~~If a wholesale permit~~
7 ~~is issued to a brewery that holds a “Class B” license, the permit shall authorize the~~
8 ~~wholesale sale of wine only.~~ Possession of a permit under this section does not
9 authorize the permittee to sell tax-free intoxicating liquor and wine brought into
10 this state under s. 139.03 (5).

11 **SECTION 17.** 125.54 (7) (e) of the statutes is created to read:

12 125.54 (7) (e) This subsection does not apply to a cooperative wholesaler under
13 s. 125.545.

14 **SECTION 18.** 125.54 (8) of the statutes is created to read:

15 125.54 (8) DUTY TO WORK IN GOOD FAITH. Each wholesaler has an obligation to
16 negotiate in good faith with any manufacturer, rectifier, or winery that seeks to sell
17 its products in this state through the wholesaler. To this end, all wholesalers shall
18 work diligently to ensure that distribution channels are available for the sale of
19 intoxicating liquor products through wholesalers to retailers in this state.

20 **SECTION 19.** 125.545 of the statutes is created to read:

21 **125.545 Small winery cooperative wholesalers.** (1) DEFINITIONS. In this
22 section:

23 (a) “Member” means a small winery that meets the requirements established
24 under this section for membership in a cooperative wholesaler and that has been
25 qualified and accepted for membership in a cooperative wholesaler.

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1 (b) "Out-of-state winery" means a winery that is located in a state other than
2 this state and that holds a valid direct shipper's permit issued under s. 125.535.

3 (c) "Retailer" means any person holding a "Class A", "Class B", or "Class C"
4 license or "Class B" permit issued under s. 125.51.

5 (d) "Small winery" means any winery that produces and bottles less than
6 25,000 gallons of wine in a calendar year.

7 (e) "Small winery cooperative wholesaler" or "cooperative wholesaler" means
8 an entity established under this section.

9 (f) "Wisconsin winery" means a winery operating under a permit issued under
10 s. 125.53.

11 **(2) CREATION AND ORGANIZATION.** (a) 1. A cooperative wholesaler may only be
12 created as provided under s. 185.043 (2) and this section. Each cooperative
13 wholesaler operating under authority of this section shall be organized under ch. 185
14 but shall be subject to the limitations on such cooperatives imposed by this section.
15 Subject to subd. 3., only small wineries may be members of a cooperative wholesaler.
16 The principal purpose of a cooperative wholesaler shall be to sell and distribute wine
17 manufactured, blended, or mixed, and also bottled, by its members.

18 2. Notwithstanding s. 185.08 (1), a cooperative wholesaler shall include in its
19 articles of incorporation under ch. 185 a single location for its agent and principal
20 office, which location shall be in this state.

21 3. A small winery may become a member of a cooperative wholesaler only if all
22 of the following apply:

23 a. The small winery holds a direct shipper's permit under s. 125.535.

24 b. The small winery is certified by the department under sub. (6) (a) as a small
25 winery.

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1 (b) In addition to the requirements specified in s. 185.31 for the board of
2 directors of a cooperative wholesaler, a director representing a member that is a
3 Wisconsin winery shall be either an owner or an employee of that Wisconsin winery.
4 If any out-of-state winery is a member of the cooperative wholesaler, at least one
5 director shall be either an owner or an employee of an out-of-state winery that is a
6 member of the cooperative wholesaler.

7 (c) Notwithstanding any provision of ch. 185, a cooperative wholesaler may not
8 employ any owner or employee of a member. However, an individual that is an owner
9 or an employee of a member may act as a volunteer to assist that cooperative
10 wholesaler in the sale and distribution of wine to retailers and other wholesalers in
11 the manner authorized under this section.

12 **(3) AUTHORIZATION AND ACTIVITIES.** (a) 1. Within 7 days after filing its articles
13 of incorporation under ch. 185, a cooperative wholesaler shall apply to the
14 department for a wholesaler's permit under s. 125.54. The provisions of s. 125.04 (5)
15 (c) and (6) shall apply to a cooperative wholesaler as if the cooperative wholesaler
16 were a corporation or a limited liability company and, for each of these provisions,
17 the department shall determine whether the cooperative wholesaler is most similar
18 to a corporation or a limited liability company in the context of that provision and
19 apply that provision to the cooperative wholesaler accordingly.

20 2. Notwithstanding s. 125.54 (6), the department may issue not more than one
21 wholesaler's permit to any cooperative wholesaler. The department may not issue
22 more than a total of 6 wholesalers' permits to cooperative wholesalers in this state.
23 The department may not issue any new wholesaler's permit to a cooperative
24 wholesaler after December 31, 2008, but may renew wholesalers' permits that were
25 initially issued to cooperative wholesalers prior to that date.

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1 3. No cooperative wholesaler may operate in this state without a wholesaler's
2 permit.

3 (b) 1. Notwithstanding s. 125.54 (1), a cooperative wholesaler issued a
4 wholesaler's permit under par. (a) is authorized to sell and distribute only wine. A
5 cooperative wholesaler may not sell or distribute any alcohol beverages, or any other
6 product, except wine.

7 2. A cooperative wholesaler shall purchase on consignment wine from its
8 members to be resold to retailers and other wholesalers. Notwithstanding s. 125.69
9 (5), a cooperative wholesaler may not purchase wine from any person other than a
10 member. A cooperative wholesaler may not resell or distribute wine unless it has
11 been purchased on consignment from a member. Notwithstanding s. 125.54 (1), a
12 cooperative wholesaler may not sell or distribute wine except to a retailer or to a
13 wholesaler holding a permit under s. 125.54.

14 3. A cooperative wholesaler shall work with all of its members on evenhanded
15 terms. Any preferential treatment by a cooperative wholesaler for the benefit of a
16 member that is a Wisconsin winery, and any discrimination against a member that
17 is an out-of-state winery, is prohibited.

18 (c) Neither a cooperative wholesaler nor its members are subject to any
19 restriction on dealings under s. 125.69 (1) between wholesalers and wineries. Except
20 as provided in s. 125.54 (7) (e) and as otherwise provided in this section, all provisions
21 of this chapter and ch. 139 that apply to a wholesaler issued a permit under s. 125.54
22 also apply to a cooperative wholesaler issued a permit under s. 125.54.

23 **(4) EXCLUSIVE DISTRIBUTION.** A member of a cooperative wholesaler may make
24 its wine available for purchase by a retailer or another wholesaler only through the
25 cooperative wholesaler of which it is a member. A member of a cooperative

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1 wholesaler may not sell its wine directly to any other wholesaler or directly to a
2 retailer.

3 **(5) SEMIANNUAL MEETINGS AND ANNUAL REPORTS.** (a) At least once every 6
4 months, the board of directors of a cooperative wholesaler shall meet in person with
5 an employee of the department. At each of these meetings, the cooperative
6 wholesaler shall provide a detailed report of its operations and sales activities, bring
7 whatever documentation the department considers reasonably necessary for the
8 department to conduct its review of the cooperative wholesaler, and answer any
9 questions the department may have about the cooperative wholesaler's activities.
10 A representative of the University of Wisconsin Center for Cooperatives shall also
11 attend each of these meetings. Within 7 days after each of these meetings, the
12 department shall submit in writing to the cooperative wholesaler all additional
13 questions for which the department requests an answer of the cooperative
14 wholesaler. The cooperative wholesaler shall provide answers to the department's
15 questions within 7 days. Within 6 weeks after each of these meetings, the
16 department shall issue a report stating whether the cooperative wholesaler is
17 operating properly under this state's law and shall detail any problem areas that the
18 cooperative wholesaler must correct. The University of Wisconsin Center for
19 Cooperatives shall also issue a report within 6 weeks of each of these meetings and
20 detail in that report all recommendations on how the cooperative wholesaler can
21 improve its operations and better comply with this state's law. All reports issued by
22 the department and by the University of Wisconsin Center for Cooperatives shall be
23 publicly available.

24 (b) By February 15 of each year, each cooperative wholesaler shall file with the
25 department, in the form and manner prescribed by the department by rule, an

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1 annual report that includes detailed information on its members, board of directors,
2 and sale and distribution activities.

3 **(6) DEPARTMENT CERTIFICATION AND RULE MAKING.** (a) 1. The department shall,
4 upon application, certify eligible applicants as small wineries and renew prior
5 certifications of eligible applicants as small wineries.

6 2. Any winery seeking to become a member of, or to maintain its membership
7 in, a cooperative wholesaler may apply to the department for certification as a small
8 winery. If the winery meets the definition of a small winery under this section,
9 satisfies the requirement under sub. (2) (a) 3. a., and submits any other information
10 that the department determines is necessary to certify that the winery is operating
11 as a small winery and is eligible for membership in a cooperative wholesaler, the
12 department shall certify the winery as a small winery. This certification shall remain
13 valid for one year.

14 3. In certifying any winery under subd. 2., the department shall classify the
15 winery as either a Wisconsin winery or an out-of-state winery.

16 4. The department shall refuse to certify under this paragraph any winery that
17 cannot demonstrate it holds all necessary permits for its operations or that the
18 department finds is otherwise not in full compliance with the laws of this state.

19 (b) The department shall promulgate rules to administer and enforce the
20 requirements under this section.

21 **(7) PENALTIES.** (a) Any winery that sells or distributes its wine directly to a
22 retailer, rather than through a wholesaler or cooperative wholesaler, is subject to a
23 fine of not more than \$10,000 and revocation of all of its permits by the department
24 under s. 125.12 (5).

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1 (b) Any cooperative wholesaler that provides preferential treatment to a
2 Wisconsin winery or discriminates against an out-of-state winery is subject to a fine
3 of not more than \$10,000 and revocation of its wholesaler's permit by the department
4 under s. 125.12 (5).

5 **SECTION 20.** 125.55 (1) (intro.) and (a) of the statutes are consolidated,
6 renumbered 125.55 (1) and amended to read:

7 125.55 (1) The department may issue ~~the following combination permits:~~ (a)
8 ~~A~~ a combination manufacturer's and rectifier's permit.

9 **SECTION 21.** 125.55 (1) (b) of the statutes is repealed.

10 **SECTION 22.** 125.55 (2) of the statutes is amended to read:

11 125.55 (2) A combination manufacturer's and wholesaler's permit may not be
12 issued. A combination rectifier's and wholesaler's permit may not be issued.

13 **SECTION 23.** 125.58 (1) of the statutes is amended to read:

14 125.58 (1) The department shall issue out-of-state shippers' permits which
15 authorize persons located outside this state to sell or ship intoxicating liquor into this
16 state. Except as provided under sub. (4), intoxicating liquor may be shipped into this
17 state only to a person holding a ~~manufacturer's, rectifier's, wholesaler's, industrial~~
18 ~~alcohol or medicinal alcohol~~ permit under s. 125.54 or, if shipped from a
19 manufacturer or rectifier in another state holding a permit under this section, to a
20 person holding a manufacturer's or rectifier's permit under s. 125.52 or a winery
21 permit under s. 125.53. Except as provided under sub. (4), a separate out-of-state
22 shipper's permit is required for each location from which any intoxicating liquor is
23 sold or shipped into this state, including the location from which the invoices are
24 issued for the sales or shipments. Any person holding an out-of-state shipper's
25 permit issued under this section may solicit orders for sales or shipments by the

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1 permittee without obtaining the sales solicitation permit required by s. 125.65, but
2 every agent, salesperson or other representative who solicits orders for sales or
3 shipments by an out-of-state shipper shall first obtain a permit for soliciting orders
4 under s. 125.65. No holder of an out-of-state shipper's permit issued under this
5 section may sell intoxicating liquor in this state or ship intoxicating liquor into this
6 state unless the out-of-state shipper is the primary source of supply for that
7 intoxicating liquor.

8 **SECTION 24.** 125.58 (4) (a) (intro.) of the statutes is renumbered 125.58 (4) and
9 amended to read:

10 125.58 (4) A winery located outside of this state may ship wine into this state
11 as provided under s. ~~125.68 (10) (bm)~~ if all of the following apply: 125.535 and is not
12 required to hold an out-of-state shipper's permit under this section.

13 **SECTION 25.** 125.58 (4) (a) 1. to 4. of the statutes are repealed.

14 **SECTION 26.** 125.58 (4) (b) of the statutes is repealed.

15 **SECTION 27.** 125.65 (8) of the statutes is amended to read:

16 125.65 (8) Nonresident persons holding permits under this section may solicit
17 sales from retailers in this state only if the orders are solicited for, and will be filled
18 by, persons holding permits under s. ~~125.52 or~~ 125.54.

19 **SECTION 28.** 125.68 (10) (a) of the statutes is amended to read:

20 125.68 (10) (a) Except as provided in ~~par. (bm)~~ s. 125.535, no intoxicating liquor
21 may be shipped into this state unless consigned to a person holding a wholesaler's
22 permit for the sale of intoxicating liquor, other than a retail "Class B" permit under
23 s. 125.54 or, if shipped from a manufacturer or rectifier in another state holding a
24 permit under s. 125.58, consigned to a person holding a manufacturer's or rectifier's
25 permit under s. 125.52 or a winery permit under s. 125.53.

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1 **SECTION 29.** 125.68 (10) (b) of the statutes is amended to read:

2 125.68 (10) (b) Except as provided in ~~par. (bm) s. 125.535~~, no common carrier
3 or other person may transport into and deliver within this state any intoxicating
4 liquor unless it is consigned to a person holding a wholesaler's permit for the sale of
5 intoxicating liquor, other than a retail "Class B" permit under s. 125.54 or, if shipped
6 from a manufacturer or rectifier in another state holding a permit under s. 125.58,
7 consigned to a person holding a manufacturer's or rectifier's permit under s. 125.52
8 or a winery permit under s. 125.53. Any common carrier violating this paragraph
9 shall forfeit \$100 for each violation.

10 **SECTION 30.** 125.68 (10) (bm) of the statutes is repealed.

11 **SECTION 31.** 125.68 (10) (bs) of the statutes is repealed.

12 **SECTION 32.** 125.68 (10) (c) of the statutes is repealed.

13 **SECTION 33.** 125.69 (1) (a) of the statutes is amended to read:

14 125.69 (1) (a) No intoxicating liquor manufacturer, rectifier, winery,
15 out-of-state shipper permittee, or wholesaler may hold any direct or indirect
16 interest in any "Class A" license or establishment and no "Class A" licensee may hold
17 any direct or indirect interest in a wholesale permit or establishment, except that a
18 winery that has a permit under s. 125.53 may have an ownership interest in a "Class
19 A" license.

20 **SECTION 34.** 125.69 (1) (b) 1. of the statutes is amended to read:

21 125.69 (1) (b) 1. Except as provided under ~~subds. 2. to subd. 4.,~~ no intoxicating
22 liquor manufacturer, rectifier, winery, out-of-state shipper permittee, or wholesaler
23 may hold any direct or indirect interest in any "Class B" license or permit or
24 establishment or "Class C" license or establishment and no "Class B" licensee or
25 permittee or "Class C" licensee may hold any direct or indirect interest in a

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1 manufacturer, rectifier, winery, out-of-state shipper, or wholesale permit or
2 establishment.

3 **SECTION 35.** 125.69 (1) (b) 2. and 3. of the statutes are repealed.

4 **SECTION 36.** 125.69 (1) (c) (intro.) of the statutes is renumbered 125.69 (1) (c)
5 and amended to read:

6 125.69 (1) (c) No manufacturer, rectifier, winery, or out-of-state shipper
7 permittee, whether located within or without this state, may hold any direct or
8 indirect interest in any wholesale permit or establishment, ~~except as provided in s.~~
9 ~~125.53, and except that a manufacturer that is also a brewer may hold a permit~~
10 ~~issued under s. 125.54 for the wholesale sale of wine only. This paragraph does not~~
11 ~~prohibit any of the following persons from obtaining a permit under s. 125.65.~~
12 Except as provided in s. 125.53, no retail licensee may hold any direct or indirect
13 interest in any manufacturer, rectifier, winery, or out-of-state shipper permittee.

14 **SECTION 37.** 125.69 (1) (c) 1. to 3. of the statutes are repealed.

15 **SECTION 38.** 125.69 (4) (c) of the statutes is repealed.

16 **SECTION 39.** 125.69 (6) (a) of the statutes is amended to read:

17 125.69 (6) (a) No campus or retail licensee or permittee may purchase
18 intoxicating liquor from, or possess intoxicating liquor purchased from, any person
19 other than a ~~manufacturer, rectifier or~~ wholesaler holding a permit under this
20 chapter for the sale of intoxicating liquor.

21 **SECTION 40.** 139.03 (6) of the statutes is created to read:

22 139.03 (6) A winery that receives intoxicating liquor under s. 125.58 (1) is not
23 liable for paying the taxes imposed under this subchapter on the receipt of such
24 intoxicating liquor, if the intoxicating liquor is mixed or blended to produce wine for
25 resale.

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1 **SECTION 41.** 139.035 of the statutes is repealed and recreated to read:

2 **139.035 Wine shipped directly to individuals in this state.** (1) All wine
3 shipped directly to an individual located in Wisconsin by a person holding a direct
4 wine shipper's permit under s. 125.535 shall be sold with the occupational tax
5 imposed under s. 139.03 included in the selling price. As directed by the department,
6 the taxes imposed under s. 139.03 shall be paid to, and a quarterly return filed with,
7 the department once every quarter on or before the 15th day of the next month
8 following the close of the calendar quarter. In addition to filing a quarterly liquor tax
9 return, each person holding a direct wine shipper's permit under s. 125.535 shall be
10 required to file an addendum, on forms furnished by the department, that provides,
11 at minimum, the identity, quantity, and price of all wine shipped to individuals in this
12 state during the previous quarter, along with the name, address, and birthdate of
13 each person who purchased the wine as well as the name of the person of legal
14 drinking age who acknowledged delivery of the wine. Working with permittees
15 under s. 125.535, the department shall develop forms, in both paper and electronic
16 format, for use by such permittees in obtaining this information and complying with
17 any other requirement under this state's law in connection with the direct shipment
18 of wine.

19 (2) Any failure of a person holding a direct wine shipper's permit under s.
20 125.535 to pay the occupational tax or file the addendum required under sub. (1)
21 within 30 days of its due date constitutes grounds for revocation or suspension of the
22 permit. The provisions on timely filing under s. 71.80 (18) apply to the tax and
23 addendum required under this section.

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1 **(3)** No wine may be shipped directly to an individual in this state by a person
2 holding a direct wine shipper's permit under s. 125.535 unless the tax imposed under
3 s. 77.52 or 77.53 is paid on the sale of such wine.

4 **SECTION 42.** 139.11 (4) (title) of the statutes is amended to read:

5 139.11 **(4)** (title) CONFIDENTIALITY AND PUBLICATIONS.

6 **SECTION 43.** 139.11 (4) of the statutes is renumbered 139.11 (4) (a) and
7 amended to read:

8 139.11 **(4)** (a) Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3., relating to
9 confidentiality of income, franchise and gift tax returns, apply to any information
10 obtained from any person on a fermented malt beverage ~~or intoxicating liquor tax~~
11 return, report, schedule, exhibit or other document or from an audit report relating
12 to any of those documents, except that the department of revenue shall publish
13 brewery production and sales statistics ~~and shall publish or permit the publication~~
14 ~~of statistics on the total number of gallons of the types and brands of intoxicating~~
15 ~~liquor sold in this state.~~

16 **SECTION 44.** 139.11 (4) (b) of the statutes is created to read:

17 139.11 **(4)** (b) Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3., relating to
18 confidentiality of income, franchise and gift tax returns, do not apply to any
19 information obtained from any person on an intoxicating liquor tax return, report,
20 schedule, exhibit or other document or from an audit report relating to any of those
21 documents. With the information provided to the department by any person, the
22 department of revenue shall publish at least once each month:

23 1. Statistics on the total number of gallons of the types and brands of
24 intoxicating liquor sold in this state.

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1 2. A current and regularly updated list, made available on paper and on the
2 department's Internet Web site, of permit holders that minimally includes detailed
3 information on the name, address, contact person, and date of permit issuance for
4 every manufacturer's and rectifier's permit issued under s. 125.52, winery permit
5 issued under s. 125.53, direct wine shipper's permit issued under s. 125.535,
6 wholesaler's permit issued under s. 125.54, and out-of-state shipper's permit issued
7 under s. 125.58.

8 3. A report summarizing the identity, quantity, and price of all products sold
9 under each winery permit issued under s. 125.53 and each direct wine shipper's
10 permit issued under s. 125.535.

11 4. A report summarizing the sales quantity and product data available for all
12 products sold under each wholesaler's permit issued under s. 125.54.

13 **SECTION 45.** 185.043 of the statutes is renumbered 185.043 (1) and amended
14 to read:

15 185.043 (1) Five Except as provided in sub. (2), 5 or more adults, one of whom
16 must be a resident, may form a cooperative by signing, acknowledging and filing
17 articles.

18 **SECTION 46.** 185.043 (2) of the statutes is created to read:

19 185.043 (2) If the cooperative is formed for purposes of operating as a small
20 winery cooperative wholesaler under s. 125.545, 3 or more individuals, at least one
21 of whom must be a resident and all of which must be owners of small wineries
22 certified by the department of revenue under s. 125.545 (6) (a), may form a
23 cooperative by signing, acknowledging, and filing articles. Membership in a
24 cooperative formed under this subsection is limited to small wineries certified by the
25 department of revenue under s. 125.545 (6) (a).

SENATE BILL 485**1 SECTION 47. Nonstatutory provisions.**

2 (1) POSITION AUTHORIZATION. The authorized FTE positions for the department
3 of revenue are increased by 1.0 PR position, to be funded from the appropriation
4 under section 20.566 (1) (ha) of the statutes, as affected by this act, for the purpose
5 of performing computer, audit, and enforcement services incurred in administering
6 the tax under section 139.03 (2m) of the statutes and for enforcing the 3-tier system
7 for alcohol beverages production, distribution, and sale under chapter 125 of the
8 statutes.

9 (2) SMALL WINERY INTERIM CERTIFICATION. (a) The department of revenue shall,
10 upon application, certify under this subsection eligible applicants as small wineries.

11 (b) Any winery that may seek to become a member of a cooperative wholesaler
12 after October 1, 2008, may apply to the department of revenue for certification as a
13 small winery. If the winery meets the definition of a small winery under section
14 125.545 (1) (d) of the statutes, as created by this act, and satisfies the requirement
15 under section 125.545 (2) (a) 3. a. of the statutes, as created by this act, and submits
16 any other information that the department determines is necessary to certify that
17 the winery is operating as a small winery and will be eligible for membership in a
18 cooperative wholesaler after October 1, 2008, the department shall certify the winery
19 as a small winery. This certification shall remain valid for one year.

20 (c) In certifying any winery under paragraph (b), the department of revenue
21 shall classify the winery as either a Wisconsin winery or an out-of-state winery, as
22 those terms are defined under section 125.545 (1) of the statutes, as created by this
23 act.

24 (d) The department of revenue shall refuse to certify under this subsection any
25 winery that cannot demonstrate it holds all necessary permits for its operations or

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1 that the department finds is otherwise not in full compliance with the laws of this
2 state.

3 (e) This subsection does not apply after September 30, 2008.

4 (3) SMALL WINERY DISTRIBUTION PHASE-IN. Notwithstanding section 125.53 (1)
5 of the statutes, as affected by this act, a winery that was issued a permit under
6 section 125.53 (1), 2005 stats., prior to the effective date of this subsection is
7 authorized to sell at wholesale to other licensees or permittees under chapter 125
8 wine manufactured and bottled on the premises covered by the winery permit. This
9 subsection does not apply after June 30, 2009.

10 (4) RULE MAKING. (a) The department of revenue shall submit in proposed form
11 the rules required under section 125.545 (6) (b) of the statutes, as created by this act,
12 to the legislative council staff under section 227.15 (1) of the statutes no later than
13 July 1, 2008.

14 (b) Using the emergency rules procedure under section 227.24 of the statutes,
15 the department of revenue shall promulgate the rules required under section
16 125.545 (6) (b) of the statutes, as created by this act, for purposes of implementing
17 this act, for the period before the effective date of the rules submitted under
18 paragraph (a). The department of revenue shall promulgate these emergency rules
19 no later than July 1, 2008. Notwithstanding section 227.24 (1) (c) and (2) of the
20 statutes, these emergency rules may remain in effect until July 1, 2010, or the date
21 on which permanent rules take effect, whichever is sooner. Notwithstanding section
22 227.24 (1) (a) and (3) of the statutes, the department of revenue is not required to
23 provide evidence that promulgating a rule under this paragraph as an emergency
24 rule is necessary for the preservation of the public peace, health, safety, or welfare

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1 and is not required to provide a finding of emergency for a rule promulgated under
2 this paragraph.

3 **SECTION 48. Fiscal changes.**

4 (1) In the schedule under section 20.005 (3) of the statutes for the appropriation
5 to the department of revenue under section 20.566 (1) (ha) of the statutes, as affected
6 by the acts of 2007, the dollar amount is increased by \$7,700 for fiscal year 2008-09
7 to increase funding for the purposes for which the appropriation is made.

8 **SECTION 49. Effective dates.** This act takes effect on October 1, 2008, except
9 as follows:

10 (1) SECTION 47 (2) of this act takes effect on July 1, 2008.

11 (2) SECTION 47 (4) of this act takes effect on the day after publication.

12 (END)