

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: **06/27/99**

Received By: **olsenje**

Wanted: **Soon**

Identical to LRB:

For: **Senate Democratic Caucus**

By/Representing: **Walter**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters: **nilsepe**

Subject: **Beverages - miscellaneous**

Extra Copies:

Pre Topic:

SDC:.....Walter - Caucus # 2765,

Topic:

Wisconsin fair dealership law

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	olsenje 06/27/99	wjackson 06/27/99		_____			
/1	nilsepe 06/28/99	wjackson 06/28/99	jfrantze 06/27/99	_____	lrb_docadmin 06/28/99		
/2	nilsepe 06/29/99	wjackson 06/29/99	kfollet 06/29/99	_____	lrb_docadmin 06/29/99		
/3			ismith 06/29/99	_____	lrb_docadmin 06/29/99		

FE Sent For:

<END>

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/1	nilsepe 06/28/99	wjackson 06/28/99	jfrantze 06/27/99	_____	lrb_docadmin 06/28/99		
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6/29

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/?	olsenje 06/27/99	wjackson 06/27/99		<u>WLj</u> <u>rjm</u>			
/1		<i>1/2 WLj 6/28</i>	jfrantze 06/27/99 <i>Kjf</i> <i>6/29</i>	_____	lrb_docadmin 06/28/99		

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1/?	olsenje	11 WLj 6/27	to 6/27	to me 6/27			

FE Sent For:

<END>

yes

SDC

Agency: General Fund Taxes

caucus number 2134

duplicate flag:
duplicate with:

Other reference numbers:	LFB Sum #:
bill number/amendment number:	
LRB draft #	LRB P-draft:

description: Tax Levy Rate Limits. Proposal to create a narrow exception to tax levy rate. No fiscal impact.

other notes

drafting instructions: See above and attached

more instructions:

caucus number 2732

duplicate flag:
duplicate with:

Other reference numbers:	LFB Sum #:
FM 1403	
bill number/amendment number:	
LRB draft #	LRB P-draft:

description: Adopt FM 1403 which provides a sales and use tax exemption for the gross receipts from the sale of and the storage, use or other consumption of materials in the maintenance of railroad tracks and rights of way.

other notes Modifications to above: change effective date to 1/1/01

drafting instructions: Adopt freestanding motion 1403 (see above)

more instructions:

NOTE CHANGE

Alrea
Sent
in previous
batch

caucus number 2762

duplicate flag:
duplicate with:

Other reference numbers:	Paper 120	LFB Sum #:
	FM 1177	
bill number/amendment number:		
LRB draft #		LRB P-draft:

description: Paper 120. Cigarette Tax Refunds. Maintain current law, directing DOR to refund 70% of cigarette taxes from sales on reservations that were designated such by 1/1/83. Allow refund of 1005 of cigarette tax collections from those sales to tribal members.

other notes

drafting instructions: See above and attached.

more instructions:

caucus number 2765

duplicate flag:
duplicate with:

Other reference numbers:	FM 1383	LFB Sum #:
bill number/amendment number:		
LRB draft #		LRB P-draft:

description: Adopt FM 1383 re: Wisconsin Fair Dealership Law.

other notes

drafting instructions: Include FM 1383.

more instructions:

99-3223
-3236

61426

include D-note explaining
unconstitutionality

CN 2765

+

Adopt provisions of LFB Motion #1383, related to the Wisconsin Fair Dealership Law.

Post-It® Fax Note 7671		Date 6/17-99	# of pages 7
To Doug	From Nance		
Co./Dept. Sen. Cwata	Co. Sen. Dem Caucus		
Phone #	Phone #		
Fax #	Fax #		

Representative Gard

FUND TAXES

Wisconsin Fair Dealership Law

Motion:

Move to create the following provisions related to the governance of relationships between wholesalers and suppliers of intoxicating liquor:

Administrative Provisions

1. Require the administrator of the Division of Hearings and Appeals (Division) in the Department of Administration (DOA) to assign a hearing examiner to preside over any hearing of a contested case that is required to be conducted by the Department of Revenue (DOR) with respect to relationships between wholesalers and suppliers of intoxicating liquor.

2. Require DOR to notify the Division of every pending hearing to which the administrator of the Division is required to assign a hearing examiner after DOR is notified that a hearing on the matter is required.

3. Authorize the administrator of the Division to set the fees to be charged for any services rendered to DOR by a hearing examiner under (1) above. Specify that the fee shall cover the total cost of the services less any costs covered by: (a) the DOA appropriation for Hearings and Appeals operations; and (b) those costs recovered through fees charged for such purposes by DOR to holders of wholesalers' permits [see (5) below].

4. Require DOR to pay all costs of the services of a hearing examiner assigned as in (1) above, including costs of support services, according to the fees set under (3) above.

5. Authorize DOR to establish, by rule, a procedure to collect annually from holders of wholesaler's permits funds necessary to reimburse DOR for charges paid to the Division for the services of a hearing examiner, including support services.

Relationships Between Wholesalers and Suppliers of Intoxicating Liquor

Specify that the Legislature finds the following:

The Legislature finds that the 3-tier system for distributing intoxicating liquor has existed in Wisconsin for over 60 years and continues to be necessary to promote the public health, safety and welfare; that the 3-tier system was established, among other reasons, to prevent suppliers

from controlling pricing and distribution in a manner that harms the interests of the citizens of Wisconsin; that a stable and healthy middle tier of the 3-tier system, the wholesaler, is integral to the 3-tier system (because the middle tier prevents supplier control of pricing and distribution and provides an efficient and effective means for tax collection) that significant consolidation of market power has occurred at the supplier level; that the number of intoxicating liquor wholesalers in Wisconsin has significantly declined over the past two decades increasing the risk of supplier control of pricing and distribution; and that this legislation is necessary to promote and maintain a stable and healthy middle tier. The Legislature further finds that relationships between intoxicating liquor wholesalers and suppliers have been subject to state regulation since the enactment of the 21st Amendment to the U.S. Constitution and that the parties to those relationships expect changes to state legislation regarding those relationships.

Applicability

Provide that the following apply with respect to relationships between wholesalers and suppliers of intoxicating liquor:

1. These provisions apply to all relationships, regardless of when they were entered into, except that the provisions do not apply to a relationship in which the volume of the business done by a wholesaler with a supplier, including a supplier's affiliates, does not exceed five percent of the wholesaler's total business volume;

2. The effect of these provisions may not be varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to that extent only.

3. Provisions of a relationship that prevent a wholesaler, through choice of law or forum provisions, from bringing an action or filing a notice of contest in this state under these provisions are void and unenforceable to that extent only.

Definitions

Specify the following definitions with respect to wholesaler - supplier relationships:

1. "Altered product" means an existing product altered by age, by alcohol content, blend mixture, flavor or in some other way and principally identified by a trademark, trade name, logotype or other commercial symbol used to identify an existing product.

2. "Existing product" means intoxicating liquor that is distributed in the United States before or on the effective date of these provisions.

3. "Good cause" means: (a) failure by a wholesaler to comply substantially with essential and reasonable requirements imposed upon the wholesaler by the supplier, or sought to be imposed by the supplier, which requirements are not discriminatory as compared with requirements imposed on other similarly situated wholesalers either by their terms or in the manner of their enforcement; or (b) bad faith by the wholesaler in carrying out the terms of the relationship.

4. "Geographic area" means that area where a wholesaler is both authorized to sell intoxicating liquor pursuant to a relationship and has in fact sold intoxicating liquor.

5. "Goodwill" includes use of a trademark, trade name, logotype or other commercial symbol, and use of a variation of a trademark, trade name, logotype, advertisement or other commercial symbol.

6. "Intoxicating liquors" means all ardent, spirituous, distilled liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include "fermented malt beverages" and "wines."

7. "New product" means intoxicating liquor that is not an altered product and that is distributed in the United States after the effective date of these provisions.

8. "Relationship" means a contract or agreement, either express or implied, whether oral or written, between a supplier and a wholesaler that grants the wholesaler the right to purchase intoxicating liquor from the supplier for resale in this state.

9. "Supplier" means any person, other than a wholesaler, who sells intoxicating liquor to a wholesaler.

10. "Transferee" means a person who acquires any asset or activity of a supplier's business and who uses the goodwill associated with the supplier's goods.

Alteration of Relationship

Specify that a supplier may not do any of the following:

1. Terminate, cancel, fail to renew or substantially alter a relationship without good cause. The supplier bears the burden of proving good cause and that the alteration is not substantial.

2. Substantially change the competitive circumstances of a wholesaler's business without good cause. The supplier bears the burden of proving good cause and that the change is not substantial.

3. Appoint more than one wholesaler to resell an existing product in a geographic area in which there was only one wholesaler reselling that existing product in that geographic area in the 12 months preceding the effective date of these provisions.

4. Refuse to sell an altered product or a new product to a wholesaler who has entered into a relationship with the supplier, except in the case of a supplier who has relationships with more than one wholesaler in the same geographic area, as described below.

Specify that a supplier who has relationships with more than one wholesaler in the same geographic area shall offer an altered product only to a wholesaler who previously resold the existing product principally identified by the same trademark, trade name, logotype or other commercial symbol used to identify the altered product.

Specify that a change in the ownership or management of a wholesaler or of a wholesaler's business is not good cause if the changed ownership or management meets the supplier's reasonable and material qualifications for wholesaler applicants in effect at the time of the change.

Notice of Termination or Change in Relationship

With certain exceptions described below, require a supplier to provide a wholesaler at least 90 days' prior written notice of termination, cancellation, nonrenewal, substantial alteration in the relationship or substantial change in the competitive circumstances of the wholesaler's business. Specify that: (a) the notice shall be given by certified mail or personal service to the wholesaler and to the Secretary of the Department of Revenue; (b) the notice shall state all of the supplier's reasons for terminating, canceling, not renewing or substantially altering the relationship, or substantially changing the competitive circumstances of the wholesaler's business; (c) the wholesaler shall have 60 days after receiving the notice in which to correct any claimed deficiency; and (d) if the wholesaler corrects the deficiency within 60 days after receiving the notice, the notice shall be void.

Provide that if the reason for the deficiency is nonpayment of sums owed, the wholesaler shall have only 10 days to correct the deficiency.

Specify that no notice is required under for the termination, cancellation, nonrenewal or substantial change of a relationship caused by an assignment for the benefit of creditors or bankruptcy.

Provide that, within the time period for remedying any claimed deficiency, the wholesaler may file a written request with the Division of Hearings and Appeals for a hearing and serve the supplier and the Secretary of DOR by certified mail or in person, with a notice of the contested action. Specify that the service of notice stays any action proposed by the supplier in the notice of termination or change in relationship as described above. However, if a motion is made by the supplier to allow the action to proceed, then the Division shall conduct a hearing limited to whether or not to let the action go forward within 20 days.

Require the Division to conduct a contested case hearing on the matter within 180 days after the filing of a notice of contest and to determine whether the supplier has met the requirements for altering a relationship and providing notice of termination or change in a relationship. Specify that if the Division determines, after a hearing, that the supplier has failed to comply with these provisions, the relationship between the supplier and the wholesaler is still in effect, and the failure of the supplier to comply with the terms of the relationship is grounds for revocation, nonrenewal or failure to grant, by DOR, of that supplier's out-of-state shipper's permit.

In addition, provide that if the Division determines that a transferee has failed to comply with these provisions, the transferee shall comply with the terms of the relationship between the supplier and the wholesaler or DOR will have grounds for revocation, non-renewal, or failure to grant the transferee's out-of-state shippers permit.

Provide that, if the wholesaler prevails, it shall be awarded its actual costs incurred in the hearing, including reasonable attorney fees. Specify that the losing party at the hearing must pay to the Division the costs of the hearing as determined under the administrative provisions described above.

Specify that any person aggrieved by a decision of the Division may seek judicial review, under the provisions in the statutes on administrative procedure and review, in the circuit court in the county in which the wholesaler's premises is located.

Additional Provisions

Specify that a transferee of a supplier's business shall comply with the requirements for altering a relationship with a wholesaler and providing notice of termination or change in a relationship.

Provide that a wholesaler may bring an action to enjoin any violation of the provisions on the relationship between wholesalers and suppliers of intoxicating liquors described above to compel compliance with those provisions, and in the same action may recover damages, together with costs including reasonable actual attorney fees, notwithstanding the statutes on costs upon counterclaims and cross complaints. Specify that these provisions do not limit any other right or remedy provided by law that may be available to the wholesaler.

Specify that if any of the provisions on the relationship between wholesalers and suppliers of intoxicating liquors (as described above) or the application of such provisions to a relationship is held invalid, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application and to this end these provisions are severable.

Effective Date

Provide that these provisions would take effect on the day after publication of the bill.

Note:

Chapter 135 of the statutes, enacted in 1973 as the Wisconsin Fair Dealership Act (WFDA), governs dealership practices in the state, providing dealers with rights and remedies in addition to those existing by contract or common law. A dealer is defined as a person who is a grantee of a

dealership situated in this state. A "dealership" includes the following components: (a) an oral or written contract or agreement between two or more persons to sell or distribute goods or services or to use certain items such as a trade name and trademark; and (b) a community of interest in the business of offering, selling or distributing goods or services at wholesale, retail, by lease, agreement or otherwise. A "grantor" is a person who grants a dealership. A "community of interest" is a continuing financial interest between the grantor and the grantee in either the operation of the dealership business or the marketing of such goods or services.

WFDA specifies that no grantor of a dealership may terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. "Good cause" means failure by a dealer to comply substantially with reasonable and nondiscriminatory requirements imposed by the grantor or bad faith by the dealer in carrying out the terms of the dealership. The burden of proving good cause is on the grantor.

WFDA provides the following procedures to be used in relation to a notice of termination or change in a dealership: (a) a grantor is required to provide a dealer at least 90 days prior written notice of termination, cancellation, nonrenewal or substantial change in competitive circumstances; (b) the notice must state the reasons for the action and provide a dealer with 60 days to correct the deficiency; (c) if the deficiency is corrected within 60 days, the notice becomes void; (d) the notice provisions do not apply if the reason for the action is the occurrence of an assignment for the benefit of creditors or bankruptcy; and (e) if the reason for the action is nonpayment of sums due under the dealership, the dealer shall have 10 days after written notice to remedy the default. If a dealer believes that a grantor has violated the provisions of WFDA, the dealer is authorized to bring an action against that grantor in any court of competent jurisdiction.

This motion would create similar and expanded provisions for the governance of intoxicating liquor dealerships and the relationship between suppliers and wholesalers of intoxicating liquor (excluding beer and wine). The motion would apply to all relationships between suppliers and wholesalers, except a relationship in which the volume of the business done by a wholesaler with a supplier (including a supplier's affiliates) does not exceed five percent of the wholesaler's total business volume. In addition to relationships covered under WFDA, the motion would apply to the following: (a) a relationship entered into prior to the enactment of the legislation; (b) a relationship not covered by WFDA because it existed prior to WFDA and has not been reaffirmed or renewed since coverage by WFDA was provided in April, 1974; or (c) a relationship that is not covered by WFDA because the relationship does not constitute a "community of interest" as required to be considered a dealership under the provisions of WFDA (however, WFDA does not define the standards by which to determine a "community of interest").

The motion would create an administrative review structure that calls for a hearing examiner in the Division of Hearings and Appeals of DOA to be assigned and preside over a hearing of a contested case involving the relationship between a supplier and a wholesaler. The motion also creates a funding mechanism for the administrative review structure in the form of fees to holders of wholesale permits and cost recovery from the losing party at a hearing.

As described above, WFDA specifies that no grantor of a dealership may terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. This motion would expand these standards by applying them to the relationship, rather than the competitive circumstances of a dealership agreement. In addition, this motion would specify that a supplier may not substantially change the competitive circumstances of a wholesaler's business without good cause, which differs from the WFDA standard of not changing the competitive circumstances of a dealership agreement without good cause.

This motion would add provisions that would prohibit a supplier from: (a) supplying more than one wholesaler with an existing product for resale in a geographic area in which there was only one wholesaler selling that product in the 12 months preceding the effective date of these provisions; and (b) refusing to sell an altered product or new product to a wholesaler with whom the supplier has a relationship. The motion would specify the conditions under which a supplier with relationships with more than one wholesaler in a geographic area could offer an altered product only to the wholesaler who previously resold the existing product related to the altered product.

With respect to the notice of termination or alteration in relationships, this motion would expand on the procedure of notice and cure provided by WFDA, specifying an administrative review procedure and providing that the review procedure would stay the action proposed by the supplier. The motion specifies that if a motion made by the supplier to allow the action to proceed, then the Division shall conduct a hearing limited to whether or not to let the action go forward within 20 days (under WFDA, court action would be needed to prohibit the supplier's proposed action from taking effect). In addition, the motion would specify that if the Division found that a supplier or its transferee failed to comply with the terms of a relationship with a wholesaler, the failure to comply is grounds for revocation, nonrenewal or failure to grant (by DOR) the supplier's out-of-state shippers permit.

Good
 BILLMOTIONS

	FAIL	N
PREVIL	(Y)	(N)
Buika	(Y)	(N)
Decker	(Y)	(N)
Jabon	(Y)	(N)
Mabro	(Y)	(N)
Shikishi	(Y)	(N)
Prachis	(Y)	(N)
Cosika	(Y)	(N)
Pattuz	(Y)	(N)
Gort	(Y)	(N)
Potter	(Y)	(N)
Kashri	(Y)	(N)
Mbare	(Y)	(N)
Duff	(Y)	(N)
Ward	(Y)	(N)
Huber	(Y)	(N)
Riley	(Y)	(N)
YES		
NOES		

FAIL

1999 BILL

1 **AN ACT to amend** 20.566 (1) (ha) and 227.43 (1) (bg); and **to create** 125.54 (3),
2 125.72, 227.43 (3) (f) and 227.43 (4) (f) of the statutes; **relating to:** relationships
3 between intoxicating liquor wholesalers and sources of supply, granting
4 rule-making authority and making an appropriation.

Analysis by the Legislative Reference Bureau

In general, distribution of alcohol beverages (including beer, wine and intoxicating liquor) to consumers in this state proceeds under a three-tier system: the manufacturer or brewer may deliver alcohol beverages only to a licensed wholesaler, who may deliver the beverages only to a licensed retailer. Consumers may purchase alcohol beverages only from the retailer. This state's Fair Dealership Law protects the interests of an intoxicating liquor wholesaler (wholesaler) where the wholesaler has a continuing financial interest with an intoxicating liquor manufacturer (manufacturer), as when the wholesaler makes a significant investment on the strength of its agreement with a manufacturer.

This state's Fair Dealership Law was enacted to "promote the compelling interest of the public in fair business relations between dealers and grantors, and in the continuation of dealerships on a fair basis". Convinced that grantors of dealerships had "inherently superior economic power and superior bargaining power in the negotiation of dealerships", the legislature attempted to "protect dealers against unfair treatment by grantors". The result was a statute with "a sharp bite", with significant protections for dealers. The statute prohibits the grantor from terminating, canceling, failing to renew or substantially changing the competitive

BILL

circumstances of a dealership agreement without good cause. *Ziegler Co., Inc. v. Rexnord, Inc.*, 139 Wis. 2d 593, 598–99, 407 N.W.2d 873 (1987) (citations omitted; quoted sources omitted).

This bill changes the relationship between intoxicating liquor manufacturers and wholesalers, beyond the protection afforded by the Fair Dealership Law. These changes apply only to relationships in which the volume of business done by a wholesaler with a manufacturer and the manufacturer's affiliates is more than 5% of the wholesaler's total business volume. This bill, in some of its significant features, does all of the following:

1. Prohibits a manufacturer from changing its relationship with a wholesaler, and from changing the competitive circumstances of a wholesaler's business, without good cause. The bill defines "relationship" as any agreement, express or implied, entered at any time, between a manufacturer and wholesaler that grants the wholesaler the right to purchase intoxicating liquor from the manufacturer for resale. The bill requires the manufacturer to prove that the change was not substantial and that the manufacturer had good cause for the change.

2. Prohibits a manufacturer from appointing a second wholesaler to distribute a brand of intoxicating liquor within any region in which only one wholesaler distributes that brand.

3. Prohibits a manufacturer from refusing to sell any altered product or new product to a wholesaler having a relationship with that manufacturer. In the event a manufacturer has relationships with more than one wholesaler in a geographic area, the bill gives the wholesaler most closely related with a brand the right to distribute any altered product associated with that brand.

4. Requires manufacturers to provide written notice to a wholesaler at least 90 days before changing the relationship or the competitive circumstances of a wholesaler's business. The notice must state all of the manufacturer's reasons for the proposed change. The bill allows a wholesaler 60 days or, if the deficiency is for nonpayment of sums owed, 10 days after receiving the notice to correct the deficiencies stated in the notice. If the wholesaler corrects the deficiencies, the manufacturer may not change the relationship or the competitive circumstances of the wholesaler's business.

5. Grants wholesalers the right to a contested-case administrative hearing before the division of hearings and appeals to resolve disputes concerning the terms and performance of the wholesaler's relationship with the manufacturer. Any action proposed by the manufacturer is stayed until completion of the hearing. If the hearing determines the manufacturer has not met its obligations under the relationship, the relationship remains in effect. If the manufacturer has met its obligations, the manufacturer may change or end the relationship. The bill authorizes the creation of a new fee, paid by wholesalers, to cover the costs of any required hearings.

6. Requires the transferee of a manufacturer's business to comply with the requirements of the relationship between the manufacturer and the wholesaler.

7. Allows a wholesaler to recover its fees incurred in the administrative hearing, including attorney fees, if the wholesaler prevails at the hearing. The bill

1999

Date (time) needed

Soon

LRB b 1426 1 1

CAUCUS BUDGET AMENDMENT

2-Note

PEN & JED: Wlj

[ONLY FOR CAUCUS]

See form AMENDMENTS — COMPONENTS & ITEMS.

CAUCUS AMENDMENT TO ASSEMBLY SUBSTITUTE AMENDMENT 1 TO 1999 ASSEMBLY BILL 133

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

√ #. Page 253, line 2: after "tax" insert "and relationship law".

√ #. Page 391, line 12: after that line insert: INSERT 391-12

√ #. Page 1139, line 11: after that line insert: INSERT 1139-11

√ #. Page 1194, line 18: before "175.05" insert "125.72 (3) (b)".

√ #. Page 1194, line 20: after that line insert: INSERT 1194-20

(End)

~~#. Page . . . line . . .~~

BILL

requires the losing party to pay the administrative expenses incurred by the division in conducting the hearing.

The bill does not apply to relationships between manufacturers or wholesalers regarding beer or wine.

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:

INS
391-12

①

^{1394h} SECTION 1. 20.566 (1) (ha) of the statutes is amended to read:

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20.566 (1) (ha) *Administration of liquor tax and relationship law*. The amounts in the schedule for computer and audit costs incurred in administering the tax under s. 139.03 (2m) and the intoxicating liquor wholesaler and supplier relationship law under s. 125.72. All moneys received from the administration fee under s. 139.06 (1) (a) shall be credited to this appropriation. Notwithstanding s. 20.001 (3) (a), at the end of each fiscal year, the unencumbered balance of this appropriation account, minus an amount equal to 10% of the sum of the amounts expended and the amounts encumbered from the account during the fiscal year, shall lapse to the general fund.

End of
INS 391-12

⑨

INS
1139-11

⑩

SECTION 2. 125.54 (3) of the statutes is created to read:

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^{2165v} 125.54 (3) HEARING FEES. The department may, by rule, establish and collect from persons holding a permit issued under this section annual fees in amounts necessary to reimburse the department for expenses incurred under s. 227.43 (3) (f) and (4) (f).

⑪

^{2165x} SECTION 3. 125.72 of the statutes is created to read:

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125.72 Relationships between wholesalers and suppliers of intoxicating liquor. (1e) LEGISLATIVE FINDINGS. The legislature finds that the 3-tier system for distributing intoxicating liquor to the public has existed in Wisconsin for over 60 years and continues to be necessary to promote the public

INS
11/30-11
conf

BILL

1 health, safety and welfare; that the 3-tier system was established, among other
 2 reasons, to prevent suppliers from controlling pricing and distribution in a manner
 3 that harms the interests of the citizens of this state; that a stable and healthy middle
 4 tier of the 3-tier system, the wholesaler, is integral to the 3-tier system; that
 5 significant consolidation of market power has occurred at the supplier level; that the
 6 number of wholesalers in this state has declined significantly between 1979 and
 7 1999, increasing the risk of supplier control of pricing and distribution of intoxicating
 8 liquor; and that this section is necessary to maintain a stable and healthy middle tier.
 9 The legislature further finds that relationships between intoxicating liquor
 10 wholesalers and suppliers have been subject to state regulation since the enactment
 11 of the 21st Amendment to the U.S. Constitution and that the parties to those
 12 relationships expect changes in state legislation regarding those relationships.

13 (1m) APPLICABILITY. (a) The effect of this section may not be varied by contract
 14 or agreement. Any contract or agreement purporting to do so is void and
 15 unenforceable to that extent only. Provisions of a relationship that prevent a
 16 wholesaler, through choice of law or forum provisions, from bringing an action or
 17 filing a notice of content in this state under this section are void and unenforceable
 18 to that extent only.

19 (b) This section applies to all relationships, regardless of when the
 20 relationships were entered into, except that this section does not apply to a
 21 relationship in which the volume of the business done by a wholesaler with a supplier
 22 and the supplier's affiliates does not exceed 5% of the wholesaler's total business
 23 volume.

24 (1s) DEFINITIONS. In this section:

25 (a) "Altered product" means an existing product that is all of the following:



INSERT
1139-11/1
conf'd.

BILL

1 1. Altered by age, by alcohol content, by blend mixture, by flavor or in some
2 other way.

3 2. Principally identified by a trademark, trade name, logotype or other
4 commercial symbol used to identify an existing product.

5 (am) "Existing product" means intoxicating liquor that is distributed in the
6 United States before or on the effective date of this paragraph [revisor inserts
7 date].

8 (ar) "Geographic area" means the area in which a wholesaler is both authorized
9 to sell intoxicating liquor under a relationship and has sold intoxicating liquor.

10 (b) "Good cause" means any of the following:

11 1. Failure by a wholesaler to comply substantially with essential and
12 reasonable requirements imposed upon the wholesaler by the supplier, or sought to
13 be imposed by the supplier, which requirements are not discriminatory as compared
14 with requirements imposed on other similarly situated wholesalers either by their
15 terms or in the manner of their enforcement.

16 2. Bad faith by the wholesaler in carrying out the terms of the relationship.

17 (c) "Goodwill" includes use of a trademark, trade name, logotype or other
18 commercial symbol, and use of a variation of a trademark, trade name, logotype,
19 advertisement or other commercial symbol.

20 (cm) "Intoxicating liquor" has the meaning given in s. 125.02 (8), but does not
21 include wine.

22 (d) "New product" means intoxicating liquor that is all of the following:

23 1. First distributed in the United States after the effective date of this
24 subdivision [revisor inserts date].

25 2. Not an altered product.



BILLINS
1139-11
conf'd.

1 (e) "Relationship" means a written or oral contract or agreement, express or
2 implied, between a supplier and a wholesaler that grants the wholesaler the right
3 to purchase intoxicating liquor from the supplier for resale in this state.

4 (f) "Supplier" means any person, other than a wholesaler, who sells intoxicating
5 liquor to a wholesaler.

6 (g) "Transferee" means a person who acquires any asset or activity of a
7 supplier's business and who uses the goodwill associated with the supplier's goods.

8 (2) CHANGE OF RELATIONSHIP. (a) A supplier may not do any of the following:


9 1. Terminate, cancel, fail to renew or substantially change a relationship
10 without good cause. The supplier bears the burden of proving good cause and that
11 the change is not substantial.

12 2. Substantially change the competitive circumstances of a wholesaler's
13 business without good cause. The supplier bears the burden of proving good cause
14 and that the change is not substantial.

15 3. Appoint more than one wholesaler to resell an existing product in a
16 geographic area in which there was only one wholesaler reselling that existing
17 product in that geographic area in the 12 months preceding the effective date of this
18 subdivision [revisor inserts date].

19 4. Except as provided in par. (b), refuse to sell an altered product or new product
20 to a wholesaler who has entered into a relationship with the supplier.

21 (b) A supplier who has relationships with more than one wholesaler in the same
22 geographic area shall offer an altered product only to a wholesaler who previously
23 resold the existing product principally identified by the same trademark, trade
24 name, logotype or other commercial symbol used to identify the altered product.



ENS 1139-11
cont'd.

BILL

1 (c) A change in the ownership or management of a wholesaler or of a
2 wholesaler's business is not good cause if the changed ownership or management
3 meets the supplier's reasonable and material qualifications for wholesaler
4 applicants in effect at the time of the change.

5 (3) NOTICE OF TERMINATION OR CHANGE IN RELATIONSHIP. (a) 1. Except as provided
6 in subs. 2. and 3., a supplier shall provide a wholesaler at least 90 days' prior written
7 notice of termination, cancellation, nonrenewal or substantial change in the
8 relationship or a substantial change in the competitive circumstances of the
9 wholesaler's business. The notice shall be given by certified mail or personal service
10 to the wholesaler and to the secretary of the department. The notice shall state all
11 of the supplier's reasons for terminating, canceling, not renewing or substantially
12 changing the relationship or substantially changing in the competitive
13 circumstances of the wholesaler's business. The wholesaler shall have 60 days after
14 receiving the notice in which to correct any claimed deficiency. If the wholesaler
15 corrects the deficiency within 60 days after receiving the notice, the notice is void.

16 2. If the reason is nonpayment of sums owed, the wholesaler shall have only
17 10 days to correct the deficiency.

18 3. No notice is required under this subsection for the termination, cancellation,
19 nonrenewal or substantial change of a relationship caused by an assignment for the
20 benefit of creditors or bankruptcy.

21 (b) 1. Within the time period for remedying any claimed deficiency, the
22 wholesaler may file a written request with the division of hearings and appeals in
23 the department of administration for a hearing and serve the supplier and the
24 secretary of revenue by certified mail or in person, with a notice of the contested
25 action. Service of notice stays any action proposed by the supplier in the notice

BILL


ENS
1139-11
cont'd.

1 provided under par. (a) 1. If the supplier files a motion with the division of hearings
2 and appeals to allow the action to proceed, the division of hearings and appeals shall,
3 within 20 days after receiving that notice, hold a hearing to determine whether the
4 action should proceed.

5 2. The division of hearings and appeals shall conduct a contested case hearing
6 on the matter, as provided in ch. 227, within 180 days after the filing of a notice of
7 contest and shall determine whether the supplier has met the requirements of this
8 subsection and sub. (2).

9 3. If the division of hearings and appeals, after a hearing, determines the
10 supplier has failed to comply with this subsection or sub. (2), the relationship
11 between the supplier and the wholesaler is still in effect. The department may
12 revoke or refuse to renew the out-of-state shippers' permit of a supplier that fails
13 to comply with the terms of the relationship or may refuse to grant an out-of-state
14 shippers' permit to such a supplier. If the division of hearings and appeals, after a
15 hearing, determines that a transferee has failed to comply with this subsection or
16 sub. (2), the transferee shall comply with the terms of the relationship between the
17 supplier and the wholesaler. The department may revoke or refuse to renew the
18 out-of-state shippers' permit of a transferee that fails to comply with the terms of
19 the relationship, or may refuse to grant an out-of-state shippers' permit to such a
20 transferee.

21 3m. If the wholesaler prevails at the hearing, the wholesaler shall be awarded
22 its actual costs incurred in the hearing, including reasonable attorney fees. The
23 losing party shall pay to the division of hearings and appeals the costs of the hearing,
24 as determined under s. 227.43 (3) (f).



BILL

1 4. Any person aggrieved by a decision of the division of hearings and appeals
2 may seek judicial review under ss. 227.53 to 227.58 in the circuit court in the county
3 in which the wholesaler's premises is located.

4 (4) LIABILITY OF TRANSFEREE. A transferee of a supplier's business shall comply
5 with the requirements under subs. (2) and (3).

6 (5) ACTION FOR DAMAGES AND INJUNCTIVE RELIEF. A wholesaler may bring an
7 action to enjoin any violation of sub. (2), (3) or (4) to compel compliance with those
8 subsections, and in the same action may recover the damages, together with costs
9 including reasonable, actual attorney fees, notwithstanding s. 814.04 (1).

10 (6) OTHER RIGHTS, REMEDIES. This section does not limit any other right or
11 remedy provided by law. " ←

end of INS 1139-11

12 SECTION 4. 227.43 (1) (bg) of the statutes is amended to read:

13 227.43 (1) (bg) Assign a hearing examiner to preside over any hearing or review
14 under ss. 84.30 (18), 84.31 (6) (a), 85.013 (1), 86.073 (3), 86.16 (5), 86.195 (9) (b), 86.32
15 (1), 114.134 (4) (b), 114.135 (9), 114.20 (19), 125.72 (3) (b), 175.05 (4) (b), 194.145 (1),
16 194.46, 218.01 (2) (bd) 2. and (c) 2., (3) (b), (c), (f) 1., (fm) 1. and (h) and (3c) (d), 218.11
17 (7) (a) and (b), 218.22 (4) (a) and (b), 218.32 (4) (a) and (b), 218.41 (4), 218.51 (5) (a)
18 and (b), 341.09 (2m) (d), 342.26, 343.69 and 348.25 (9).

19 SECTION 5. 227.43 (3) (f) of the statutes is created to read:

20 227.43 (3) (f) The administrator of the division of hearings and appeals may
21 set the fees to be charged for any services rendered under s. 125.72 to the department
22 of revenue by a hearing examiner under this section. The fee shall cover the total
23 cost of the services less any costs covered by the appropriation under s. 20.505 (4) (f)
24 and those costs recovered under s. 125.72 (3) (b) 3m.

25 SECTION 6. 227.43 (4) (f) of the statutes is created to read:

INS 1194-20

2356t

2356v



**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

June 22, 1999

LRB 3236/1dn

PEN: kg&mh:jf

WLj

JEU

6/426/1dn

→ ~~Senator Panzer:~~

→ This is a draft of joint finance motion #1383.

This draft may impermissibly impair contractual relationships between the affected parties in violation of article I, section 12, of the Wisconsin Constitution and in violation of article 1, section 10, of the U.S. Constitution. A challenge to legislation must prove 1) legislation impairs existing contractual relationship; 2) impairment is substantial; and 3) if substantial, impairment is not justified by purpose of legislation. *Reserve Life Ins. Co. v. La Follette*, 108 Wis. 2d 637, 323 N. W. 2d 173 (Ct. App. 1982). Therefore, adjudication of impairment-of-contracts cases requires a balancing of interests. First, courts determine the extent of the impairment. At that stage courts consider, among other things, whether or not the parties to the contract reasonably relied on its express terms; as indicated by whether the industry has been regulated previously, whether a basic term of the contract was altered and whether liability was significantly increased. The more severe the impairment, the more important must be the public purpose that is the reason for the impairment. If there is a legitimate public purpose, the legislation must create reasonable conditions and must be appropriate to the purpose.

The Twenty-first Amendment to the U.S. Constitution, which grants states broad latitude in regulating commerce of intoxicating liquors, does not license states to ignore their obligations under other constitutional provisions. *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484; 116 S. Ct. 1495 (1996).

I don't know whether "volume of business" in proposed s. 125.72 (1m) refers to fluid ounces, to gross sales in dollars, or to some other measure.

Paul E. Nilsen
Legislative Attorney
Phone: (608) 261-6926

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1426/1dn
PEN&JEO:wlj:jf

June 27, 1999

This draft may impermissibly impair contractual relationships between the affected parties in violation of article I, section 12, of the Wisconsin Constitution and in violation of article 1, section 10, of the U.S. Constitution. A challenge to legislation must prove 1) legislation impairs existing contractual relationship; 2) impairment is substantial; and 3) if substantial, impairment is not justified by purpose of legislation. *Reserve Life Ins. Co. v. La Follette*, 108 Wis. 2d 637, 323 N. W. 2d 173 (Ct. App. 1982). Therefore, adjudication of impairment-of-contracts cases requires a balancing of interests. First, courts determine the extent of the impairment. At that stage courts consider, among other things, whether or not the parties to the contract reasonably relied on its express terms; as indicated by whether the industry has been regulated previously, whether a basic term of the contract was altered and whether liability was significantly increased. The more severe the impairment, the more important must be the public purpose that is the reason for the impairment. If there is a legitimate public purpose, the legislation must create reasonable conditions and must be appropriate to the purpose.

The Twenty-first Amendment to the U.S. Constitution, which grants states broad latitude in regulating commerce of intoxicating liquors, does not license states to ignore their obligations under other constitutional provisions. *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484; 116 S. Ct. 1495 (1996).

I don't know whether "volume of business" in proposed s. 125.72 (1m) refers to fluid ounces, to gross sales in dollars, or to some other measure.

Paul E. Nilsen
Legislative Attorney
Phone: (608) 261-6926



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1426/z
PEN&JEO:wlj:jf

SDC:.....Walter - Caucus #2765, Wisconsin fair dealership law

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 253, line 2: after “tax” insert “and relationship law”.

3 **2.** Page 391, line 12: after that line insert:

4 “SECTION 594h. 20.566 (1) (ha) of the statutes is amended to read:

5 20.566 (1) (ha) *Administration of liquor tax and relationship law*. The amounts
6 in the schedule for computer and audit costs incurred in administering the tax under
7 s. 139.03 (2m) and the intoxicating liquor wholesaler and supplier relationship law
8 under s. 125.72. All moneys received from the administration fee under s. 139.06 (1)
9 (a) shall be credited to this appropriation. Notwithstanding s. 20.001 (3) (a), at the
10 end of each fiscal year, the unencumbered balance of this appropriation account,

1 minus an amount equal to 10% of the sum of the amounts expended and the amounts
2 encumbered from the account during the fiscal year, shall lapse to the general fund.”.

3 **3.** Page 1139, line 11: after that line insert:

4 “**SECTION 2165v.** 125.54 (3) of the statutes is created to read:

5 125.54 (3) HEARING FEES. The department may, by rule, establish and collect
6 from persons holding a permit issued under this section annual fees in amounts
7 necessary to reimburse the department for expenses incurred under s. 227.43 (3) (f)
8 and (4) (f).

9 **SECTION 2165x.** 125.72 of the statutes is created to read:

10 **125.72 Relationships between wholesalers and suppliers of**

11 **intoxicating liquor.** (1e) LEGISLATIVE FINDINGS. The legislature finds that the
12 3-tier system for distributing intoxicating liquor to the public has existed in
13 Wisconsin for over 60 years and continues to be necessary to promote the public
14 health, safety and welfare; that the 3-tier system was established, among other
15 reasons, to prevent suppliers from controlling pricing and distribution in a manner
16 that harms the interests of the citizens of this state; that a stable and healthy middle
17 tier of the 3-tier system, the wholesaler, is integral to the 3-tier system; that
18 significant consolidation of market power has occurred at the supplier level; that the
19 number of wholesalers in this state has declined significantly between 1979 and
20 1999, increasing the risk of supplier control of pricing and distribution of intoxicating
21 liquor; and that this section is necessary to maintain a stable and healthy middle tier.
22 The legislature further finds that relationships between intoxicating liquor
23 wholesalers and suppliers have been subject to state regulation since the enactment

1 of the 21st Amendment to the U.S. Constitution and that the parties to those
 2 relationships expect changes in state legislation regarding those relationships.

3 (1m) APPLICABILITY. (a) The effect of this section may not be varied by contract
 4 or agreement. Any contract or agreement purporting to do so is void and
 5 unenforceable to that extent only. Provisions of a relationship that prevent a
 6 wholesaler, through choice of law or forum provisions, from bringing an action or
 7 filing a notice of ~~contest~~ in this state under this section are void and unenforceable
 8 to that extent only. contest

9 (b) This section applies to all relationships, regardless of when the
 10 relationships were entered into, except that this section does not apply to a
 11 relationship in which the volume of the business done by a wholesaler with a supplier
 12 and the supplier's affiliates does not exceed 5% of the wholesaler's total business
 13 volume.

14 (1s) DEFINITIONS. In this section:

15 (a) "Altered product" means an existing product that is all of the following:

- 16 1. Altered by age, by alcohol content, by blend mixture, by flavor or in some
 17 other way.
- 18 2. Principally identified by a trademark, trade name, logotype or other
 19 commercial symbol used to identify an existing product.

20 (am) "Existing product" means intoxicating liquor that is distributed in the
 21 United States before or on the effective date of this paragraph [revisor inserts
 22 date].

23 (ar) "Geographic area" means the area in which a wholesaler is both authorized
 24 to sell intoxicating liquor under a relationship and has sold intoxicating liquor.

25 (b) "Good cause" means any of the following:

insert
3-5

1 1. Failure by a wholesaler to comply substantially with essential and
2 reasonable requirements imposed upon the wholesaler by the supplier, or sought to
3 be imposed by the supplier, which requirements are not discriminatory as compared
4 with requirements imposed on other similarly situated wholesalers either by their
5 terms or in the manner of their enforcement.

6 2. Bad faith by the wholesaler in carrying out the terms of the relationship.

7 (c) "Goodwill" includes use of a trademark, trade name, logotype or other
8 commercial symbol, and use of a variation of a trademark, trade name, logotype,
9 advertisement or other commercial symbol.

10 (cm) "Intoxicating liquor" has the meaning given in s. 125.02 (8), but does not
11 include wine.

12 (d) "New product" means intoxicating liquor that is all of the following:

13 1. First distributed in the United States after the effective date of this
14 subdivision [revisor inserts date].

15 2. Not an altered product.

16 (e) "Relationship" means a written or oral contract or agreement, express or
17 implied, between a supplier and a wholesaler that grants the wholesaler the right
18 to purchase intoxicating liquor from the supplier for resale in this state.

19 (f) "Supplier" means any person, other than a wholesaler, who sells intoxicating
20 liquor to a wholesaler.

21 (g) "Transferee" means a person who acquires any asset or activity of a
22 supplier's business and who uses the goodwill associated with the supplier's goods.

23 **(2) CHANGE OF RELATIONSHIP.** (a) A supplier may not do any of the following:

1 1. Terminate, cancel, fail to renew or substantially change a relationship
2 without good cause. The supplier bears the burden of proving good cause and that
3 the change is not substantial.

4 2. Substantially change the competitive circumstances of a wholesaler's
5 business without good cause. The supplier bears the burden of proving good cause
6 and that the change is not substantial.

7 3. Appoint more than one wholesaler to resell an existing product in a
8 geographic area in which there was only one wholesaler reselling that existing
9 product in that geographic area in the 12 months preceding the effective date of this
10 subdivision [revisor inserts date].

11 4. Except as provided in par. (b), refuse to sell an altered product or new product
12 to a wholesaler who has entered into a relationship with the supplier.

13 (b) A supplier who has relationships with more than one wholesaler in the same
14 geographic area shall offer an altered product only to a wholesaler who previously
15 resold the existing product principally identified by the same trademark, trade
16 name, logotype or other commercial symbol used to identify the altered product.

17 (c) A change in the ownership or management of a wholesaler or of a
18 wholesaler's business is not good cause if the changed ownership or management
19 meets the supplier's reasonable and material qualifications for wholesaler
20 applicants in effect at the time of the change.

21 **(3) NOTICE OF TERMINATION OR CHANGE IN RELATIONSHIP.** (a) 1. Except as provided
22 in subds. 2. and 3., a supplier shall provide a wholesaler at least 90 days' prior written
23 notice of termination, cancellation, nonrenewal or substantial change in the
24 relationship or a substantial change in the competitive circumstances of the
25 wholesaler's business. The notice shall be given by certified mail or personal service

1 to the wholesaler and to the secretary of the department. The notice shall state all
2 of the supplier's reasons for terminating, canceling, not renewing or substantially
3 changing the relationship or substantially changing in the competitive
4 circumstances of the wholesaler's business. The wholesaler shall have 60 days after
5 receiving the notice in which to correct any claimed deficiency. If the wholesaler
6 corrects the deficiency within 60 days after receiving the notice, the notice is void.

7 2. If the reason is nonpayment of sums owed, the wholesaler shall have only
8 10 days to correct the deficiency.

9 3. No notice is required under this subsection for the termination, cancellation,
10 nonrenewal or substantial change of a relationship caused by an assignment for the
11 benefit of creditors or bankruptcy.

12 (b) 1. Within the time period for remedying any claimed deficiency, the
13 wholesaler may file a written request with the division of hearings and appeals in
14 the department of administration for a hearing and serve the supplier and the
15 secretary of revenue by certified mail or in person, with a notice of the contested
16 action. Service of notice stays any action proposed by the supplier in the notice
17 provided under par. (a) 1. If the supplier files a motion with the division of hearings
18 and appeals to allow the action to proceed, the division of hearings and appeals shall,
19 within 20 days after receiving that notice, hold a hearing to determine whether the
20 action should proceed.

21 2. The division of hearings and appeals shall conduct a contested case hearing
22 on the matter, as provided in ch. 227, within 180 days after the filing of a notice of
23 contest and shall determine whether the supplier has met the requirements of this
24 subsection and sub. (2).

1 3. If the division of hearings and appeals, after a hearing, determines the
2 supplier has failed to comply with this subsection or sub. (2), the relationship
3 between the supplier and the wholesaler is still in effect. The department may
4 revoke or refuse to renew the out-of-state shippers' permit of a supplier that fails
5 to comply with the terms of the relationship or may refuse to grant an out-of-state
6 shippers' permit to such a supplier. If the division of hearings and appeals, after a
7 hearing, determines that a transferee has failed to comply with this subsection or
8 sub. (2), the transferee shall comply with the terms of the relationship between the
9 supplier and the wholesaler. The department may revoke or refuse to renew the
10 out-of-state shippers' permit of a transferee that fails to comply with the terms of
11 the relationship, or may refuse to grant an out-of-state shippers' permit to such a
12 transferee.

13 3m. If the wholesaler prevails at the hearing, the wholesaler shall be awarded
14 its actual costs incurred in the hearing, including reasonable attorney fees. The
15 losing party shall pay to the division of hearings and appeals the costs of the hearing,
16 as determined under s. 227.43 (3) (f).

17 4. Any person aggrieved by a decision of the division of hearings and appeals
18 may seek judicial review under ss. 227.53 to 227.58 in the circuit court in the county
19 in which the wholesaler's premises is located.

20 (4) LIABILITY OF TRANSFEREE. A transferee of a supplier's business shall comply
21 with the requirements under subs. (2) and (3).

22 (5) ACTION FOR DAMAGES AND INJUNCTIVE RELIEF. A wholesaler may bring an
23 action to enjoin any violation of sub. (2), (3) or (4) to compel compliance with those
24 subsections, and in the same action may recover the damages, together with costs
25 including reasonable, actual attorney fees, notwithstanding s. 814.04 (1).

INSEA
3-3**BILL**

requires the losing party to pay the administrative expenses incurred by the division in conducting the hearing.

The bill does not apply to relationships between manufacturers or wholesalers regarding beer or wine.

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:

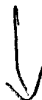
2 20.566 (1) (ha) Administration of liquor tax and relationship law. The amounts
3 in the schedule for computer and audit costs incurred in administering the tax under
4 s. 139.03 (2m) and the intoxicating liquor wholesaler and supplier relationship law
5 under s. 125.72. All moneys received from the administration fee under s. 139.06 (1)
6 (a) shall be credited to this appropriation. Notwithstanding s. 20.001 (3) (a), at the
7 end of each fiscal year, the unencumbered balance of this appropriation account,
8 minus an amount equal to 10% of the sum of the amounts expended and the amounts
9 encumbered from the account during the fiscal year, shall lapse to the general fund.

10 **SECTION 2.** 125.54 (3) of the statutes is created to read:

11 125.54 (3) **HEARING FEES.** The department may, by rule, establish and collect
12 from persons holding a permit issued under this section annual fees in amounts
13 necessary to reimburse the department for expenses incurred under s. 227.43 (3) (f)
14 and (4) (f).

15 **SECTION 3.** 125.72 of the statutes is created to read:

16 **125.72 Relationships between wholesalers and suppliers of**
17 **intoxicating liquor.** (1e) **LEGISLATIVE FINDINGS.** The legislature finds that the
18 3-tier system for distributing intoxicating liquor to the public has existed in
19 Wisconsin for over 60 years and continues to be necessary to promote the public



BILL

1 health, safety and welfare; that the 3-tier system was established, among other
2 reasons, to prevent suppliers from controlling pricing and distribution in a manner
3 that harms the interests of the citizens of this state; that a stable and healthy middle
4 tier of the 3-tier system, the wholesaler, is integral to the 3-tier system; that
5 significant consolidation of market power has occurred at the supplier level; that the
6 number of wholesalers in this state has declined significantly between 1979 and
7 1999, increasing the risk of supplier control of pricing and distribution of intoxicating
8 liquor; and that this section is necessary to maintain a stable and healthy middle tier.
9 The legislature further finds that relationships between intoxicating liquor
10 wholesalers and suppliers have been subject to state regulation since the enactment
11 of the 21st Amendment to the U.S. Constitution and that the parties to those
12 relationships expect changes in state legislation regarding those relationships.

13 **(1m) APPLICABILITY.** (a) The effect of this section may not be varied by contract
14 or agreement. Any contract or agreement purporting to do so is void and
15 unenforceable to that extent only. Provisions of a relationship that prevent a
16 wholesaler, through choice of law or forum provisions, from bringing an action or
17 filing a notice of content in this state under this section are void and unenforceable
18 to that extent only.

19 (b) This section applies to all relationships, regardless of when the
20 relationships were entered into, except that this section does not apply to a
21 relationship in which the volume of the business done by a wholesaler with a supplier
22 and the supplier's affiliates does not exceed 5% of the wholesaler's total business
23 volume.

24 **(1s) DEFINITIONS.** In this section:

25 (a) "Altered product" means an existing product that is all of the following:

(end insert)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1426/2
PEN&JEO:wlj:kjf

3

SDC:.....Walter - Caucus # 2765, Wisconsin fair dealership law

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

only
change
pg. 20

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 253, line 2: after "tax" insert "and relationship law".

3 2. Page 391, line 12: after that line insert:

4 "SECTION 594h. 20.566 (1) (ha) of the statutes is amended to read:

5 20.566 (1) (ha) *Administration of liquor tax and relationship law*. The amounts
6 in the schedule for computer and audit costs incurred in administering the tax under
7 s. 139.03 (2m) and the intoxicating liquor wholesaler and supplier relationship law
8 under s. 125.72. All moneys received from the administration fee under s. 139.06 (1)
9 (a) shall be credited to this appropriation. Notwithstanding s. 20.001 (3) (a), at the
10 end of each fiscal year, the unencumbered balance of this appropriation account,

1 minus an amount equal to 10% of the sum of the amounts expended and the amounts
2 encumbered from the account during the fiscal year, shall lapse to the general fund.”.

3 **3.** Page 1139, line 11: after that line insert:

4 **“SECTION 2165v.** 125.54 (3) of the statutes is created to read:

5 125.54 (3) HEARING FEES. The department may, by rule, establish and collect
6 from persons holding a permit issued under this section annual fees in amounts
7 necessary to reimburse the department for expenses incurred under s. 227.43 (3) (f)
8 and (4) (f).

9 **SECTION 2165x.** 125.72 of the statutes is created to read:

10 **125.72 Relationships between wholesalers and suppliers of**
11 **intoxicating liquor. (1e) LEGISLATIVE FINDINGS.** The legislature finds that the
12 3-tier system for distributing intoxicating liquor to the public has existed in
13 Wisconsin for over 60 years and continues to be necessary to promote the public
14 health, safety and welfare; that the 3-tier system was established, among other
15 reasons, to prevent suppliers from controlling pricing and distribution in a manner
16 that harms the interests of the citizens of this state; that a stable and healthy middle
17 tier of the 3-tier system, the wholesaler, is integral to the 3-tier system; that
18 significant consolidation of market power has occurred at the supplier level; that the
19 number of wholesalers in this state has declined significantly between 1979 and
20 1999, increasing the risk of supplier control of pricing and distribution of intoxicating
21 liquor; and that this section is necessary to maintain a stable and healthy middle tier.
22 The legislature further finds that relationships between intoxicating liquor
23 wholesalers and suppliers have been subject to state regulation since the enactment

because the middle tier prevents supplier control
of pricing and distribution and provides an efficient
and effective means of tax collection

1 of the 21st Amendment to the U.S. Constitution and that the parties to those
2 relationships expect changes in state legislation regarding those relationships.

3 (1m) APPLICABILITY. (a) The effect of this section may not be varied by contract
4 or agreement. Any contract or agreement purporting to do so is void and
5 unenforceable to that extent only. Provisions of a relationship that prevent a
6 wholesaler, through choice of law or forum provisions, from bringing an action or
7 filing a notice of contest in this state under this section are void and unenforceable
8 to that extent only.

9 (b) This section applies to all relationships, regardless of when the
10 relationships were entered into, except that this section does not apply to a
11 relationship in which the volume of the business done by a wholesaler with a supplier
12 and the supplier's affiliates does not exceed 5% of the wholesaler's total business
13 volume.

14 (1s) DEFINITIONS. In this section:

15 (a) "Altered product" means an existing product that is all of the following:

16 1. Altered by age, by alcohol content, by blend mixture, by flavor or in some
17 other way.

18 2. Principally identified by a trademark, trade name, logotype or other
19 commercial symbol used to identify an existing product.

20 (am) "Existing product" means intoxicating liquor that is distributed in the
21 United States before or on the effective date of this paragraph [revisor inserts
22 date].

23 (ar) "Geographic area" means the area in which a wholesaler is both authorized
24 to sell intoxicating liquor under a relationship and has sold intoxicating liquor.

25 (b) "Good cause" means any of the following:

1 1. Failure by a wholesaler to comply substantially with essential and
2 reasonable requirements imposed upon the wholesaler by the supplier, or sought to
3 be imposed by the supplier, which requirements are not discriminatory as compared
4 with requirements imposed on other similarly situated wholesalers either by their
5 terms or in the manner of their enforcement.

6 2. Bad faith by the wholesaler in carrying out the terms of the relationship.

7 (c) "Goodwill" includes use of a trademark, trade name, logotype or other
8 commercial symbol, and use of a variation of a trademark, trade name, logotype,
9 advertisement or other commercial symbol.

10 (cm) "Intoxicating liquor" has the meaning given in s. 125.02 (8), but does not
11 include wine.

12 (d) "New product" means intoxicating liquor that is all of the following:

13 1. First distributed in the United States after the effective date of this
14 subdivision [revisor inserts date].

15 2. Not an altered product.

16 (e) "Relationship" means a written or oral contract or agreement, express or
17 implied, between a supplier and a wholesaler that grants the wholesaler the right
18 to purchase intoxicating liquor from the supplier for resale in this state.

19 (f) "Supplier" means any person, other than a wholesaler, who sells intoxicating
20 liquor to a wholesaler.

21 (g) "Transferee" means a person who acquires any asset or activity of a
22 supplier's business and who uses the goodwill associated with the supplier's goods.

23 (2) CHANGE OF RELATIONSHIP. (a) A supplier may not do any of the following:

1 1. Terminate, cancel, fail to renew or substantially change a relationship
2 without good cause. The supplier bears the burden of proving good cause and that
3 the change is not substantial.

4 2. Substantially change the competitive circumstances of a wholesaler's
5 business without good cause. The supplier bears the burden of proving good cause
6 and that the change is not substantial.

7 3. Appoint more than one wholesaler to resell an existing product in a
8 geographic area in which there was only one wholesaler reselling that existing
9 product in that geographic area in the 12 months preceding the effective date of this
10 subdivision [revisor inserts date].

11 4. Except as provided in par. (b), refuse to sell an altered product or new product
12 to a wholesaler who has entered into a relationship with the supplier.

13 (b) A supplier who has relationships with more than one wholesaler in the same
14 geographic area shall offer an altered product only to a wholesaler who previously
15 resold the existing product principally identified by the same trademark, trade
16 name, logotype or other commercial symbol used to identify the altered product.

17 (c) A change in the ownership or management of a wholesaler or of a
18 wholesaler's business is not good cause if the changed ownership or management
19 meets the supplier's reasonable and material qualifications for wholesaler
20 applicants in effect at the time of the change.

21 **(3) NOTICE OF TERMINATION OR CHANGE IN RELATIONSHIP.** (a) 1. Except as provided
22 in subds. 2. and 3., a supplier shall provide a wholesaler at least 90 days' prior written
23 notice of termination, cancellation, nonrenewal or substantial change in the
24 relationship or a substantial change in the competitive circumstances of the
25 wholesaler's business. The notice shall be given by certified mail or personal service

1 to the wholesaler and to the secretary of the department. The notice shall state all
2 of the supplier's reasons for terminating, canceling, not renewing or substantially
3 changing the relationship or substantially changing in the competitive
4 circumstances of the wholesaler's business. The wholesaler shall have 60 days after
5 receiving the notice in which to correct any claimed deficiency. If the wholesaler
6 corrects the deficiency within 60 days after receiving the notice, the notice is void.

7 2. If the reason is nonpayment of sums owed, the wholesaler shall have only
8 10 days to correct the deficiency.

9 3. No notice is required under this subsection for the termination, cancellation,
10 nonrenewal or substantial change of a relationship caused by an assignment for the
11 benefit of creditors or bankruptcy.

12 (b) 1. Within the time period for remedying any claimed deficiency, the
13 wholesaler may file a written request with the division of hearings and appeals in
14 the department of administration for a hearing and serve the supplier and the
15 secretary of revenue by certified mail or in person, with a notice of the contested
16 action. Service of notice stays any action proposed by the supplier in the notice
17 provided under par. (a) 1. If the supplier files a motion with the division of hearings
18 and appeals to allow the action to proceed, the division of hearings and appeals shall,
19 within 20 days after receiving that notice, hold a hearing to determine whether the
20 action should proceed.

21 2. The division of hearings and appeals shall conduct a contested case hearing
22 on the matter, as provided in ch. 227, within 180 days after the filing of a notice of
23 contest and shall determine whether the supplier has met the requirements of this
24 subsection and sub. (2).

1 3. If the division of hearings and appeals, after a hearing, determines the
2 supplier has failed to comply with this subsection or sub. (2), the relationship
3 between the supplier and the wholesaler is still in effect. The department may
4 revoke or refuse to renew the out-of-state shippers' permit of a supplier that fails
5 to comply with the terms of the relationship or may refuse to grant an out-of-state
6 shippers' permit to such a supplier. If the division of hearings and appeals, after a
7 hearing, determines that a transferee has failed to comply with this subsection or
8 sub. (2), the transferee shall comply with the terms of the relationship between the
9 supplier and the wholesaler. The department may revoke or refuse to renew the
10 out-of-state shippers' permit of a transferee that fails to comply with the terms of
11 the relationship, or may refuse to grant an out-of-state shippers' permit to such a
12 transferee.

13 3m. If the wholesaler prevails at the hearing, the wholesaler shall be awarded
14 its actual costs incurred in the hearing, including reasonable attorney fees. The
15 losing party shall pay to the division of hearings and appeals the costs of the hearing,
16 as determined under s. 227.43(3) (f).

17 4. Any person aggrieved by a decision of the division of hearings and appeals
18 may seek judicial review under ss. 227.53 to 227.58 in the circuit court in the county
19 in which the wholesaler's premises is located.

20 (4) LIABILITY OF TRANSFEREE. A transferee of a supplier's business shall comply
21 with the requirements under subs. (2) and (3).

22 (5) ACTION FOR DAMAGES AND INJUNCTIVE RELIEF. A wholesaler may bring an
23 action to enjoin any violation of sub. (2), (3) or (4) to compel compliance with those
24 subsections, and in the same action may recover the damages, together with costs
25 including reasonable, actual attorney fees, notwithstanding s. 814.04 (1).



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1426/3
PEN&JEO:wlj:ijs

SDC:.....Walter – Caucus # 2765, Wisconsin fair dealership law

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 253, line 2: after “tax” insert “and relationship law”.

3 2. Page 391, line 12: after that line insert:

4 “SECTION 594h. 20.566 (1) (ha) of the statutes is amended to read:

5 20.566 (1) (ha) *Administration of liquor tax and relationship law*. The amounts

6 in the schedule for computer and audit costs incurred in administering the tax under

7 s. 139.03 (2m) and the intoxicating liquor wholesaler and supplier relationship law

8 under s. 125.72. All moneys received from the administration fee under s. 139.06 (1)

9 (a) shall be credited to this appropriation. Notwithstanding s. 20.001 (3) (a), at the

10 end of each fiscal year, the unencumbered balance of this appropriation account,

1 minus an amount equal to 10% of the sum of the amounts expended and the amounts
2 encumbered from the account during the fiscal year, shall lapse to the general fund.”.

3 **3.** Page 1139, line 11: after that line insert:

4 “SECTION 2165v. 125.54 (3) of the statutes is created to read:

5 125.54 (3) HEARING FEES. The department may, by rule, establish and collect
6 from persons holding a permit issued under this section annual fees in amounts
7 necessary to reimburse the department for expenses incurred under s. 227.43 (3) (f)
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13 Wisconsin for over 60 years and continues to be necessary to promote the public
14 health, safety and welfare; that the 3–tier system was established, among other
15 reasons, to prevent suppliers from controlling pricing and distribution in a manner
16 that harms the interests of the citizens of this state; that a stable and healthy middle
17 tier of the 3–tier system, the wholesaler, is integral to the 3–tier system because the
18 middle tier prevents supplier control of pricing and distribution and provides an
19 efficient and effective means of tax collection; that significant consolidation of
20 market power has occurred at the supplier level; that the number of wholesalers in
21 this state has declined significantly between 1979 and 1999, increasing the risk of
22 supplier control of pricing and distribution of intoxicating liquor; and that this
23 section is necessary to maintain a stable and healthy middle tier. The legislature
24 further finds that relationships between intoxicating liquor wholesalers and

1 suppliers have been subject to state regulation since the enactment of the 21st
2 Amendment to the U.S. Constitution and that the parties to those relationships
3 expect changes in state legislation regarding those relationships.

4 (1m) APPLICABILITY. (a) The effect of this section may not be varied by contract
5 or agreement. Any contract or agreement purporting to do so is void and
6 unenforceable to that extent only. Provisions of a relationship that prevent a
7 wholesaler, through choice of law or forum provisions, from bringing an action or
8 filing a notice of contest in this state under this section are void and unenforceable
9 to that extent only.

10 (b) This section applies to all relationships, regardless of when the
11 relationships were entered into, except that this section does not apply to a
12 relationship in which the volume of the business done by a wholesaler with a supplier
13 and the supplier's affiliates does not exceed 5% of the wholesaler's total business
14 volume.

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20 commercial symbol used to identify an existing product.

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22 United States before or on the effective date of this paragraph [revisor inserts
23 date].

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25 to sell intoxicating liquor under a relationship and has sold intoxicating liquor.

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4 be imposed by the supplier, which requirements are not discriminatory as compared
5 with requirements imposed on other similarly situated wholesalers either by their
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