

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: **09/28/1999**

Received By: **rkite**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau 63773**

By/Representing: **Russell**

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

Drafter: **rkite**

May Contact:

Alt. Drafters:

Subject: **Trade Regulation**

Extra Copies: **PEN**

Pre Topic:

LFB:.....Russell -

Topic:

Liquor dealerships under fair dealership laws

Instructions:

Same as 99LRB1774

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>
/?	rkite 10/02/1999	jgeller 10/02/1999		_____			
/1			jfrantze 10/02/1999	_____	lrb_docadmin 10/02/1999		
/2	rkite 10/03/1999	chanaman 10/04/1999	mclark 10/03/1999	_____	lrb_docadmin 10/03/1999		
/3			mclark 10/04/1999	_____	lrb_docadmin 10/04/1999		

10/04/1999 03:27:53 PM
Page 2

FE Sent For:

<END>

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/2	rkite 10/03/1999	<i>1/2</i>	mclark 10/03/1999	_____	lrb_docadmin 10/03/1999		

FE Sent For:

mrc 10/4 *mrc/km 10/4*
<END>

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/?	rkite 10/02/1999	jgeller 10/02/1999		_____			
/1		1/2 Wlj 10/3	jfrantze 10/02/1999	_____	lrb_docadmin 10/02/1999		

FE Sent For:

MRC MRC/KJF
10/3 10/3
<END>

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May Contact:

Alt. Drafters:

Subject: Trade Regulation

Extra Copies: PEN

WPD's -> please e-mail copy to Doug Burnett in Chvala's office

Pre Topic:

LFB:.....Russell -

Topic:

Liquor dealerships under fair dealership laws

Done MB

Instructions:

Same as 99LRB1774

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>
/?	rkite	<i>1 10/2 jlg</i>	<i>7/9</i>	<i>7/9</i>			
		<i>10/2</i>	<i>10/2</i>	<i>10/2</i>			

FE Sent For:

<END>

LRB Drafting

MEMORANDUM

To: Senator Charles Chvala

From: Eric Petersen, Wisconsin Wine & Spirits Institute

Date: October 1, 1999

Re: Drafter's Note from the Legislative Reference Bureau LRB 1774//1dn dated September 28, 1999

We have attached a revised draft to LRB's second draft which shows the changes and a clean draft where the changes are incorporated. The revisions are necessary as set forth in our previous memo to you.

*Faith Russell -
Draft per this
memo*

**ASSEMBLY 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 1189, line 11: after that line insert:

3 "SECTION 2166e. 135.02 (3) of the statutes is renumbered 135.02 (3)(intro)
4 and amended to read:

5 135.02 (3)(intro.) "Dealership" means a any of the following:

6 (a) A contract or agreement, either expressed or implied, whether oral or
7 written, between 2 or more persons, by which a person is granted the right to sell or
8 distribute goods or services, or use a trade name, trademark, service mark, logotype,
9 advertising or other commercial symbol, in which there is a community of interest
10 in the business of offering, selling or distributing goods or services at wholesale,
11 retain, by lease, agreement or otherwise.

1 SECTION 2166m. 135.02(3)(b) of the statutes is created to read:

2 135.02(3)(b) A contract or agreement, either expressed or implied, whether
3 oral or written, between 2 or more persons by which a wholesaler, as defined in s.
4 125.02(21), is granted the right to sell or distribute intoxicating liquor, as defined in
5 s. 125.02(8), or use a trade name, trademark, service mark, logotype, advertising or
6 other commercial symbol related to intoxicating liquor.

7 SECTION 2166s. 135.066 of the statutes is created to read:

8 135.066 Intoxicating liquor dealerships.

9 (1) LEGISLATIVE FINDINGS. The legislature finds that a balanced and healthy
10 3-tier system for distributing intoxicating liquor is in the best interest of this state and
11 its citizens; that the 3-tier system for distributing intoxicating liquors has existed since
12 the 1930s; that the a balanced and healthy 3-tier system ensures a balanced and level
13 system between the manufacturer and wholesale tiers; that a wholesale tier consisting
14 of numerous healthy competitors is necessary for a balanced and healthy 3-tier
15 system; that the number of intoxicating liquor wholesalers in this state is in
16 significant decline; that this decline threatens the health and stability of the wholesale
17 tier; that the regulation of all intoxicating liquor dealerships, regardless of when they
18 were entered into, is necessary to promote and maintain a wholesale tier consisting
19 of numerous healthy competitors; and that the maintenance and promotion of the 3-
20 tier system will promote the public health, safety and welfare. The legislature further
21 finds that a stable and healthy wholesale tier provides an efficient and effective means
22 for tax collection. The legislature further finds that dealerships between intoxicating
23 liquor wholesalers and manufacturers have been subject to state regulation since the

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

3 (2) DEFINITIONS. In this section:

4 (a) "Intoxicating liquor" has the meaning given in s. 125.02(8).

5 (b) "Net revenues" means the gross dollar amount received from the sale of
6 intoxicating liquor minus adjustments for returns, discounts and allowances.

7 (c) "Wholesaler" has the meaning given in s. 125.02(21).

8 (d) "Wine" has the meaning given in 125.02 (22).

9 (3) LIABILITY OF TRANSFEREE OF INTOXICATING LIQUOR GRANTOR. (a) In
10 this subsection:

11 1. "Goodwill" includes the use of a trademark, trade name, logotype or other
12 commercial symbol, and the use of a variation of a trademark, trade name, logotype,
13 advertisement or other commercial symbol.

14 2. "Transferee" means a person who acquires any asset or activity of a
15 grantor's intoxicating liquor business and who uses the goodwill associated with the
16 grantor's brand of intoxicating liquor of the grantor.

17 (b) ~~A transferee is considered a grantor for the purposes of this chapter and~~
18 ~~is considered to have assumed the transferor's dealership with the wholesaler of that~~
19 ~~brand. A transferee shall be bound by each of the grantor's dealerships with the~~
20 ~~grantor's wholesalers and consequently shall be deemed a grantor for purposes of~~
21 ~~and shall comply with the requirements of this chapter.~~

22 (4) CHANGE IN OWNERSHIP. (a) In this subsection, "successor wholesaler"
23 means a wholesaler who succeeds to the management, ownership or control of a

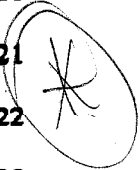
1 wholesaler or all or any part of a wholesaler's business, whether by stock purchase,
 2 sale of assets, transfer or assignment of a brand which is the subject of a dealership
 3 agreement, or otherwise.

4 (b) A change in the management, ownership or control of a wholesaler or all
 5 or any part of a wholesaler's business is not good cause for a grantor to terminate,
 6 cancel, fail to renew or substantially change the competitive circumstances of its
 7 dealership with a successor wholesaler if the successor wholesaler meets the grantor's
 8 reasonable and material qualifications for dealerships-wholesaler applicants in effect
 9 at the time of the change. If the successor wholesaler meets the grantor's reasonable
 10 and material qualifications for dealerships-wholesaler applicants in effect at the time
 11 of the change, the successor wholesaler shall succeed to the dealership rights of the
 12 predecessor wholesaler and the grantor shall continue to be bound by the dealership.

13 (5) **NONAPPLICABILITY.** This chapter section and section 135.02 (3)(b) do
 14 does not apply to any of the following dealerships:

15 (a) Dealerships in which a grantor, including any affiliate, division or
 16 subsidiary of the grantor, has never produced more than 200,000 gallons of
 17 intoxicating liquor in any year.

18 (b) Dealerships in which the dealer's net revenues from the sale of all of the
 19 grantor's brands of intoxicating liquor, except wine, constitute less than 5% of the
 20 dealer's total net revenues from the sale of intoxicating liquor, except wine, during
 21 for the dealer's previous-most recent fiscal year preceding the alleged violation of this
 22 chapter and the dealer's net revenues from the sale of all of the grantor's brands of
 23 wine constitute less than 5% of the dealer's total net revenues from the sale of wine



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during for the dealer's previous most recent fiscal year preceding the alleged violation of this chapter.

(6) SEVERABILITY. The provisions of this section are severable as provided in s. 990.001 (11)."

2. Page 1586, line 24: after that line insert:

"(2g) INTOXICATING LIQUOR DEALERSHIPS. The treatment of section 135.066 of the statutes, the renumbering and amendment of section 135.02(3) of the statutes and the creation of section 135.02(3)(b) of the statutes is retroactive and applies first apply to dealerships in effect on October 1, 1998 and to any currently pending lawsuit."

(END)

Now

1999 - 2000 LEGISLATURE

RM
not run
61843/1

LRB:
RNK:cmh:mrc

D-Note

Jg*

**ASSEMBLY 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 1139, line 11: after that line insert:

3 "SECTION 2166e. 135.02 (3) of the statutes is renumbered 135.02 (3) (intro.) and
4 amended to read:

5 135.02 (3) (intro.) "Dealership" means a any of the following:

6 (a) A contract or agreement, either expressed or implied, whether oral or
7 written, between 2 or more persons, by which a person is granted the right to sell or
8 distribute goods or services, or use a trade name, trademark, service mark, logotype,
9 advertising or other commercial symbol, in which there is a community of interest
10 in the business of offering, selling or distributing goods or services at wholesale,
11 retail, by lease, agreement or otherwise.

12 SECTION 2166m. 135.02 (3) (b) of the statutes is created to read:

for distributing intoxicating liquor has existed since the 1930's; that a balanced and healthy 3-tier system

1 135.02 (3) (b) A contract or agreement, either expressed or implied, whether
2 oral or written, between 2 or more persons by which a wholesaler, as defined in s.
3 125.02 (21), is granted the right to sell or distribute intoxicating liquor, as defined
4 in s. 125.02 (8), or use a trade name, trademark, service mark, logotype, advertising
5 or other commercial symbol related to intoxicating liquor.

6 SECTION 2166s. 135.066 of the statutes is created to read:

7 **135.066 Intoxicating liquor dealerships.** *(NO JP)*

8 *(NO JP)* (1) LEGISLATIVE FINDINGS. The legislature finds that a balanced and healthy
9 3-tier system for distributing intoxicating liquor is in the best interest of this state
10 and its citizens; that the 3-tier system ensures a ~~balanced and~~ *balanced and* level system between
11 the manufacturer and wholesale tiers; that a wholesale tier consisting of numerous
12 healthy competitors is necessary for a balanced and healthy 3-tier system; that the
13 number of intoxicating liquor wholesalers in this state is in ^{significant} decline; that this decline
14 threatens the health and stability of the wholesale tier; that the regulation of all
15 intoxicating liquor dealerships, regardless of when they were entered into, is
16 necessary to promote and maintain a wholesale tier consisting of numerous healthy
17 competitors; and that the maintenance and promotion of the 3-tier system will
18 promote the public health, safety and welfare. The legislature further finds that a
19 stable and healthy wholesale tier provides an efficient and effective means for tax
20 collection. The legislature further finds that dealerships between intoxicating liquor
21 wholesalers and manufacturers have been subject to state regulation since the
22 enactment of the 21st Amendment to the U.S. Constitution and that the parties to
23 those dealerships expect changes to state legislation regarding those dealerships.

24 (2) DEFINITIONS. In this section:

25 (a) "Intoxicating liquor" has the meaning given in s. 125.02 (8).

1 (b) "Net revenues" means the gross dollar amount received from the sale of
2 intoxicating liquor minus adjustments for returns, discounts and allowances.

3 (c) "Wholesaler" has the meaning given in s. 125.02 (21).

4 (d) "Wine" has the meaning given in 125.02 (22).

5 (3) LIABILITY OF TRANSFEREE OF INTOXICATING LIQUOR GRANTOR. (a) In this
6 subsection:

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

10 2. "Transferee" means a person who acquires any asset or activity of a grantor's
11 intoxicating liquor business and who uses the goodwill associated with the grantor's
12 brand of intoxicating liquor. *of the grantor*

13 (b) A transferee is considered a grantor for the purposes of this chapter ~~and~~
14 considered to have assumed the transferor's dealership with the wholesaler of that
15 brand and shall be bound by the grantor's dealerships
16 with the grantor's wholesalers

17 (4) CHANGE IN OWNERSHIP. (a) In this subsection, "successor wholesaler" means
18 a wholesaler who succeeds to the management, ownership or control of a wholesaler
19 or wholesaler's business.

20 (b) A change in the management, ownership or control of a wholesaler, ~~or a~~
21 wholesaler's business, is not good cause for a grantor to terminate, cancel, fail to
22 renew or substantially change the competitive circumstances of its dealership with
23 a successor wholesaler if the successor wholesaler meets the grantor's reasonable
24 and material qualifications for ~~dealerships~~ *wholesaler applicants* in effect at the time of the change. If the
25 successor wholesaler meets the grantor's reasonable and material qualifications for
~~dealerships~~ *wholesaler applicants* in effect at the time of the change, the successor ~~shall succeed to the~~ *wholesaler*

or any part of a wholesaler's business by any means including by stock purchase, sale of assets or transfer or assignment of a brand of intoxicating liquor that is the subject of a dealership agreement

→ ¶(c) Dealerships, as defined in sub (3)(a).

1 dealership rights of the predecessor wholesaler and the grantor shall continue to be
2 bound by the dealership.

3 (5) NONAPPLICABILITY. This ~~chapter~~ ^{section} does not apply to any of the following
4 dealerships:

5 (a) Dealerships in which a grantor, including any affiliate, division or
6 subsidiary of the grantor, has never produced more than 200,000 gallons of
7 intoxicating liquor in any year.

8 (b) Dealerships in which the dealer's net revenues from the sale of ^{all of} the grantor's
9 brands of intoxicating liquor, except wine, constitute less than 5% of the dealer's total
10 net revenues from the sale of ^{a grantor's} intoxicating liquor, except wine, during the dealer's
11 ^{most recent} ~~previous~~ fiscal year ^{preceding a cancellation or alteration of a dealership} and the dealer's net revenues from the sale of the grantor's
12 brands of wine constitute less than 5% of the dealer's total net revenues from the sale
13 of wine during the dealer's ^{most recent} ~~previous~~ fiscal year ^{preceding a grantor's cancellation or alteration of a dealership}

14 (6) SEVERABILITY. The provisions of this section are severable as provided in s.
15 990.001 (11)."

16 2. Page 1586, line 24 after that line insert:

17 ^{7c} ~~(7c)~~ INTOXICATING LIQUOR DEALERSHIPS. The treatment of section 135.066 of the
18 statutes, the renumbering and amendment of section 135.02 (3) of the statutes and
19 the creation of section 135.02 (3) (b) of the statutes first apply to dealerships in effect
20 on October 1, 1998."

(END)

20
Insert
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4-20

concerning the cancellation or alteration of a dealership
and to litigation, ~~to be resolved before~~
~~litigation is resolved~~ pending on the day after publication

Insert 4-20

Page 16/17, line 13: after that line insert:
eff date " (3^c ^m) ^(CS) Intoxicating liquor dealerships. The
treatment of section 135.066[✓] of the statutes, the
renumbering and amendment of section[✓] 135.02(3)
of the statutes and the creation of section
135.02(3)(b)[✓] of the statutes and SECTION 9358(7c) of
take effect ^{this act}
retroactively to October 1, 1998.[✓]"

(end ins)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1843/~~11/11~~
RNK
/ldn
JG

Faith Russell:

1. A court could find this ~~bill~~ ^{amendment} unconstitutional in that its retroactive application may impermissibly impair the obligation of contracts in violation of article I, section 10, of the U.S. Constitution and article I, section 12, of the Wisconsin Constitution. A court may make this finding based on the fact that it may impair existing contractual relationships between intoxicating liquor manufacturers and wholesalers.

Furthermore, because certain provisions of this draft are to be applied retroactively, a court might find that they do not comport with due process requirements. These requirements are satisfied if the public interest served by the retroactive application outweighs the private interests that are overturned by it and if that retroactive application is not fundamentally unfair.

While the inclusion of legislative findings in this draft may give a court a basis on which to sustain the constitutionality of the draft, a court could still find the provisions of the draft unconstitutional.

¶ 2. The retroactive application of the provisions of this draft would seem to also have practical implementation problems. It is not clear to me how a court will be able to determine how to "undo" dealership arrangements that were improperly terminated or that were created based upon an improper termination during the period subsequent to October 1, 1998, and the date this amendment is enacted,
on which ↓

¶ 13. The retroactive application of provisions of this draft to pending lawsuits may also raise practical problems during the litigation of a case. ~~It~~ It is possible that a case being litigated under current pleading laws ~~it~~ could require, for example, at court ~~and~~ parties to a lawsuit to change strategy in the middle of a case. This could be particularly burdensome ^{to the parties and to the court} if the case has almost been concluded or if the ^{case} ~~case is~~ involves a long or complicated trial.



¶ 4. The draft language provided for this draft included a ^{reference} reference in s. 135.066 (5)(b), as created in this draft, to an "alleged violation of this chapter".

~~Section 135.066 (5)(b) describes dealerships that will not be covered by the provisions of the draft, not just those that~~

Because ~~section~~ ^{section} 135.066 (5)(b) does not presume

presume that a violation of the chapter

has occurred, I have changed that language somewhat. I believe the changed language

is consistent with the underlying intent of the provision.



¶ 5. I have asked Paul Nilsen to review this draft for any technical problems. If his review uncovers^s any such problems, this draft may require redrafting.

RNK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1843/1dn
RNK:jlg:ijs&jf

October 2, 1999

Faith Russell:

1. A court could find this amendment unconstitutional in that its retroactive application may impermissibly impair the obligation of contracts in violation of article I, section 10, of the U.S. Constitution and article I, section 12, of the Wisconsin Constitution. A court may make this finding based on the fact that it may impair existing contractual relationships between intoxicating liquor manufacturers and wholesalers.

Furthermore, because certain provisions of this draft are to be applied retroactively, a court might find that they do not comport with due process requirements. These requirements are satisfied if the public interest served by the retroactive application outweighs the private interests that are overturned by it and if that retroactive application is not fundamentally unfair.

While the inclusion of legislative findings in this draft may give a court a basis on which to sustain the constitutionality of the draft, a court could still find the provisions of the draft unconstitutional.

2. The retroactive application of the provisions of this draft would seem to also have practical implementation problems. It is not clear to me how a court will be able to determine how to "undo" dealership arrangements that were improperly terminated or that were created based upon an improper termination during the period subsequent to October 1, 1998, and the date on which this amendment is enacted.

3. The retroactive application of provisions of this draft to pending lawsuits may also raise practical problems during the litigation of a case. It could require, for example, parties to a lawsuit to change strategy in the middle of a case. This could be particularly burdensome to the parties and to the court if the case has almost been concluded or if the case involves a long or complicated trial.

4. The draft language provided for this draft included a reference in s. 135.066 (5) (b), as created in this draft, to an "alleged violation of this chapter". Because s. 135.066 (5) (b) does not presume that a violation of the chapter has occurred, I have changed that language somewhat. I believe the changed language is consistent with the underlying intent of the provision.

5. I have asked Paul Nilsen to review this draft for any technical problems. If his review uncovers any such problems, this draft may require redrafting.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: Robin.Kite@legis.state.wi.us

Barman, Mike

From: Barman, Mike
Sent: Saturday, October 02, 1999 1:17 PM
To: Burnett, Douglas
Cc: Kite, Robin
Subject: 99b1843/1 (by request of RNK)



99b1843/1



99b1843/1.dn

Mike Barman

Mike Barman - Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

D-Note

LFB:.....Russell – Liquor dealerships under fair dealership laws

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

ASSEMBLY 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 1139, line 11: after that line insert:

3 “SECTION 2166e. 135.02 (3) of the statutes is renumbered 135.02 (3) (intro.) and
4 amended to read:

5 135.02 (3) (intro.) “Dealership” means a any of the following:

6 (a) A contract or agreement, either expressed or implied, whether oral or
7 written, between 2 or more persons, by which a person is granted the right to sell or
8 distribute goods or services, or use a trade name, trademark, service mark, logotype,
9 advertising or other commercial symbol, in which there is a community of interest

1 in the business of offering, selling or distributing goods or services at wholesale,
2 retail, by lease, agreement or otherwise.

3 **SECTION 2166m.** 135.02 (3) (b) of the statutes is created to read:

4 135.02 (3) (b) A contract or agreement, either expressed or implied, whether
5 oral or written, between 2 or more persons by which a wholesaler, as defined in s.
6 125.02 (21), is granted the right to sell or distribute intoxicating liquor, as defined
7 in s. 125.02 (8), or use a trade name, trademark, service mark, logotype, advertising

8 or other commercial symbol related to intoxicating liquor. *This definition does*
not apply to relationships described in s. 135.066(5)(a) and (b).
9 **SECTION 2166s.** 135.066 of the statutes is created to read:

10 **135.066 Intoxicating liquor dealerships.** (1) LEGISLATIVE FINDINGS. The
11 legislature finds that a balanced and healthy 3-tier system for distributing
12 intoxicating liquor is in the best interest of this state and its citizens; that the 3-tier
13 system for distributing intoxicating liquor has existed since the 1930's; that a
14 balanced and healthy 3-tier system ensures a level system between the
15 manufacturer and wholesale tiers; that a wholesale tier consisting of numerous
16 healthy competitors is necessary for a balanced and healthy 3-tier system; that the
17 number of intoxicating liquor wholesalers in this state is in significant decline; that
18 this decline threatens the health and stability of the wholesale tier; that the
19 regulation of all intoxicating liquor dealerships, regardless of when they were
20 entered into, is necessary to promote and maintain a wholesale tier consisting of
21 numerous healthy competitors; and that the maintenance and promotion of the
22 3-tier system will promote the public health, safety and welfare. The legislature
23 further finds that a stable and healthy wholesale tier provides an efficient and
24 effective means for tax collection. The legislature further finds that dealerships
25 between intoxicating liquor wholesalers and manufacturers have been subject to

1 state regulation since the enactment of the 21st Amendment to the U.S. Constitution
2 and that the parties to those dealerships expect changes to state legislation
3 regarding those dealerships.

4 (2) DEFINITIONS. In this section:

5 (a) "Intoxicating liquor" has the meaning given in s. 125.02 (8).

6 (b) "Net revenues" means the gross dollar amount received from the sale of
7 intoxicating liquor minus adjustments for returns, discounts and allowances.

8 (c) "Wholesaler" has the meaning given in s. 125.02 (21).

9 (d) "Wine" has the meaning given in 125.02 (22).

10 (3) LIABILITY OF TRANSFEREE OF INTOXICATING LIQUOR GRANTOR. (a) In this
11 subsection:

12 1. "Goodwill" includes the use of a trademark, trade name, logotype or other
13 commercial symbol, and the use of a variation of a trademark, trade name, logotype,
14 advertisement or other commercial symbol.

15 2. "Transferee" means a person who acquires any asset or activity of a grantor's
16 intoxicating liquor business and who uses the goodwill associated with the
17 intoxicating liquor of the grantor.

18 (b) A transferee is considered a grantor for the purposes of this chapter and
19 shall be bound by the grantor's dealerships with the grantor's wholesalers.

20 (4) CHANGE IN OWNERSHIP. (a) In this subsection, "successor wholesaler" means
21 a wholesaler who succeeds to the management, ownership or control of a wholesaler
22 or wholesaler's business or any part of a wholesaler's business by any means
23 including by stock purchase, sale of assets or transfer or assignment of a brand of
24 intoxicating liquor that is the subject of a dealership agreement.

1 (b) A change in the management, ownership or control of a wholesaler, a
2 wholesaler's business or any part of a wholesaler's business is not good cause for a
3 grantor to terminate, cancel, fail to renew or substantially change the competitive
4 circumstances of its dealership with a successor wholesaler if the successor
5 wholesaler meets the grantor's reasonable and material qualifications for
6 wholesaler applicants in effect at the time of the change. If the successor wholesaler
7 meets the grantor's reasonable and material qualifications for wholesaler applicants
8 in effect at the time of the change, the successor wholesaler shall succeed to the
9 dealership rights of the predecessor wholesaler and the grantor shall continue to be
10 bound by the dealership.

11 (5) NONAPPLICABILITY. This section does not apply to any of the following
12 dealerships:

13 (a) Dealerships in which a grantor, including any affiliate, division or
14 subsidiary of the grantor, has never produced more than 200,000 gallons of
15 intoxicating liquor in any year.

16 (b) Dealerships in which the dealer's net revenues from the sale of all of the
17 grantor's brands of intoxicating liquor, except wine, constitute less than 5% of the
18 dealer's total net revenues from the sale of intoxicating liquor, except wine, during
19 the dealer's most recent fiscal year preceding a grantor's cancellation or alteration
20 of a dealership and the dealer's net revenues from the sale of the grantor's brands
21 of wine constitute less than 5% of the dealer's total net revenues from the sale of wine
22 during the dealer's most recent fiscal year preceding a grantor's cancellation or
23 alteration of a dealership.

24

(c) Dealerships, as defined in s. 135.02 (3) (b).

1 (6) SEVERABILITY. The provisions of this section are severable as provided in s.
2 990.001 (11)."

*as defined in section
135.02(3) of the statutes,
as affected by this act,*

3 2. Page 1604, line 25: after that line insert:

4 "(7c) INTOXICATING LIQUOR DEALERSHIPS. The treatment of section 135.066 of the
5 statutes, the renumbering and amendment of section 135.02 (3) of the statutes and
6 the creation of section 135.02 (3) (b) of the statutes first apply to dealerships in effect
7 on October 1, 1998, and to ~~litigation concerning the cancellation or alteration of a~~
8 ~~dealership pending on~~ the day after publication."

9 3. Page 1617, line 13: after that line insert:

10 "(3c) INTOXICATING LIQUOR DEALERSHIPS. The treatment of section 135.066 of the
11 statutes, the renumbering and amendment of section 135.02 (3) of the statutes and
12 the creation of section 135.02 (3) (b) of the statutes and ~~section 9358 (7)~~ of this act
13 take effect retroactively to October 1, 1998."

14 (END)

*any cause of action under chapter 135 of the
statutes for which final judgment has not
been entered on or before*

b1843/2

D-Note

Faith Russell;

¶ 1. This redraft reflects changes made after review by Paul Nelson. The draft revises the initial applicability provision to make clear ~~to which causes of action~~ ^{that} the provisions of the draft apply to any cause of action under ch. 135 ~~that~~ for which a final judgment has not been entered on or before the date of publication.

¶ 2. This redraft also revises s. 135.02(3)(b) ^v as created in the draft, to make clear that the definition created in that provision does not apply to dealerships ~~under~~ described in s. 135.066(5)(a) and (b) ^v.

RNK

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

LRBb1843/2dn
RNK:wlj:mrc

October 3, 1999

Faith Russell:

1. This redraft reflects changes made after review by Paul Nilsen. The draft revises the initial applicability provision to make clear that the provisions of the draft apply to any cause of action under ch. 135 for which a final judgment has not been entered on or before the date of publication.

2. This redraft also revises s. 135.02 (3) (b), as created in the draft, to make clear that the definition created in that provision does not apply to dealerships described in s. 135.066 (5) (a) and (b).

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: Robin.Kite@legis.state.wi.us

Nilsen, Paul

From: Burnett, Douglas
Sent: Monday, October 04, 1999 1:53 PM
To: Kite, Robin; Nilsen, Paul
Subject: FW: FW: LRB Draft: 99b1843/2

Go ahead and make these changes. Thanks.

-----Original Message-----

From: tim speerschneider [mailto:tps@dewittross.com] <mailto:[mailto:tps@dewittross.com]>
Sent: Monday, October 04, 1999 12:19 PM
To: Burnett, Douglas
Subject: Re: FW: LRB Draft: 99b1843/2

Dear Doug:

The following changes are needed in LRBb/1834/2 dated October 3, 1999:

1. Line 8, p. 2. Insert in last sentence of paragraph after "This" the words "subsection of this"
2. Line 9, p. 2. Change "relationships" to "those dealerships"

These changes make clear that the limitations in 135.066 (5)(a) and (b) regarding the definition in 135.02 (3)(b) are only applicable to that subsection. This is purely a drafting issue that Robin and I disagree on.

3. Line 19, p. 3. Make the following change:

Delete: A transferee is considered a grantor for the purposes of this chapter and is considered to have assumed the transferor's dealership with the wholesaler of that brand.

Substitute: A transferee shall be bound by each of the grantor's dealerships with the grantor's wholesalers and consequently shall be deemed a grantor for purposes of, and shall comply with, the requirements of this chapter.

The substitution is stronger and clearer language. Robin and I disagree on this drafting issue.

4. Line 20, p. 4. Add after "the sale of" the words "all of"

Robin and I agree that this addition is necessary for parallel construction with line 16, p. 4.

"Burnett, Douglas" wrote:

> Doug Burnett
> Office of Senate Majority Leader Chuck Chvala
> 608-266-9170

>
> -----Original Message-----

> **From:** Russell, Faith
> **Sent:** Sunday, October 03, 1999 11:53 AM
> **To:** Burnett, Douglas; Healy, Brett
> **Subject:** FW: LRB Draft: 99b1843/2

>
> Hello -

>
> Here is a second draft for liquor dealerships. There were a couple of
> problems with the first draft. The corrections are explained in the
> drafter's note explains. I've checked the second draft and I think it's
> okay. Doug, could you please again send me a note to confirm whether or not

> you'll ask for any modifications? Thanks -

>

> Faith Russell

>

> -----Original Message-----

> **From:** Clark, Mary

> **Sent:** Sunday, October 03, 1999 11:32 AM

> **To:** Russell, Faith

> **Cc:** Reinhardt, Rob; Hubli, Scott; Haugen, Caroline

> **Subject:** LRB Draft: 99b1843/2

>

> Following is the PDF version of draft 99b1843/2.

>

> <<99b1843/2>> <<99b1843/2dn>>

>

> -----

> Name: 99b18432.pdf

> 99b18432.pdf Type: Portable Document Format (application/pdf)

> Encoding: base64

> Description: 99b1843/2

>

> Name: 99b18434.pdf

> 99b18434.pdf Type: Portable Document Format (application/pdf)

> Encoding: base64

> Description: 99b1843/2dn

>



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb18432
RNK:yg/cmb/wlj:mrc

13

LFB:.....Russell - Liquor dealerships under fair dealership laws

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

d-note

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

2 1. Page 1139, line 11: after that line insert:

3 "SECTION 2166e. 135.02 (3) of the statutes is renumbered 135.02 (3) (intro.) and
4 amended to read:

5 135.02 (3) (intro.) "Dealership" means a any of the following:

6 (a) A contract or agreement, either expressed or implied, whether oral or
7 written, between 2 or more persons, by which a person is granted the right to sell or
8 distribute goods or services, or use a trade name, trademark, service mark, logotype,
9 advertising or other commercial symbol, in which there is a community of interest

1 in the business of offering, selling or distributing goods or services at wholesale,
2 retail, by lease, agreement or otherwise.

3 **SECTION 2166m.** 135.02 (3) (b) of the statutes is created to read:

4 135.02 (3) (b) A contract or agreement, either expressed or implied, whether
5 oral or written, between 2 or more persons by which a wholesaler, as defined in s.
6 125.02 (21), is granted the right to sell or distribute intoxicating liquor, as defined
7 in s. 125.02 (8), or use a trade name, trademark, service mark, logotype, advertising
8 or other commercial symbol related to intoxicating liquor. This ~~definition~~ ^{Paragraph} does not
9 apply to ~~relationships~~ ^{dealerships} described in s. 135.066 (5) (a) and (b).

10 **SECTION 2166s.** 135.066 of the statutes is created to read:

11 **135.066 Intoxicating liquor dealerships. (1) LEGISLATIVE FINDINGS.** The
12 legislature finds that a balanced and healthy 3-tier system for distributing
13 intoxicating liquor is in the best interest of this state and its citizens; that the 3-tier
14 system for distributing intoxicating liquor has existed since the 1930's; that a
15 balanced and healthy 3-tier system ensures a level system between the
16 manufacturer and wholesale tiers; that a wholesale tier consisting of numerous
17 healthy competitors is necessary for a balanced and healthy 3-tier system; that the
18 number of intoxicating liquor wholesalers in this state is in significant decline; that
19 this decline threatens the health and stability of the wholesale tier; that the
20 regulation of all intoxicating liquor dealerships, regardless of when they were
21 entered into, is necessary to promote and maintain a wholesale tier consisting of
22 numerous healthy competitors; and that the maintenance and promotion of the
23 3-tier system will promote the public health, safety and welfare. The legislature
24 further finds that a stable and healthy wholesale tier provides an efficient and
25 effective means for tax collection. The legislature further finds that dealerships

1 between intoxicating liquor wholesalers and manufacturers have been subject to
2 state regulation since the enactment of the 21st Amendment to the U.S. Constitution
3 and that the parties to those dealerships expect changes to state legislation
4 regarding those dealerships.

5 (2) DEFINITIONS. In this section:

6 (a) "Intoxicating liquor" has the meaning given in s. 125.02 (8).

7 (b) "Net revenues" means the gross dollar amount received from the sale of
8 intoxicating liquor minus adjustments for returns, discounts and allowances.

9 (c) "Wholesaler" has the meaning given in s. 125.02 (21).

10 (d) "Wine" has the meaning given in 125.02 (22).

11 (3) LIABILITY OF TRANSFEREE OF INTOXICATING LIQUOR GRANTOR. (a) In this
12 subsection:

13 1. "Goodwill" includes the use of a trademark, trade name, logotype or other
14 commercial symbol, and the use of a variation of a trademark, trade name, logotype,
15 advertisement or other commercial symbol.

16 2. "Transferee" means a person who acquires any asset or activity of a grantor's
17 intoxicating liquor business and who uses the goodwill associated with the
18 intoxicating liquor of the grantor.

19 (b) A transferee is considered a grantor for the purposes of this chapter and
20 shall be bound by the grantor's dealerships with the grantor's wholesalers.

21 (4) CHANGE IN OWNERSHIP. (a) In this subsection, "successor wholesaler" means
22 a wholesaler who succeeds to the management, ownership or control of a wholesaler
23 or wholesaler's business or any part of a wholesaler's business by any means
24 including by stock purchase, sale of assets or transfer or assignment of a brand of
25 intoxicating liquor that is the subject of a dealership agreement.

insert
3-20

1 (b) A change in the management, ownership or control of a wholesaler, a
2 wholesaler's business or any part of a wholesaler's business is not good cause for a
3 grantor to terminate, cancel, fail to renew or substantially change the competitive
4 circumstances of its dealership with a successor wholesaler if the successor
5 wholesaler meets the grantor's reasonable and material qualifications for
6 wholesaler applicants in effect at the time of the change. If the successor wholesaler
7 meets the grantor's reasonable and material qualifications for wholesaler applicants
8 in effect at the time of the change, the successor wholesaler shall succeed to the
9 dealership rights of the predecessor wholesaler and the grantor shall continue to be
10 bound by the dealership.

11 (5) NONAPPLICABILITY. This section does not apply to any of the following
12 dealerships:

13 (a) Dealerships in which a grantor, including any affiliate, division or
14 subsidiary of the grantor, has never produced more than 200,000 gallons of
15 intoxicating liquor in any year.

16 (b) Dealerships in which the dealer's net revenues from the sale of all of the
17 grantor's brands of intoxicating liquor, except wine, constitute less than 5% of the
18 dealer's total net revenues from the sale of intoxicating liquor, except wine, during
19 the dealer's most recent fiscal year preceding a grantor's cancellation or alteration
20 of a dealership and the dealer's net revenues from the sale of ^{all of} the grantor's brands
21 of wine constitute less than 5% of the dealer's total net revenues from the sale of wine
22 during the dealer's most recent fiscal year preceding a grantor's cancellation or
23 alteration of a dealership.

24 (6) SEVERABILITY. The provisions of this section are severable as provided in s.
25 990.001 (11)."

insert
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(a) "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.

(b) "Transferee" means a person who acquires any asset or activity of a grantor's intoxicating liquor business and who uses the goodwill associated with intoxicating liquor of the grantor.

(b) A transferee shall be bound by each of the grantor's dealerships with the grantor's wholesalers and ~~(consequently)~~ ^{shall} be ~~deemed~~ ^{considered} a grantor for purposes of, and shall comply with, the requirements of this chapter.

135.066 (6) SEVERABILITY. If any provision of section 135.066, or the application of any provision of section 135.066 to a dealership is held invalid, such invalidity shall not affect other provisions or applications of section 135.066 that can be given effect without the invalid provision or application and to this end the provisions of section 135.066 are severable.

2. Page 1607, line 22: after that line insert:

INTOXICATING LIQUOR DEALERSHIPS. The creation of ~~s~~Section 135.066 is to be applied retroactively to all intoxicating liquor dealerships regardless of when they were entered into including any intoxicating liquor dealerships that were terminated or the competitive circumstances of which were changed ~~within one year prior to the enactment of section 135.066~~ since October 1, 1998.

✓
(end insert)

^{cm}
61843/3du

DRAFT

Faith Russell:

This draft makes changes
recommended by lobbyist Timm
Speerschneider.

~~REV~~

Under s. 990.001 (11), STATS, ~~ALL~~

Wisconsin Statutes are severable to the extent that

it is possible to sever them. Because we

cannot affect severability beyond what the Statutes

already provide, we generally do not draft severability

clauses in Wisconsin's Proposed s. 135.066 (6), STATS, is

included in this draft only because that language was

insisted upon, even though this language adds nothing to

current law. Adding redundant language to the Statutes
may have unintended consequences far exceeding the scope of this

proposal by calling into doubt whether
other provisions of the statute are severable
and, if so, why proposed s. 135.066(6), Stats., was
necessary.

-PEN

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

LRBb1843/3dn
PEN:cmh:mrc

October 4, 1999

Faith Russell:

This draft makes changes recommended by lobbyist Timm Speerschneider.

Under s. 990.001 (11), stats., ALL Wisconsin statutes are severable to the extent that it is possible to sever them. Because we cannot affect severability beyond what the statutes already provide, we generally do not draft severability clauses in Wisconsin. Proposed s. 135.066 (6), stats., is included in this draft only because that language was insisted upon, even though this language adds nothing to current law. Adding redundant language to the statutes may have unintended consequences for exceeding the scope of this proposal by calling into doubt whether other provisions of the statutes are severable and, if so, why proposed s. 135.066 (6), stats., was necessary.

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



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1843/3
RNK:jg/cmb/wlj:mrc

LFB:.....Russell – Liquor dealerships under fair dealership laws

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

ASSEMBLY 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 1139, line 11: after that line insert:

3 “**SECTION 2166e.** 135.02 (3) of the statutes is renumbered 135.02 (3) (intro.) and
4 amended to read:

5 135.02 (3) (intro.) “Dealership” means a any of the following:

6 (a) A contract or agreement, either expressed or implied, whether oral or
7 written, between 2 or more persons, by which a person is granted the right to sell or
8 distribute goods or services, or use a trade name, trademark, service mark, logotype,
9 advertising or other commercial symbol, in which there is a community of interest

1 in the business of offering, selling or distributing goods or services at wholesale,
2 retail, by lease, agreement or otherwise.

3 **SECTION 2166m.** 135.02 (3) (b) of the statutes is created to read:

4 135.02 (3) (b) A contract or agreement, either expressed or implied, whether
5 oral or written, between 2 or more persons by which a wholesaler, as defined in s.
6 125.02 (21), is granted the right to sell or distribute intoxicating liquor, as defined
7 in s. 125.02 (8), or use a trade name, trademark, service mark, logotype, advertising
8 or other commercial symbol related to intoxicating liquor. This paragraph does not
9 apply to dealerships described in s. 135.066 (5) (a) and (b).

10 **SECTION 2166s.** 135.066 of the statutes is created to read:

11 **135.066 Intoxicating liquor dealerships. (1) LEGISLATIVE FINDINGS.** The
12 legislature finds that a balanced and healthy 3-tier system for distributing
13 intoxicating liquor is in the best interest of this state and its citizens; that the 3-tier
14 system for distributing intoxicating liquor has existed since the 1930's; that a
15 balanced and healthy 3-tier system ensures a level system between the
16 manufacturer and wholesale tiers; that a wholesale tier consisting of numerous
17 healthy competitors is necessary for a balanced and healthy 3-tier system; that the
18 number of intoxicating liquor wholesalers in this state is in significant decline; that
19 this decline threatens the health and stability of the wholesale tier; that the
20 regulation of all intoxicating liquor dealerships, regardless of when they were
21 entered into, is necessary to promote and maintain a wholesale tier consisting of
22 numerous healthy competitors; and that the maintenance and promotion of the
23 3-tier system will promote the public health, safety and welfare. The legislature
24 further finds that a stable and healthy wholesale tier provides an efficient and
25 effective means for tax collection. The legislature further finds that dealerships

1 between intoxicating liquor wholesalers and manufacturers have been subject to
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3 and that the parties to those dealerships expect changes to state legislation
4 regarding those dealerships.

5 (2) DEFINITIONS. In this section:

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7 (b) "Net revenues" means the gross dollar amount received from the sale of
8 intoxicating liquor minus adjustments for returns, discounts and allowances.

9 (c) "Wholesaler" has the meaning given in s. 125.02 (21).

10 (d) "Wine" has the meaning given in 125.02 (22).

11 (3) LIABILITY OF TRANSFEREE OF INTOXICATING LIQUOR GRANTOR. (a) In this
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14 commercial symbol, and the use of a variation of a trademark, trade name, logotype,
15 advertisement or other commercial symbol.

16 2. "Transferee" means a person who acquires any asset or activity of a grantor's
17 intoxicating liquor business and who uses the goodwill associated with the
18 intoxicating liquor of the grantor.

19 (b) A transferee shall be bound by each of the grantor's dealerships with the
20 grantor's wholesalers and consequently shall be considered a grantor for purposes
21 of, and shall comply with, the requirements of this chapter.

22 (4) CHANGE IN OWNERSHIP. (a) In this subsection, "successor wholesaler" means
23 a wholesaler who succeeds to the management, ownership or control of a wholesaler
24 or wholesaler's business or any part of a wholesaler's business by any means

1 including by stock purchase, sale of assets or transfer or assignment of a brand of
2 intoxicating liquor that is the subject of a dealership agreement.

3 (b) A change in the management, ownership or control of a wholesaler, a
4 wholesaler's business or any part of a wholesaler's business is not good cause for a
5 grantor to terminate, cancel, fail to renew or substantially change the competitive
6 circumstances of its dealership with a successor wholesaler if the successor
7 wholesaler meets the grantor's reasonable and material qualifications for
8 wholesaler applicants in effect at the time of the change. If the successor wholesaler
9 meets the grantor's reasonable and material qualifications for wholesaler applicants
10 in effect at the time of the change, the successor wholesaler shall succeed to the
11 dealership rights of the predecessor wholesaler and the grantor shall continue to be
12 bound by the dealership.

13 (5) NONAPPLICABILITY. This section does not apply to any of the following
14 dealerships:

15 (a) Dealerships in which a grantor, including any affiliate, division or
16 subsidiary of the grantor, has never produced more than 200,000 gallons of
17 intoxicating liquor in any year.

18 (b) Dealerships in which the dealer's net revenues from the sale of all of the
19 grantor's brands of intoxicating liquor, except wine, constitute less than 5% of the
20 dealer's total net revenues from the sale of intoxicating liquor, except wine, during
21 the dealer's most recent fiscal year preceding a grantor's cancellation or alteration
22 of a dealership and the dealer's net revenues from the sale of all of the grantor's
23 brands of wine constitute less than 5% of the dealer's total net revenues from the sale
24 of wine during the dealer's most recent fiscal year preceding a grantor's cancellation
25 or alteration of a dealership.

