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WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Veterans, Homeland Security,
Military Affairs, Small Business and Government
Reform (SC-VHSMASBGR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



WISCONSIN LEGISLATURE

P. O. Box 7882 Madison, WI 53707-7882

FOR IMMEDIATE RELEASE
November 7, 2005

For more information, contact:
Sen. Brown: (608) 266-8546
Rep. Jeff Fitzgerald: (608) 266-2540

Sen. Brown and Rep. Fitzgerald Broker Compromise on Beer Distribution Legislation

- Lead authors bring small brewers and beer distributors to the table to address concerns --

Madison...State Representative Jeff Fitzgerald (R-Horicon) and State Senator Ron Brown (R-Eau Claire) today announced a compromise between the Wisconsin Brewers Guild and the Wisconsin Beer Distributors Association over pending legislation. The meeting called late Monday afternoon by the lawmakers brought the groups together to discuss Assembly Bill (AB) 787 and Senate Bill (SB) 415 to see what provisions might be negotiable.

"This was always the goal of the negotiations," Rep. Fitzgerald said. "We knew that everyone agreed in principle, it was just a matter of working through the details." The compromise language is now being drafted into an amendment which will be offered by Sen. Brown when the legislation comes before the state Senate.

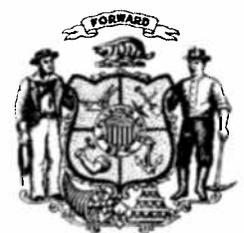
"This legislation will protect Wisconsin brewers from legal challenge and ensure that current markets are not devastated by undercutting from big box retailers," said Brown. "I am pleased that our large and small brewers, joined by the distributors who bring their product to market, were able to come to the table and reach an agreement that will continue Wisconsin's proud brewery traditions." In response to the *Granholm v. Heald* Supreme Court decision rendered earlier this year, Brown joined State Representative Jeff Fitzgerald to draft legislation to head off potential Commerce Clause questions about distribution of beer in Wisconsin. The *Granholm* case challenged the constitutionality of direct shipment of wine in Michigan and New York as unconstitutional under the United States Commerce Clause. Consequently, the case calls into question state laws across the country relating to direct shipment of alcoholic beverages, specifically beer. "SB 415 and AB 787 were written to strengthen Wisconsin's three-tier system, which small brewers and beer distributors both agree has served this state well for well-over 50 years," said Brown.

While the language of the amendment must yet be reviewed by all parties, the tone of the meeting ended positively with hopes of seeing the legislation enacted. "Our objective from the beginning was to preserve the ability of small brewers to succeed," said Carl Nolen, president of Capital Brewery and Wisconsin Brewers guild executive. "We believe this amendment accomplishes that goal." Nolen went on to thank Sen. Brown and Rep. Fitzgerald for their patience and willingness to negotiate a compromise that serves the best interests of Wisconsin.

"This is a very complex bill that took months of dialogue to figure out," Rep. Fitzgerald said. "To see a positive conclusion to all of that work is very rewarding."



WISCONSIN STATE LEGISLATURE





FOR IMMEDIATE RELEASE

November 9, 2005

Contact: Eric Jensen
Wisconsin Beer Distributors Association
(608) 445-9077

Tim Roby
Putnam Roby Communications
(608) 577-7174

Legislature Passes Compromise Beer Distribution Bill
Wisconsin brewers, distributors, retailers applaud legislative leadership

(MADISON) – Compromise carried the legislative day as the Wisconsin State Senate overwhelmingly passed an amended version of Assembly Bill 787 by a voice vote, and the Assembly concurred.

“The credit goes to a bipartisan cast of characters,” said Eric Jensen, executive director of the Wisconsin Beer Distributors Association (WBDA). “But, State Representative Jeff Fitzgerald (R-Horicon) and State Senator Ron Brown (R-Eau Claire) deserve the lion’s share for their leadership in helping to broker a compromise on this important bill.”

Late Monday afternoon, both Rep. Fitzgerald and Sen. Brown called leaders of WBDA and the Wisconsin Brewers Guild to the negotiating table to iron-out differences that could have threatened the future of the bill.

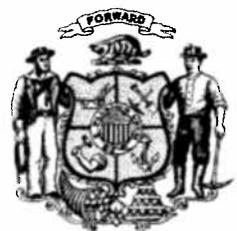
AB 787 and its companion, Senate Bill 415, were written to address potential legal challenges resulting from a recent U.S. Supreme Court decision (*Granholm v. Heald*) that effectively mandates that Wisconsin law treat in-state and out-of-state brewers equally, which they currently do not.

“This is a suitable fix to a problem that was brewing for months,” said Jensen. “This compromise protects large and small brewers, their jobs and their distributing partners who help deliver their products.”

While passing the original version of AB 787 last week by a 78-16 vote, the Assembly quickly concurred in the amended compromise version today. The bill now goes to Gov. Jim Doyle.



WISCONSIN STATE LEGISLATURE



Question & Answer in Regard to AB 787/SB 415:

Date?

Q: Why is this bill necessary?

A: Leg. Council and Private Attorneys agree that the US Supreme Court decision in Granholm vs. Heald (May 2005) creates a potential problem with Wisconsin's beer law.

Big-box mega retailers are already legally challenging other states' three-tier systems for alcohol distribution.

Q: Does this bill require brewers to use "wholesalers"?

A: No.

This bill allows all brewers to keep their wholesale licenses, and DOES NOT require any brewer to sell their beer through independent beer distributors. ANY brewer can still sell ANY volume of beer directly to retailers if they wish.

Q: Does this bill require anyone to build a warehouse?

A: No.

Under the Compromise Amendment (LRB-1451/1), brewers under 50,000 barrels production per year are completely exempt from the warehouse requirement.

Brewers over 50,000 barrels production need a "separate warehouse" ONLY if they wish to sell more than 1000 barrels/year directly to retailers. If they choose to sell beer through independent distributors (as nearly all brewers do today) no warehouse is required.

Q: Does this bill limit brewer's retail sales?

A: No.

Some brewers have "hospitality suites" at their breweries, or have retail stores where consumers can buy their beer. This bill has no impact on a brewer's ability to legally sell beer under a retail license.

Q: Will this prevent a brewer from taking his/her beer to a local festival, or delivering to a retail account a distributor forgot or missed for some reason?

A: No.

Compromise Amendment (LRB-1451/1) specifically addresses these situations.

Q: What if a small brewer loses their distributor in a certain area for some reason?

A: Compromise Amendment (LRB-1451/1) specifically addresses this contingency without requiring anyone to find or build a “separate warehouse.”

Q: Why are “designated territories” necessary?

A: They are a part of the compromise proposed by the brewers that resulted in AB 787 and that allows brewers to maintain the ability to sell directly to retailers if they wish to do so.

“Designated territories” are designed to prevent big-box mega retailers from becoming the *de facto* middle-tier of the three-tier system, destroying our independent beer distributors, hurting Wisconsin’s craft brewers and increasing costs for taverns, convenience stores and the thousands of other small retailers in Wisconsin.

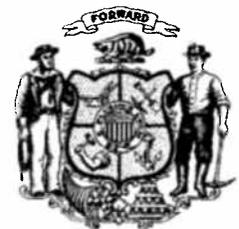
Q: Does this bill affect “brew pubs”?

A: No.

Brew pubs are regulated by a section of the statutes [125.31(1)(a)] that is not altered in any way by AB 787.



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Date?

AB 787 helps ensure that the system for regulating beer production, distribution and sale that works well today for brewers, distributors and retailers cannot be challenged legally under the recent Granholm vs. Heald decision issued by the US Supreme Court.

With inclusion of Senate Amendment ___, AB 787 has the support of all parties involved (Beer Distributors, Small Brewers, Large Brewers and retailers).

AB 787 accomplishes its primary goal by making sure that brewers located inside Wisconsin and brewers located outside Wisconsin are regulated in an even-handed way. (The Granholm decision requires equal treatment of in-state and out-of-state alcohol manufacturers.) Presently Wisconsin does not regulate brewers even-handedly, making Wisconsin's beer regulations vulnerable to legal challenge - a challenge that could destroy our regulatory system and devastate the beer distributors, the small brewers and thousands of retailers throughout Wisconsin.

As with many statutes - changing one part requires that other parts be changed to avoid unintended consequences. The goal of AB 787 from the start has been to proactively repair Wisconsin's legal vulnerability and do so in a way as to provide the least possible disruption to the parties' current and future business operations. I believe that with the inclusion of Senate Amendment ___, we have now completely accomplished our goals.

In short here's what AB 787 as amended will do:

- Repair the legal vulnerability. Current law allows in-state brewers to sell beer to retailers directly from the brewery, but requires out-of-state brewers to have a warehouse in Wisconsin in order to do the same. (That was the factual situation in New York state which was found unconstitutional in the Granholm decision.)

AB 787 requires, generally, that in-state brewers wishing to sell directly to retailers (as opposed to having beer distributors provide that service) have a warehouse separate from their brewery - as required of out-of-state brewers.

It is important to note that no brewer is required to build a warehouse - unless they want to sell directly to retailers (something few if any do today).

- Provide Blanket Exemption for Small Brewers. Recognizing the business & financial situation of smaller brewers, AB 787 creates a blanket exemption from the separate warehouse requirement for brewers making less than 50,000 barrels per year. In other words, a brewer below this level of production may sell all of its beer to retailers directly from the brewery - no "separate warehouse" required. (Or as most small brewers do now, they can continue to use the services of independent beer distributors as they see fit.)

- Provide limited exemptions for brewers OVER 50,000 barrels production. AB 787 recognizes that brewers making over 50,000 barrels per year are no longer “small” and in need of total exemption. But, AB 787 recognizes that there are limited circumstances where requiring a “separate warehouse” doesn’t make sense.

First - brewers over 50,000 production (including the major brewers like Miller) will be able to sell up to 1000 barrels of their production directly to retailers. This is designed to allow sufficient flexibility to growing smaller brewers (who generally choose to use the services of independent distributors) to continue delivering their own beer to community festivals, to beer tasting events or to the occasional local retail customer as they do today, without requiring a “separate warehouse.”

Second - AB 787 will provide for “emergency” situations to ensure that a larger brewer (who has decided not to have a “separate warehouse” and therefore utilizes the services of independent distributors) is not foreclosed from a particular market if for some reason one of the brewer’s distributors can no longer provide the service. AB 787 will do this by allowing the brewer a 12 month period during which the brewer can service the territory right from the brewery without triggering the “separate warehouse” requirement while making alternate permanent arrangements.

Ultimately, the Granholm case and AB 787 address the underlying issue of “direct shipping” which means the sale and shipment of beer directly from brewery (usually major brewers) to large volume retailers. “Direct shipping” does not occur today, and in fact AB 787 will change nothing about how retailer buy and sell beer in Wisconsin today.

But mega-retailers are seeking it in other states (via the courts and legislatures). “Direct shipping” will destroy the internal economics of independent beer distributors (70 multi-generation, family owned companies providing jobs to 2500 Wisconsinites), dramatically and negatively impacting all, and putting many out of business altogether.

Distribution of beer is a capital and labor intensive business. Small brewers depend on being able to share those distribution costs with many other brewers so they can get to market competitively. Wisconsin law permits small brewers to sell their beer directly to retailers today, but except for very limited circumstances they do not - because they cannot afford to. The erosion of the distribution system will have dire consequences for Wisconsin’s burgeoning craft brewing industry.

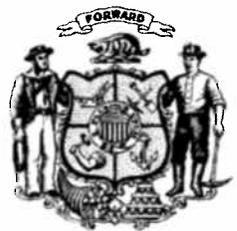
There are also 17,000 retailers throughout Wisconsin (taverns, restaurants, convenience stores, liquor stores, grocers, etc.) who depend on beer distributors to deliver a fresh product as often as necessary. None of these folks are candidates to

get "direct shipments." Erosion of the distribution system will cause their costs - and eventually the cost to consumers - to rise significantly.

AB 787 will preserve our beer distribution system, ensure fair competition among beer distributors, among brewers (large and small) and among retailers of all sizes, and it will ensure that future decisions about regulating alcohol remain in our hands, and not in the hands of the courts.



WISCONSIN STATE LEGISLATURE



Date?

Mutual Proposal - WBG & WBDA

- 1) General Rule (already spelled out in AB 787/SB 415): In order to sell beer to retailers, all brewers (in-state or out) must have a "wholesale warehouse" that is physically separate from the brewery premise.

- 2) Exceptions to the Rule (replaces 30,000/100,000 exemption - Page 7, (2)(b) in AB 787/SB 415):
 - a) Any brewer who's annual production does not exceed 50,000 barrels may sell any amount of beer directly to retailers straight from the brewery premise (no separate warehouse required).

 - b) Any brewer who's annual production does exceed 50,000 barrels may sell up to 1000 (one-thousand) barrels aggregate per year to retailers straight from brewery premise before separate warehouse required. (**We do not want beer sold by the brewer directly to retail licenses issued to the brewer - meaning the brewer's hospitality center, beer garden, etc. - to count toward this 1000 total.)

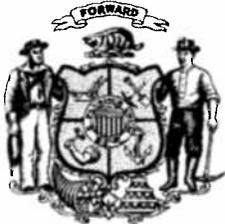
 - c) Emergency distribution. In the event that a distributor, who has been assigned distribution rights to a designated sales territory by any brewer, is unable to service the territory (whether because of termination of rights by the brewer, termination by the distributor, bankruptcy or other business interruption by the distributor) the brewer may sell beer to retailers in that previously assigned designated sales territory directly from the brewery premise for up to 12 months before separate warehouse is required.

- 3) Must ensure that designated territory provisions allow a brewer to make occasional low volume deliveries into territories assigned to other distributors (those made under (2)(b) above).

Suggestion - insert language in (4)(a) that allows a BREWER (not another distributor) to deliver directly to retailers in a designated territory assigned to another distributor with the distributor's (who has the territory rights) permission.



WISCONSIN STATE LEGISLATURE



Date ?

1) AB 787 was made necessary by the Granholm vs. Heald decision issued by Supreme Court (May 16, 2005).

- Ruling – states may not regulate in-state and out-of-state alcohol manufacturers differently on the issue of “direct shipping” (sales/shipments directly from manufacturer to retailers or consumers).
- Basis – Commerce Clause of US Constitution prohibits unequal treatment.
- Factual setting in Granholm dealt with wine – but the rule set down by the Supreme Court in this case is based on the Commerce Clause (which has a very long history of Constitutional decisions) – it is unlikely this decision will be found by other courts to apply only to wine.

2) Wisconsin vulnerable to Granholm-style challenge because our regulatory structure for beer is nearly identical to New York’s regulatory structure for wine that was found unconstitutional in Granholm.

- New York allowed in-state wineries to sell wine directly to consumers straight from the winery.
- Out-of-state wineries could too but only if they had a warehouse in NY.
- Court ruled this unequal treatment of out-of-state wineries a violation of Commerce Clause.
- Wisc law allows in-state brewers to sell beer directly to retailers straight from the brewery. Out-of-state brewers may also be able to sell directly to retailers – but only through an in-state warehouse. (Just like NY scenario.)

3) If vulnerability is not repaired, decisions on alcohol-regulatory policy may be decided by Court rather than Legislature.

- In Granholm it was out-of-state wineries and consumers who sued saying NY consumers should be able to get shipments of out-of-state wine.
- Similar scenario in Wisconsin would be out-of-state brewers and/or out-of-state big-box mega retailers suing to get “direct shipments.”
- Court could decide to let no brewer “direct ship” to retailers, or could decide to allow ALL brewers “direct ship.”
- If the latter – no doubt that big-box mega retailers would seek agreements with brewers. If signed before Legislature repairs problem, Contract Clause of

Constitution may well prevent any remedial legislation – decision would be out of Legislature’s hands.

- Michigan Fed. Court ordered Michigan to allow all direct shipping of wine on Tuesday, November 1st because the bill to repair their similar legal problem stalled in senate committee. It will now be very difficult to fix the problem, if still possible.

4) “Direct shipping” will destroy beer distributors.

- Big-box and other large retailers are most likely for “direct shipping.”
- Big-box and large retailers are very tiny % of the number of retail accounts served by beer distributors – but are a large % of beer distributor’s sales volume.
- Distributors cannot survive loss of big-box/large retailers without major changes (and many will not survive at all).

5) “Direct shipping” will hurt most retailers and small brewers.

- Distributors will be forced to cut back/alter services to the thousands of taverns, convenience stores, restaurants and grocers who are not large enough to warrant “direct shipments”:
 - Stop “value added” services (store shelf stocking, promotional activities, bartender training & educational programming, community support, etc.)
 - Charge for delivery, reduce delivery frequency (requiring retailers to have expensive larger refrigerated storage) or require pick-up
 - Cut benefits, wages or jobs
 - Increase prices to retailers
- Small brewers rely on the sharing of distribution expenses with other brewers in order to get products to market efficiently and competitively.
 - They can “direct ship” unlimited quantities today. None do because they cannot afford to.
 - Loss of distributors, or dramatic change in distribution services will hurt Wisconsin’s small brewer’s competitiveness.

6) AB 787 is result of delicate 5-month negotiation among beer distributors and brewers (large and small).

- Key components were proposed by brewers in "counter-proposal" to WBDA:
 - Warehouse requirement for in-state brewers (fixes legal vulnerability)
 - Designated sales territories (prevent statewide "direct shipping" to big-boxes)
- AB 787 (with Brown Amendment) contains exemption for small brewers negotiated with the Wisconsin Brewers Guild.
- Result is AB 787 with addition of Sen. Brown's compromise Amendment - is supported by:
 - Wisconsin Beer Distributors Association
 - Wisconsin Brewers Guild
 - Miller Brewing Company (and AB and Coors)
 - Huber Brewing Company (listed as Wisconsin Brewers Guild member)
 - Tavern League of Wisconsin
 - Wisc. Assoc. of Pet. Mkters and Convenience Stores
 - Wisc. Wine & Spirits Institute

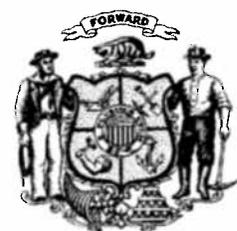
7) What AB 787 Does and why:

- Fixes Commerce Clause vulnerability highlighted by Granholtz
 - Requires in-state brewers who wish to sell beer directly to retailers to have a "physically separate" warehouse from which beer is sold.
 - This puts out-of-state and in-state brewers on equal competitive terms.
- Preserves fair competition between brewers who wish to act as distributors and independent beer distributors.
 - "Designated territories" mean that brewers cannot cherry pick high-volume accounts from independent beer distributors, and prevent statewide "direct shipping" to mega-retailers
 - "Designated territories" are the law in half the states – this is not a new idea.
- Creates appropriate exemptions for smaller brewers – thus preserves fair competition among small and large brewers in a way that does not violate Equal Protection Clause of Constitution.

- Brown Amendment creates exemption for small brewers under 50,000 barrels annual production (about 17 million 12 oz. bottles)
- NO STATE creates a regulatory exemption for small brewers who produce over 50,000 barrels. 80+% of states have no exemptions for small brewers whatsoever. Wisconsin would be fairly unique in looking out for its small brewers.
- Few if any Wisconsin brewers regardless of size sell any of their beer directly to retailers today – even though has been legal for decades – it is not economically efficient for them to do it.
- AB 787 does not cap any brewer's production, does not limit any brewer's growth and does not require any brewer to sell beer through independent beer distributors.
- AB 787 with Senator Brown's amendment creates the following exemptions for small brewers:
 - 1) If a brewer produces LESS than 50,000 barrels per year the brewer may ship as much beer to retailers directly from the brewery as they wish – no "separate warehouse" necessary. (They may also choose to utilize independent distributors.)
 - 2) If a brewer produces MORE than 50,000 barrels per year, the brewer is no longer exempt from the "separate warehouse" requirement that allows Wisconsin to be compliant with the Granholm decision. HOWEVER:
 - Brewer larger than 50,000 can sell/deliver up to 1000 barrels aggregate per year to retailers. (This allows brewers to service low volume community events, beer tasting festivals or "emergency" deliveries as they do today.)
 - If a brewer has assigned distribution rights to an independent distributor, and that distributor (for whatever reason – fire, bankruptcy, termination for rights by the brewer or by the distributor, etc.) becomes unable to service the territory, the brewer can serve the territory directly from the brewery for up to 12 months. (This allows a brewer to avoid the warehouse requirement while temporarily servicing a territory until alternate arrangements can be made.)

8) Summary – AB 787 with the Brown Amendment:

- **Brings WI into clear compliance with Granholm decision for beer.**
- **Fixes Commerce Clause problem (different treatment of in-state and out-of-state brewers) without creating Equal Protection problem (arbitrary exemptions for small brewers).**
- **Is a delicately negotiated balance of competing legal requirements and business interests. Has support of WBDA, Wisc. Brewers Guild, Miller & other brewers and retailers.**
- **Allows all brewers to sell directly to retailers if they wish (same as current law).**
- **Preserves fair competition between independent beer distributors and brewers who wish to act as beer distributors.**
- **Protects Wisconsin's growing craft brewing industry.**
- **Retains policy-making decisions on alcohol for the Legislature.**
- **Protects taverns, restaurants, convenience stores and grocers from unfair competition by mega-big-box retailers.**
- **Ultimately preserves beer distribution industry (70 multi-generation, family owned Wisconsin businesses employing over 2500 statewide).**

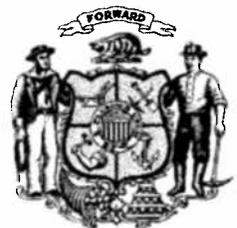


Date?

“Our objective from the beginning was to preserve the ability of small brewers to succeed. We believe this amendment accomplishes that goal,” said Carl Nolen, president of Capital Brewery and Wisconsin Brewers Guild executive. “We would like to thank Senator Brown and Representative Fitzgerald for their patience and willingness to negotiate a compromise that serves the best interests of Wisconsin.”



WISCONSIN STATE LEGISLATURE



Date?

Help protect Wisconsin's small breweries!

Contact your state Senator **TODAY** and urge them to **OPPOSE** Assembly Bill 787 and Senate Bill 415

Legislation is quickly moving through the Legislature that will restrict the ability of Wisconsin small breweries to grow and provide high-quality craft beers to consumers! In fact, the bill (AB 787) will likely pass the Assembly today—November 1st. We need your help to defeat AB 787 (and its companion bill, SB 415) in the Senate. This is our last chance to squash the bill before it's sent to the Governor's desk.

We need your help to send a message to Senators that AB 787 (and SB 415) is bad for small brewers... bad for consumers... and bad for Wisconsin!

Talking Points:

Assembly Bill 787 (and Senate Bill 415) is simply bad public policy, as it would:

- Impose excessive and irrational government regulation on small breweries.
- Severely limit the ability of small breweries to grow and provide their product to consumers.
- **Likely result in higher beer prices for Wisconsin consumers.**
- Possibly reduce the variety of craft beer available to Wisconsin consumers.
- Make it more difficult for certain small brewers to attend beer tasting festivals.
- Impede a growing manufacturing sector (small breweries), hurting job creation and economic growth.

What you can do to help:

Call or e-mail your Senator and urge them to protect small brewers from unnecessary government regulation. Ask them to oppose AB 787 & SB 415. Remind them that the legislation does **NOT** allow small brewers to grow and restricts their ability to get their products to consumers.

Whether you call (*which is more effective*) or e-mail your legislator, remember:

- **Identify yourself as a constituent;**
- **Clearly state your position;**
- **Stay on message;**
- **Use personal stories; and**
- **Ask for their help/position**

Time is of the essence in the legislative process. Remember, the Assembly will vote on this bill today and send it to the Senate. So please contact your Senator AS SOON AS POSSIBLE!

If you're unsure who your Senator is or don't know how to contact them, please reference the "Who is your Legislator" website at <http://165.189.139.210/WAML/>.

While we might not have the financial resources of the influential special interests backing this bill, we do have a strong, collective voice and the grassroots resources to make a difference. **With your help, we CAN help save the craft beer industry in Wisconsin!**