



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 02/20/2007 (Per: ARG)



### Appendix A

 The 2007 drafting file for **LRB-0044/P1**

has been copied/added to the drafting file for

## **2007 LRB 07-1983**

 The attached 2007 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

 This cover sheet was added to rear of the original 2007 drafting file. The drafting file was then returned, intact, to its folder and filed.

2007 DRAFTING REQUEST

Bill

Received: 08/28/2006

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Fred Risser (608) 266-1627

By/Representing: Terry Tuschen (aide)

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Beverages

Extra Copies:

Submit via email: YES

Requester's email: Sen.Risser@legis.wisconsin.gov

Carbon copy (CC:) to: aaron.gary@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Third retail location (Class B license) for certain brewers

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>
/?							
/P1	agary 09/08/2006	kfollett 09/20/2006	rschluet 09/20/2006	_____	mbarman 09/20/2006		

FE Sent For:

<END>

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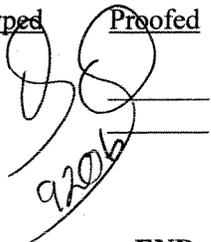
**Instructions:**

See Attached

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/?	agary	1P1Kjf 9/28					
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FE Sent For:

<END>

**Gary, Aaron**

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**From:** Tuschen, Terry  
**Sent:** Thursday, August 17, 2006 11:36 AM  
**To:** Gary, Aaron  
**Cc:** Tuschen, Terry  
**Subject:** Sen. Risser drafting request for changing Tiered House Laws (s. 125.31(1)(a)1

**Importance:** High

Hi Aaron, Fred saw yesterday's Wisconsin State Journal editorial about the Great Dane Brew Pub not being able to sell its own beer at a third establishment it is opening due to the state law that prohibits brewers that produce more than 4,000 barrels per year from selling their own brew at more than two establishments. (s.125.31(1)(a)2.

He'd like a bill drafted to increase the barrel limit that defines a small brewer to 6,000 barrels.

I'm attaching a link to the relevant story that started all of this.

<http://www.madison.com/archives/read.php?ref=/wsj/2006/08/10/0608090586.php>

Thanks and let me know if you have any questions!

Terry

\*\*\*\*\*

Terry Tuschen  
Office of State Senator Fred Risser  
123 South, State Capitol  
Madison, WI 53702  
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Terry.Tuschen@legis.state.wi.us



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## Post-prohibition Law Stifles Great Dane

**The New Location Won't Be Able To Sell Beer Brewed A Few Feet Away Unless The State's "tide House" Law Is Changed.**

**Wisconsin State Journal :: FRONT :: A13**

**Thursday, August 10, 2006**

**BARRY ADAMS [badams@madison.com](mailto:badams@madison.com) 608-252-6148**

Some of the nation's finest craft beers will be available when Eliot Butler opens his third Great Dane Pub & Brewing Co. location at Hilldale Shopping Center in December.

But beer drinkers hoping to sample a beer made by the Great Dane will be out of luck.

The brew pub won't be allowed to sell the beer it brews.

The reason is a 1930s, post-Prohibition law designed to prevent a single brewer from controlling the beer market.

Butler hopes to have the law changed in the next legislative session, which begins in January. The law prevents a brewer that makes more than 4,000 barrels of beer a year from owning more than two retail establishments that sell its beer.

In the meantime, customers at Hilldale will have to choose from a list of other beers, or go elsewhere for the Great Dane's Landmark Lite, Crop Circle Wheat or Verruckte Stadt German Pils. Those beers can be found at the brew pub's Downtown and Fitchburg locations or at more than two dozen other bars and restaurants around the state, including the Great Dane Pub in the Dane County Regional Airport.

That business opened earlier this year but is owned by the Compass Group, which runs restaurants and bars in dozens of airports around the country. The company bought the rights to Great Dane's menu and name.

"We're really risking the consistency of our brand, but I'm confident we can get the law changed that would allow us to sell our product in one more location," Butler said. "It doesn't make sense that we're being treated like the largest brewer in the state."

Butler thinks the existing law would allow him to brew beer at the Hilldale location. But if he wanted to sell the beer to his customers seated just a few feet away, the beer would have to be put in kegs,

shipped to a wholesaler and delivered back to the brew pub.

According to Peter Carstensen, the George Young-Bascom professor of law at UW-Madison, breweries before Prohibition operated what were called tide houses.

The taverns were built or bought by the breweries and then leased to operators under the condition that only the brewer's beers would be sold. After Prohibition, Wisconsin and other states enacted tide house laws with the goal of preventing monopolies and forcing wholesalers to distribute the beer, thus raising the price of beer to discourage drinking, Carstensen said.

Prohibition began in 1920 and banned only the manufacture, sale and transport -- but not possession or consumption -- of alcohol. Prohibition was repealed in 1933.

"What you've got now are some very entrenched economic interests in the wholesaler that make very little economic sense today," Carstensen said. "Clearly, if (Butler) goes in with a proposal that says he wants to tweak it, it's going to protect the interest of the craft brewers, but it's not going to seriously impact the wholesalers."

Butler said he wants the limit raised from 4,000 barrels a year, but he's not sure how high it should go. His two brew pubs make about 4,400 barrels, tops of any other brew pub operation in the state and 10th in the country, according to the Brewers Association, a national trade organization. Butler also has the support of other brew pub operators in the area.

"I look at the Great Dane's situation and I don't know why they should be limited," said David Bookstaff, owner of JT Whitney's Pub & Brewery on the West Side. "They're definitely good for the city and good for the economy."

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**Gary, Aaron**

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**From:** Gary, Aaron  
**Sent:** Friday, September 08, 2006 10:39 AM  
**To:** Tuschen, Terry  
**Subject:** RE: Sen. Risser drafting request for changing Tiered House Laws (s. 125.31(1)(a)1

I'm sorry, I can't tell you that (even the existence or non-existence of a drafting request is considered confidential). I'll have your draft ready shortly. I sketched it out narrowly to meet Great Dane's needs, and if you want it expanded from there, you can let me know. Thanks. Aaron

Aaron R. Gary  
Legislative Attorney  
Legislative Reference Bureau  
608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

---

**From:** Tuschen, Terry  
**Sent:** Friday, September 08, 2006 10:33 AM  
**To:** Gary, Aaron  
**Cc:** Tuschen, Terry  
**Subject:** RE: Sen. Risser drafting request for changing Tiered House Laws (s. 125.31(1)(a)1

Hi Aaron, thanks for the explanation and information. Go ahead and try a different approach to address the problem and I'll talk to Fred about this too.

Can you tell me if there are other legislators working on this issue that you know of (not necessarily who)?  
Thanks, Terry

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**From:** Gary, Aaron  
**Sent:** Friday, September 08, 2006 10:12 AM  
**To:** Tuschen, Terry  
**Subject:** RE: Sen. Risser drafting request for changing Tiered House Laws (s. 125.31(1)(a)1

Hi Terry,

I'm not sure that changing the small brewer definition to increase the barrel amount from 4,000 to 6,000 will accomplish your goal. As I read s. 125.31, any brewer can have two retail locations. In addition to these 2 retail locations, a small brewer may have a retail license for up to 4 more restaurants if the following requirements are satisfied:

1. The brewer's sale of alcohol beverages in the restaurant accounts for less than 50% of the restaurant's gross receipts (that is, restaurants has greater \$\$ value food sales than drink sales).
2. The brewer sells other beer brands in addition to its own.
3. The brewer obtains its own beer brands sold in the restaurant from an independent wholesaler (that is, it would have to sell beer made on premises to an independent wholesaler and then buy it back, which would also involve delivery to wholesaler's premises and then back to the brewery.)

These requirements would apply even if the barrel amount were increased from 4,000 to 6,000 and Great Dane were considered a small brewer. But based on the article, it sounds like this is not what you want. (Another statutory provision allows any brewer to have an *indirect* interest in a retail license for up to 20 restaurants, but again this provision would not seem to be useful for the Great Dane under the circumstances described.)

Do you want me to continue with the draft to increase the barrel amount from 4,000 to 6,000? Or do you want me to try a different approach to address the problem discussed in the State Journal story?

Thanks. Aaron

Aaron R. Gary  
Legislative Attorney  
Legislative Reference Bureau

608.261.6926 (voice)  
608.264.6948 (fax)  
aaron.gary@legis.state.wi.us

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**Sent:** Thursday, August 17, 2006 11:36 AM  
**To:** Gary, Aaron  
**Cc:** Tuschen, Terry  
**Subject:** Sen. Risser drafting request for changing Tiered House Laws (s. 125.31(1)(a)1  
**Importance:** High

Hi Aaron, Fred saw yesterday's Wisconsin State Journal editorial about the Great Dane Brew Pub not being able to sell its own beer at a third establishment it is opening due to the state law that prohibits brewers that produce more than 4,000 barrels per year from selling their own brew at more than two establishments. (s.125.31(1)(a)2.

He'd like a bill drafted to increase the barrel limit that defines a small brewer to 6,000 barrels.  
I'm attaching a link to the relevant story that started all of this.  
<http://www.madison.com/archives/read.php?ref=/wsj/2006/08/10/0608090586.php>

Thanks and let me know if you have any questions!

Terry

\*\*\*\*\*

Terry Tuschen  
Office of State Senator Fred Risser  
123 South, State Capitol  
Madison, WI 53702  
608.266.1627  
Terry.Tuschen@legis.state.wi.us

soon

ARG... kjf

in 9/8

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

Gen

1 AN ACT ...; relating to: retail alcohol beverage licenses held by brewers.

*Analysis by the Legislative Reference Bureau*

Under current law, alcohol beverages are generally distributed from the manufacturer to the consumer under a three-tier distribution system: the manufacturer sells to a wholesaler; the wholesaler sells to a retailer or another wholesaler; and the retailer sells to the consumer. With respect to fermented malt beverages (beer), a brewer's permit authorizes the brewer to manufacture, possess, and store beer on the brewery premises.

Under current law, a brewer generally may not hold a Class "B" license (authorizing the retail sale of beer for consumption on or off the premises where sold), subject to certain exceptions. One exception allows a brewer to maintain and operate, and hold a Class "B" license for, one retail premises on brewery premises and one retail premises on property owned by the brewer or its subsidiary or affiliate. Under other exceptions, in addition to these two Class "B" licenses, a brewer may do either, but not both, of the following:

1. Possess or hold an indirect interest in Class "B" licenses for not more than 20 restaurants in which the sale of alcohol beverages accounts for less than 60 percent of gross receipts and in which the brewer's beer is not sold.

2. Possess a Class "B" license for not more than four restaurants in which the sale of alcohol beverages accounts for less than 50 percent of gross receipts if the brewer is a small brewer (generally one that manufactures less than 4,000 barrels of beer annually), the restaurant also sells other brewers' beer, and the brewer's own beer is purchased by the restaurant from an independent wholesaler.

This bill creates another exception that allows a brewer to possess a Class "B" license for one restaurant, on brewery premises, in which the brewer's beer made on

the premises is sold. The brewer may possess Class "B" licenses under both this exception and the exception noted in item <sup>2</sup> ~~2~~ above, but not under both this exception and the exception noted in item <sup>1</sup> ~~1~~ above. The Class "B" license allowed under this exception is in addition to the two Class "B" licenses that a brewer may hold under current law for brewery premises and property owned by the brewer or its affiliate.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 125.31 (1) (a) 2. of the statutes is amended to read:

2           125.31 (1) (a) 2. Notwithstanding ss. 125.29 (2) and 125.33 (1), a brewer may  
3 maintain and operate one place on brewery premises and one place on real estate  
4 owned by the brewer or a subsidiary or affiliate corporation or limited liability  
5 company for the sale of fermented malt beverages for which a Class "B" license is  
6 required for each place, but, except as provided in subds. 3. and 4. to 5., not more than  
7 2 such Class "B" licenses shall be issued to any brewer.

8           History: 1981 c. 79; 1989 a. 253; 1991 a. 32; 1993 a. 112, 213, 215, 491; 1999 a. 163; 2001 a. 16; 2005 a. 103.

8           **SECTION 2.** 125.31 (1) (a) 4. of the statutes is amended to read:

9           125.31 (1) (a) 4. Notwithstanding ss. 125.29 (2) and 125.33 (1), in addition to  
10 places authorized under ~~subd.~~ subds. 2. and 5., a brewer may possess or hold an  
11 indirect interest in a Class "B" license for not more than 20 restaurants in each of  
12 which the sale of alcohol beverages accounts for less than ~~60%~~ 60 percent of the restaurant's  
13 gross receipts if no fermented malt beverages manufactured by the brewer are  
14 offered for sale in any of these restaurants. No brewer may possess Class "B" licenses  
15 under both this subdivision and subd. 3.

16           History: 1981 c. 79; 1989 a. 253; 1991 a. 32; 1993 a. 112, 213, 215, 491; 1999 a. 163; 2001 a. 16; 2005 a. 103.

16           **SECTION 3.** 125.31 (1) (a) 5. of the statutes is created to read:

17           125.31 (1) (a) 5. Notwithstanding ss. 125.29 (2) and 125.33 (1), in addition to  
18 places authorized under subds. 2. and 4., a brewer may possess a Class "B" license  
19 for one restaurant, on brewery premises, in which is offered for sale fermented malt

1 beverages manufactured by the brewer on the premises. No brewer may possess  
2 Class "B" licenses under both this subdivision and subd. 3.

3 (END)

*D-Note*

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

LRB-0044/P1dn

ARG: *gf*

*Date*

ATTN: Terry Tuschen

Please review the attached draft carefully to ensure that it is consistent with your intent. As discussed, this bill is drafted narrowly to address the problem described in the State Journal article that you forwarded to me.

My intent in drafting this exception is to require the brewer to sell its own beer, made on-site, in the restaurant, but allow (but not require) the brewer to also sell other brewers' brands.

I note that the exception created in this draft is not limited to small brewers. I can draft the bill to limit it to small brewers if you prefer, but I would need to also increase the barrel limit defining small brewers. I also note that this bill, as drafted, would not, for example, allow the Great Dane to sell at its Hilldale location beer that is made on Doty Street; it authorizes only retail sales of beer made on-site. Please let me know if you want me to remove this restriction.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

---

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

LRB-0044/P1dn  
ARG:kjfrs

September 20, 2006

ATTN: Terry Tuschen

Please review the attached draft carefully to ensure that it is consistent with your intent. As discussed, this bill is drafted narrowly to address the problem described in the State Journal article that you forwarded to me.

My intent in drafting this exception is to require the brewer to sell its own beer, made on-site, in the restaurant, but allow (but not require) the brewer to also sell other brewers' brands.

I note that the exception created in this draft is not limited to small brewers. I can draft the bill to limit it to small brewers if you prefer, but I would need to also increase the barrel limit defining small brewers. I also note that this bill, as drafted, would not, for example, allow the Great Dane to sell at its Hilldale location beer that is made on Doty Street; it authorizes only retail sales of beer made on-site. Please let me know if you want me to remove this restriction.

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Phone: (608) 261-6926  
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State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0044/P1  
ARG:kjf:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 1     **AN ACT** *to amend* 125.31 (1) (a) 2. and 125.31 (1) (a) 4.; and *to create* 125.31 (1)  
2             (a) 5. of the statutes; **relating to:** retail alcohol beverage licenses held by  
3             brewers.

---

***Analysis by the Legislative Reference Bureau***

Under current law, alcohol beverages are generally distributed from the manufacturer to the consumer under a three-tier distribution system: the manufacturer sells to a wholesaler; the wholesaler sells to a retailer or another wholesaler; and the retailer sells to the consumer. With respect to fermented malt beverages (beer), a brewer's permit authorizes the brewer to manufacture, possess, and store beer on the brewery premises.

Under current law, a brewer generally may not hold a Class "B" license (authorizing the retail sale of beer for consumption on or off the premises where sold), subject to certain exceptions. One exception allows a brewer to maintain and operate, and hold a Class "B" license for, one retail premises on brewery premises and one retail premises on property owned by the brewer or its subsidiary or affiliate. Under other exceptions, in addition to these two Class "B" licenses, a brewer may do either, but not both, of the following:

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of beer annually), the restaurant also sells other brewers' beer, and the brewer's own beer is purchased by the restaurant from an independent wholesaler.

This bill creates another exception that allows a brewer to possess a Class "B" license for one restaurant, on brewery premises, in which the brewer's beer made on the premises is sold. The brewer may possess Class "B" licenses under both this exception and the exception noted in item 1. above, but not under both this exception and the exception noted in item 2. above. The Class "B" license allowed under this exception is in addition to the two Class "B" licenses that a brewer may hold under current law for brewery premises and property owned by the brewer or its affiliate.

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4 beverages manufactured by the brewer on the premises. No brewer may possess  
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6

(END)