



2007 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB40)

Received: **06/21/2007**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Russell**

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

Drafter: **agary**

May Contact:

Addl. Drafters: **jkreye**

Subject: **Beverages**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**
Faith.Russell@legis.wisconsin.gov

Pre Topic:

LFB:.....Russell -

Topic:

Direct wine shipments; intoxicating liquor wholesalers

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>
/?							
/1	agary 06/21/2007	lkunkel 06/22/2007	rschluet 06/22/2007	_____	sbasford 06/22/2007		
/2	agary 06/25/2007	lkunkel 06/25/2007	nmatzke 06/25/2007	_____	sbasford 06/25/2007		

FE Sent For:

2007 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB40)

Received: 06/21/2007

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Legislative Fiscal Bureau

By/Representing: Russell

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters: jkreye

Subject: Beverages

Extra Copies:

Submit via email: YES

Requester's email:

Carbon copy (CC:) to: aaron.gary@legis.wisconsin.gov
Faith.Russell@legis.wisconsin.gov

Pre Topic:

LFB:.....Russell -

Topic:

Direct wine shipments; intoxicating liquor wholesalers

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>
/?							
/1	agary 06/21/2007	lkunkel 06/22/2007	rschluet 06/22/2007		sbasford 06/22/2007		

Handwritten notes: 2/mk 6/25, nwn 6/25, nwn/rs 6/25

FE Sent For:

<END>

2007 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB40)

Received: **06/21/2007**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Russell**

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

Drafter: **agary**

May Contact:

Addl. Drafters: **jkreye**

Subject: **Beverages**

Extra Copies: **JK**

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**
Faith.Russell@legis.wisconsin.gov

Pre Topic:

LFB:.....Russell -

Topic:

Direct wine shipments; intoxicating liquor wholesalers

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>
/?	agary	1/mk 6/22					

FE Sent For:

<END>

9 90m

From Fair Russell
6/20 5:00 p

7-7597

DRAFT
06-19-07

MAINTAINING AND PRESERVING WISCONSIN'S THREE-TIER SYSTEM FOR THE SALE AND EFFECTIVE TAXATION OF INTOXICATING LIQUOR

Since the repeal of Prohibition, Wisconsin has relied on a three-tier system for the responsible distribution of alcoholic beverages (beer, wine and distilled spirits). The regulatory framework involves the sale of alcoholic beverages from manufacturers (tier 1) to licensed wholesale distributors (tier 2) to retailers (tier 3). Without a specific statutory exception, *all* sales of alcoholic beverages to consumers must occur through the three-tier system. In addition to providing a reliable distribution framework, the three-tier system is vital to the effective collection of state taxes on alcoholic beverage sales – over \$50 million in Wisconsin taxes collected in 2005-06.

During the last two years, litigation results and legislative initiatives have led to a comprehensive review in virtually every state of the laws governing the sale and distribution of alcoholic beverages. Most notably, these statutory reviews have been prompted by the U.S. Supreme Court's holding in *Granholm v. Heald* (addressing the direct shipment of wine to consumers), the federal district court decision in *Costco Wholesale Corporation v. Hoen* (involving arguments to advance self-distribution by manufacturers and challenge other three-tier regulations) and even more recent actions challenging regulations involving direct sales to and by retailers. See "New Vintage of Wine Litigation," *National Law Journal* (Jan. 26, 2007). Most importantly, these statutory reviews are necessary to ensure the continued viability of the three-tier system and, accordingly, the continued ability of Wisconsin to effectively tax alcoholic beverage sales.

To maintain and preserve Wisconsin's three-tier system for the sale and distribution of intoxicating liquor¹ and accompanying tax collection, the following statutory changes are proposed:

- Creating a new framework for direct shipment of wine:
 - a new permit available to any winery, in-state or out-of-state;
 - a scaled annual permit fee, based on volume direct shipped;
 - new reporting requirements;
 - an annual limit on the amount direct shipped;
 - a taxation system similar to that for out-of-state shippers, subject to occupational tax; and,
 - penalties for non compliance.

¹ Under Wisconsin law, "intoxicating liquor" includes distilled spirits, cider and wine but *not* fermented malt beverages (beer). Moreover, under Wisconsin law, the sale and distribution of intoxicating liquor is regulated differently than the sale and distribution of beer. These proposals are generally limited to intoxicating liquor and, in most instances, are *not* intended to effect the sales and distribution of fermented malt beverages.

- Clarifying the requirement that a retail license authorizes only face-to-face sales to consumers at the licensed premises.
- Restating the legislature's intent to make clear a commitment to maintaining and preserving the state's three-tier system.
- Clarifying the permitted actions of manufacturers and rectifiers.
- Eliminating the ability of wineries to act as wholesalers as well as eliminating other grandfathered exceptions to the restrictions on dealings between manufacturers, wholesalers and retailers.
- Clarifying what information is publicly available on the permit holders active in the sale and distribution of intoxicating liquor.
- Creating a severability provision in the event that a single statutory provision is invalidated, so it does not affect the entire three-tier regulatory framework.

The legislation would also require that a comprehensive study be conducted by the Legislative Council on the state's interest in the effective regulation of alcoholic beverage through the three-tier system.

***Granholm v. Heald* and the Direct Shipment of Wine**

In 2005, the United States Supreme Court issued a decision in *Granholm v. Heald*, 125 S.Ct 1885 (May 16, 2005) that encourages certain changes to Wisconsin laws authorizing the direct shipment of wine to Wisconsin consumers. In *Granholm*, the Court held that state laws on the direct shipment of wine are constitutional only if they treat all wineries “evenhandedly.” Based on this principle, the Court invalidated Michigan and New York statutes that permitted in-state wineries to ship wine directly to consumers in those states but prohibited out-of-state wineries from doing the same.

Currently, Wisconsin law on the direct shipment of wine to consumers in this state is not “evenhanded” under *Granholm*. Instead, state law permits the direct shipment of wine to Wisconsin consumers only from wineries licensed in states that have a reciprocal wine agreement with Wisconsin.² Wineries licensed in these states may ship up to 27 liters (three cases) of wine per year to Wisconsin consumers of legal drinking age without having to obtain an out-of-state shipper’s permit or deliver the wine through a Wisconsin wholesaler. Wis. Stat. §§ 125.58; 125.68(10). Because wineries licensed in non-reciprocity states are prohibited from engaging in the same activity, Wisconsin law, like the former laws of Michigan and New York, is not “evenhanded” under *Granholm*’s parameters.

Additionally, current state law does not treat Wisconsin wineries “evenhandedly” under *Granholm*. Although wineries licensed in this state may ship wine directly to consumers in other states under the reciprocity statutes in those states for other out-of-state direct shipment laws, Wisconsin law does not currently authorize in-state wineries to ship directly to Wisconsin consumers. Instead, Wisconsin winery permits authorize the sale of wine only to licensed wholesalers or retailers.³ Wis. Stat. § 125.53.

In short, a new statutory framework addressing the United States Supreme Court’s concerns in *Granholm* should be created to level the playing field for *all* wineries that want to ship their products directly to Wisconsin consumers.

² At this point in time, Wisconsin has reciprocal wine agreements with two states: California and Oregon. On June 7, 2006, the reciprocity agreement between Washington and Wisconsin for direct shipment of wine was terminated on account of Washington’s new direct shipment law.

³ Under current law, a Wisconsin winery would have to obtain either a Class A (liquor store) or Class B (wine bar) retail license in order to sell wine directly to Wisconsin consumers. While these licenses permit the face-to-face sale of wine to consumers on the licensed premises, they do not permit the direct shipment of wine to a consumer’s residence. Moreover, as noted below, the current law needs to be changed to eliminate the ability of wineries to hold retail licenses.

Costco and Direct Sales to Retailers

In 2004, mega-retailer Costco filed a lawsuit in federal district court in Seattle challenging Washington State's three-tier distribution system and other allegedly anti-competitive provisions in the state's liquor laws. (*Costco Wholesale Corporation v. Hoen*, 04-CV-360, filed Feb. 20, 2004, W.D. Wash.) After a series of motions, hearings and rulings, the federal district court ultimately held on April 21, 2006 that several aspects of Washington State's three-tier regulatory system are anti-competitive and violate federal antitrust law. An appeal of the district court decision was filed with the U.S. Court of Appeals for the 9th Circuit and oral argument occurred on March 8, 2007.

In its most general terms, the litigation was an effort by Costco to strike down state statutory restrictions that prevent it and other retailers in Washington from dealing directly with manufacturers. Costco asserted that it can deliver alcohol beverages to the consumer far less expensively if manufacturers are permitted to self-distribute and make direct sales to retailers.

One count of Costco's four count complaint alleged that Washington law discriminates against out-of-state wineries and breweries by allowing Washington-based wineries and brewers to distribute their products directly to retailers. While not involving direct sales to consumers, this argument was similar to the Commerce Clause challenges presented in *Granholm*. Not surprisingly, the federal district court in *Costco* invalidated these Washington direct shipment statutes as unconstitutional under the Commerce Clause and following the precedent established in *Granholm*. In-state and out-of-state manufacturers must be treated evenhandedly.

The other three counts in Costco's complaints were based on federal antitrust laws prohibiting unreasonable restraints of trade, the privileges and immunities clause of the U.S. Constitution and anti-monopoly provisions of the Washington State Constitution. All of these arguments were in support of Costco's ultimate objective: free-market alcohol sales and distribution.

Ruling for *Costco*, the Federal district court decision invalidated Washington's laws requiring:

- **price posting** – beer and wine prices from manufacturers and distributors must be posted with state regulators and no sales can be made other than at posted prices;
- **price holding** – beer and wine prices to be posted in advance of their holding dates and be held for a full month;
- **uniform pricing** – distributors must sell beer and wine at a uniform price to all retailers;
- **sales on credit** – retailers cannot purchase beer and wine on credit;
- **volume discounts** – distributors cannot sell beer or wine at a volume discount;
- **delivered price** – distributors must sell beer and wine to all retailers at a uniform delivered price, even if retailer pays the freight and picks up the goods;

- **central warehousing** – retailers prohibited from receiving beer and wine at its own warehouse or a bonded warehouse to transfer to its various licensed locations; and,
- **minimum mark-up** – beer and wine prices must be marked-up a minimum of 10 percent from manufacturer to wholesaler and from wholesaler to retailer.

The U.S. Court of Appeals is likely to issue its decision later this year. The appeal is being closely watched as at least 30 other states and alcohol regulators have filed briefs in support of Washington.

Granholm and Costco: A Challenge to the Three-Tier System

Costco is the decision of a single federal district court and a decision that is unlikely to be the final word on these issues and validity of Washington's liquor laws. Whether the decision will directly affect liquor laws in other states is unknown at this time. However, the *Costco* decision raises many important issues for other states to consider in reviewing their existing state laws post-*Granholm* on the sale and distribution of alcoholic beverages through a three-tier system. The combination of *Costco* and *Granholm* – as well as the retail-direct litigation pending in several states – cannot be ignored if Wisconsin is to maintain and preserve its three-tier system for the sale and distribution of intoxicating liquor and accompanying tax collection. Statutory changes need to occur that reaffirm the importance and integrity of Wisconsin's three-tier system.

Proposed Framework For The Direct Shipment Of Wine

In order to level the playing field for all wineries that want to ship their wines directly to Wisconsin consumers, current state law on reciprocal wine agreements should be repealed, and an "evenhanded" framework for regulating the direct shipment of wine should be created and put in its place. This new framework should require all wineries to obtain a new type of permit – a direct wine shippers' permit – before they ship any wine directly to a Wisconsin consumer.

A proposal for the creation of a direct wine shippers' permit and the regulation of persons holding such permits is set forth below. The proposed framework incorporates many of the current requirements that must be met by wineries engaging in direct shipment activities under reciprocal wine agreements, but it is an entirely new statute that address the concerns of the United States Supreme Court in *Granholm*.

125.535 Direct wine shippers' permits.

(1) AUTHORIZED ACTIVITIES. The department shall issue direct wine shippers' permits authorizing the permittee to ship wine directly to an individual in this state who is of the legal drinking age, who acknowledges in writing receipt of the wine shipped and who is not intoxicated at the time of delivery. A signature on the delivery form of the common carrier by a person of legal drinking age acknowledges delivery in writing.

(2) ANNUAL PERMIT FEE. The department shall charge the following annual fees for each permit issued under this section:

1. For permittees that ship more than 90 liters of wine annually to individuals in this state, \$1,000.
2. For permittees that ship between 27 and 90 liters of wine annually to individuals in this state, \$500.
3. For permittees that ship less than 27 liters of wine annually to individuals in this state, \$100.

(3) PERSONS ELIGIBLE. (a) A direct wine shippers' permit may be issued to any person who manufactures and bottles wine on premises covered by:

1. A valid manufacturers' or rectifiers' permit under s. 125.52;
2. A winery permit under s. 125.53; or
3. A winery license, permit, or other authorization issued to the winery by any state from which the winery will ship wine into this state.

(b) A winery located outside of this state is eligible for a direct wine shippers' permit under sub. (2)(a)3. if all of the following apply:

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

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

(4) ANNUAL REPORT REQUIRED. A permittee under this section shall submit a report to the department, by January 31 of each year, on forms furnished by the department, providing the identity, quantity, and price of all products shipped to individuals in this state during the previous calendar year, along with the name, address, and birthdate of each person who purchased these products and each person to whom these products were shipped.

(5) LABELS. Containers of wine shipped to an individual in this state under this section must be clearly labeled to indicate that the package may not be delivered to an underage person or to an intoxicated person.

(6) RESTRICTIONS. No individual may resell wine received under this section or use it for a commercial purpose.

(7) ANNUAL LIMIT. No individual in this state may receive more than 27 liters of wine annually under this section, and no permittee under this section may ship more than 27 liters of wine annually to an individual in this state. This subsection does not apply to purchases made under a permit issued under s. 125.61.

(8) PENALTIES. Failure to comply with the requirements of this section or s. 139.035 shall carry a penalty of revocation by the secretary of revenue of the permit.

Any person holding a direct shippers' permit should be required to pay Wisconsin's occupational tax on any amount of wine that is shipped directly to an individual in this state. Accordingly, section 139.035, Wis. Stat., should be repealed and recreated as set forth below. In addition, in order to provide further scrutiny over direct wine shipments, persons holding a direct wine shippers' permit should be required to file an addendum to their regular monthly tax return, on forms furnished by DOR, that summarizes their direct shipment activities for the previous month. The addendum should require the permittee to provide, at a minimum, the identity, quantity, and price of all wine shipped directly to individuals in Wisconsin during the previous calendar month, along with the name, address, and birthdate of each person who purchased the wine. The addendum also should require the permittee to attach a copy of the signature provided by the person of legal drinking age who acknowledged delivery of the wine. In addition to the addendum, a copy of a signed attestation from the delivery person who reviewed proof of age identification and verified that the person was not intoxicated at the time of delivery shall also be provided to DOR.

~~139.035 Reciprocal agreements. The department shall negotiate and, if possible, enter into reciprocal agreements with the appropriate officials of other states concerning the shipping of wine to individuals in this state under ss. 125.58~~

~~(4) and 125.68 (10) (bm). The purpose of the agreements shall be to permit those shipments while ensuring that the fiscal impact of shipments of wine to individuals in this state from other states, and from this state to individuals in other states, is fair to this state. An agreement under this section may include the provision that this state will tax wine shipped from this state to individuals in another state and the other state will tax wine shipped to individuals in this state.~~

139.035 Wine shipped directly to individuals in this state. (1) All wine shipped directly to an individual located in Wisconsin by a person holding a direct wine shippers' permit under s. 125.535 shall be sold with the occupational tax imposed under s. 139.03 included in the selling price. Each person holding a direct wine shippers' permit under s. 125.535 shall be required to file an addendum to the monthly liquor tax return required under s. 139.06(2)(a), on forms furnished by the department, that provides, at minimum, the identity, quantity, and price of all wine shipped to individuals in this state during the previous calendar month, along with the name, address, and birthdate of each person who purchased the wine and a copy of the signature provided by the person of legal drinking age who acknowledged delivery of the wine. A form shall also be developed by the department for recording an attestation of the delivery person who reviewed the proof of age identification provided at the time of delivery and determined that the recipient was not intoxicated.

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

If recreated in this way, persons holding a direct wine shippers' permit:

- Would be required to pay the occupational tax to, and on a monthly return field with, the DOR on or before the 15th of every month following the month in which the tax liability is incurred. *See* Wis. Stat. § 139.06(2)(a); Tax 8.11, Wis. Admn. Code.⁴ In order to secure payment of these taxes, the DOR would require the permittee to provide security, enter into a security bond, and/or maintain a deposit with DOR as provided in section 139.06(2)(b)-(c), Wis. Stat.
- Would be subject to the following tax, recordkeeping, and enforcement provisions: (a) Wis. Stat. § 139.096 (failure to file returns within the time prescribed); (b) Wis. Stat. § 139.11(1) (preservation of records); (c) Wis. Stat. 139.25 (penalties for unpaid, delinquent, or incorrect returns; nonpayment of taxes; false or fraudulent returns; failure to furnish a return or data required by

⁴ For out-of-state wineries, tax liability would be incurred by the shipper when wine is shipped into Wisconsin. Wis. Stat. § 139.06(2)(a). In the case of wine produced or bottled within Wisconsin, tax liability would be incurred, as it currently is, by the person holding the winery license (and, in this case, the direct shippers' permit) at the time of first sale within this state. *Id.*

DOR; assisting false or fraudulent returns; failure to keep records; miscellaneous).⁵

In addition to the changes suggested above, the following changes should be made to current Wisconsin law in order to: (a) repeal all statutory references to reciprocal wine agreements; and (b) provide persons holding a direct wine shippers' permit the same rights and privileges that currently are held by in-state and certain out-of-state wineries under reciprocal wine agreements:

125.52(8) Manufacturers' and rectifiers' permits.

~~(8) SALES TO INDIVIDUALS IN OTHER STATES. A permittee under this section that ships wine from this state to individuals in another state under authorization of a reciprocal agreement specified in s. 139.035 shall submit a report to the department, by January 31 of each year, on forms furnished by the department. The report shall include the identity, quantity, and price of all products shipped during the previous calendar year from this state to individuals in another state under authorization of a reciprocal agreement specified in s. 139.035. The report shall also include the name, address, and birthdate of each person who purchased these products and each person to whom these products were shipped. The department shall keep confidential, in the same manner required for tax returns under s. 71.78 (1), (4), and (5) to (8), reports submitted under this subsection.~~

125.53 Winery permit. (1) The department shall issue only to a manufacturing winery in this state that holds a valid certificate issued under s. 73.03 (50) a winery permit authorizing the manufacture and bottling of wine on the premises covered by the permit for sale at wholesale to other licensees or permittees. A permittee under this section may offer on the premises taste samples of wine manufactured on the premises to persons who have attained the legal drinking age. A permittee under this section may also have either a "Class A" or "Class B" license, but not both. If a "Class A" or "Class B" liquor license has also been issued to the winery, the winery may offer the taste samples on the "Class A" or "Class B" premises.

(2) Winery permits may be issued to any person except a foreign corporation, a foreign limited liability company or a person acting as an agent for or in the employ of another.

~~(3) A permittee under this section that ships wine from this state to individuals in another state under authorization of a reciprocal agreement specified in s. 139.035 shall submit a report to the department, by January 31 of each year, on forms furnished by the department. The report shall include the identity, quantity, and price of all products shipped during the previous calendar~~

⁵ Note that failure to comply with Wis. Stat. § 139.11(1) (preservation of records) constitutes grounds for permit revocation. Wis. Stat. § 139.25(9). In addition, any person who violates any provision of Wis. Stat. §§ 139.01 to 139.22 for which a specific penalty is not provided is subject to a fine of \$50 to \$500, imprisonment of 10 to 90 days, and/or revocation of the person's license or permit. *Id.* at (10).

~~year from this state to individuals in another state under authorization of a reciprocal agreement specified in s. 139.035. The report shall also include the name, address, and birthdate of each person who purchased these products and each person to whom these products were shipped. The department shall keep confidential, in the same manner required for tax returns under s. 71.78 (1), (4), and (5) to (8), reports submitted under this subsection.~~

125.58 Out-of-state shippers' permit; exception to requirement.

...

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

1. The winery is located in a state that has a reciprocal agreement with this state under s. 139.035.

2. The winery holds a valid business tax registration certificate issued under s. 73.03 (50). Notwithstanding s. 73.03 (50), the department shall charge an annual fee of \$10 for this registration.

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

4. The winery submits a report to the department, by January 31 of each year, on forms furnished by the department, providing the identity, quantity, and price of all products shipped into this state during the previous calendar year, along with the name, address, and birthdate of each person who purchased these products and each person to whom these products were shipped. The department shall keep confidential, in the same manner required for tax returns under s. 71.78 (1), (4), and (5) to (8), reports submitted under this subdivision.

(b) An out-of-state shipper's permit is not required for shipments into this state under this subsection.

125.68 General restrictions and requirements.

...

(10) SHIPMENTS INTO STATE. (a) Except as provided in par. ~~(b)~~ s. 125.535, no intoxicating liquor may be shipped into this state unless consigned to a person wholesaler holding a permit for the sale of intoxicating liquor, other than a retail "Class B" permit.

(b) Except as provided in par. ~~(b)~~ s. 125.535, no common carrier or other person may transport into and deliver within this state any intoxicating liquor unless it is consigned to a person wholesaler holding a permit for the sale of intoxicating liquor, other than retail "Class B" permit. Any common carrier violating this paragraph shall forfeit \$100 for each violation.

~~(b)~~ A winery in compliance with the requirements of s. 125.58 (4) may ship wine into this state under s. 125.58 (4) from a state that has a reciprocal agreement with this state under s. 139.035 to an individual who is of the legal drinking age and who acknowledges in writing receipt of the wine shipped if the shipping container is clearly labeled to indicate that the package may not be delivered to an underage person or to an intoxicated person. A person who

direct
can't sell to
mfr. for
blending.

DRAFT
06-19-07

~~receives wine under this paragraph may not sell it or use it for a commercial purpose. A signature on the delivery form of the common carrier by a person of legal drinking age acknowledges delivery in writing.~~

~~(bs) No individual may resell wine received under par. (bm) or receive more than 27 liters of wine annually under par. (bm).~~

~~(e) This subsection does not apply to purchases made under a permit issued under s. 125.61.~~

Other Proposed Statutory Changes

In addition to updating the proposed framework for the direct shipment of wine, additional statutory changes are necessary in maintaining and preserving Wisconsin's three-tier system.

- **Restatement of Legislative Intent**

Importance of the role of the three-tier system in tax collection and the protection of public health and welfare should be highlighted.

125.01 Legislative intent. This chapter shall be construed as an enactment of the legislature's support for the 3-tier system for alcohol beverages production, distribution, and sale that, through uniform statewide regulation, provides this state regulatory authority over the production, storage, distribution, transportation, sale, and consumption of alcohol beverages by and to its citizens, for the benefit of the public health and welfare and this state's economic stability. Without the 3-tier system, the effective statewide regulation and collection of state taxes on alcoholic beverage sales would be seriously jeopardized. It is further the intent of the legislature that without a specific statutory exception, all sales of alcohol beverages shall occur through the three-tier system, from manufacturers to licensed wholesale distributors to retailers to consumers. Face-to-face sales at licensed premises directly advance the state's interest in preventing alcohol sales to underage or intoxicated person.

- **Clarifying Face-to-Face Sales Requirement for Retailers**

A retail license authorizes only face-to-face sales to consumers at the licensed premises. However, in the age of Internet sales, this requirement needs to be stated explicitly.

125.51(11). Face-to-Face Sales. A retail license authorizes only face-to-face sales to consumers at the licensed premises.

- **Clarifying the Permitted Actions of Manufacturers and Rectifiers**

Manufacturers and rectifiers of intoxicating liquor should not be allowed to act as wholesalers and, instead, should be required to sell only to licensed wholesale distributors.

125.52 Manufacturers' and rectifiers' permits.

(1) **AUTHORIZED ACTIVITIES.** The department shall issue manufacturers' and rectifiers' permits which authorize the manufacture or rectification, respectively, of intoxicating liquor on the premises covered by the permit. A person holding a manufacturer's or rectifier's permit may manufacture, or bottle or ~~wholesale~~ wine, pursuant to the terms of the permit, without procuring a winery permit. A manufacturer's or rectifier's permit entitles the

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

- **Eliminate Grandfathered Exceptions to the Restrictions on Dealings**

In order to maintain the integrity of the three-tier system, the state must strictly limit the restrictions on dealings between manufacturers, rectifiers, wholesalers and retailers. Accordingly, statutory changes are necessary to eliminate a few grandfathered situations for licensees and permittees to hold interests across tiers.

Moreover, it should be clear that all restrictions on dealings also apply to out-of-state shippers. That is, these out-of-state wineries and distillers should be treated the same as in-state manufacturers for "even-handed" regulation.

125.53 Winery permit. (1) The department shall issue only to a manufacturing winery in this state that holds a valid certificate issued under s. 73.03 (50) a winery permit authorizing the manufacture and bottling of wine on the premises covered by the permit for sale ~~at to wholesalers to other licensees or permittees.~~ A permittee under this section may offer on the premises taste samples of wine manufactured on the premises to persons who have attained the legal drinking age. A permittee under this section may also have either a "Class A" or "Class B" license, but not both. If a "Class A" or "Class B" liquor license has also been issued to the winery, the winery may offer the taste samples on the "Class A" or "Class B" premises.

125.69 Restrictions on dealings between manufacturers, rectifiers, wholesalers and retailers.

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

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

~~2. A wholesaler may have an interest in a corporation that owns and operates a golf course and leases premises on the golf course to the holder of a~~

~~"Class B" license or permit for the premises, if the wholesaler's permit and the "Class B" license or permit were originally issued to the corporation and to the "Class B" licensee or permittee before June 1, 1981. The wholesaler's permit and "Class B" license or permit shall be renewed annually, unless revoked under s. 125.12. An application for a wholesaler's permit to which this paragraph applies shall have attached to it an affidavit stating the applicant's interest in the "Class B" premises.~~

~~3. A brewer may hold both a "Class B" license for the sale of intoxicating liquor on brewery premises and a wholesaler's permit for the sale of wine only issued under s. 125.54.~~

~~4. A winery that has a permit under s. 125.53 may have an ownership interest in a "Class B" license issued under s. 125.51 (3) (am).~~

~~(c) No manufacturer, whether located within or without this state, may hold any direct or indirect interest in any wholesale permit or establishment, except as provided in s. 125.53., and except that a manufacturer that is also a brewer may hold a permit issued under s. 125.54 for the wholesale sale of wine only. This paragraph does not prohibit any of the following persons from obtaining a permit under s. 125.65:~~

~~1. An employee of a person who has been issued a permit under s. 125.53.~~

~~2. A licensee who was issued a "Class B" license under s. 125.51 (3) (am).~~

~~3. A "Class A" licensee who has also been issued a permit under s. 125.53.~~

~~(d) No retailer may hold any direct or indirect interest in any manufacturer, rectifier, winery or wholesaler.~~

(2) VOLUME DISCOUNTS TO CAMPUSES AND RETAILERS. A wholesaler of intoxicating liquor shall charge the same price to all campuses and retail licensees and permittees making purchases in similar quantities. Any discount offered on intoxicating liquor shall be delivered to the retailer in a single transaction and single delivery, and on a single invoice.

(3) RETAIL PURCHASE CREDIT RESTRICTIONS. (a) *Restrictions on sales.* 1. No intoxicating liquor retail licensee or retail permittee may:

a. Receive, purchase or acquire intoxicating liquor from any permittee except for cash or credit for a period of not more than 30 days.

b. Receive, purchase or acquire intoxicating liquor from any permittee if at the time of the receipt, purchase or acquisition, he or she is indebted to any permittee for intoxicating liquor received, purchased, acquired or delivered more than 30 days earlier.

2. No campus or intoxicating liquor retail licensee or permittee may receive any intoxicating liquor on consignment or on any basis other than a bona fide sale.

(b) *Restrictions on issuance of licenses and permits.* No intoxicating liquor retail license or retail permit may be issued under this chapter to any person having an indebtedness for intoxicating liquor outstanding more than 30 days. In each application for a retail license or retail permit, the applicant shall state whether the applicant has any indebtedness for intoxicating liquor to any licensee or permittee which has been outstanding for more than 30 days.

Direct
brewer
125.29
or 125.31

not quite ←

~~(e) Wholesalers holding retail licenses and permits. For purposes of this subsection, a person holding both an intoxicating liquor wholesale permit and intoxicating liquor retail license is deemed an intoxicating liquor retailer.~~

(c) *Penalties.* A retail licensee or retail permittee who violates par. (a) is subject to the penalties in s. 125.11, except that he or she may not be imprisoned.

(d) *Costs.* The cost of administering this subsection shall be charged to the manufacturer, rectifier and wholesaler permittees. The department shall determine the costs and shall establish the procedure for apportioning the cost against the permittees and provide for the method of payment to the department.

(4) SOURCE OF SUPPLY. No wholesaler may purchase intoxicating liquor for resale unless he or she purchases it either from the primary source of supply for the brand of intoxicating liquor sought to be sold or from a wholesaler within this state who holds a permit issued under this chapter. No wholesaler may sell intoxicating liquor purchased by the wholesaler to any other licensee or permittee under this chapter if the intoxicating liquor has not been purchased by the wholesaler from the primary source of supply or from a wholesaler within the state holding a permit issued under this chapter.

(5) CAMPUSES AND RETAILERS TO PURCHASE FROM PERSONS HOLDING PERMITS. (a) No campus or retail licensee or permittee may purchase or possess intoxicating liquor purchased from any person other than a ~~manufacturer, rectifier or~~ wholesaler holding a permit under this chapter for the sale of intoxicating liquor.

(b) Any person who violates par. (a), if the total volume of intoxicating liquor purchased or possessed by that person in one month is 12 liters or less, may be required to forfeit not more than \$100. A person who purchases or possesses more than 12 liters of intoxicating liquor in one month in violation of par. (a) shall be fined not less than \$1,000 nor more than \$10,000.

(c) Notwithstanding par. (b), a "Class B" licensee who purchases intoxicating liquor from a "Class A" licensee for resale or who possesses intoxicating liquor purchased from a "Class A" licensee for resale may be fined not more than \$100.

(6) LICENSE OR PERMIT REVOCATION. The violation of sub. (1), (3) or (5) is sufficient cause for the revocation of the license or permit of any licensee or permittee receiving the benefit from the prohibited act as well as the revocation of the license or permit of the licensee or permittee committing the prohibited act.

- **Public Availability of Information**

To ensure better access to information on permit holders active in the sale and distribution of intoxicating liquor in Wisconsin, the legislation would clarify what data is publicly available.

139.11. Records and reports

(4) Confidentiality. Sections 71.78(1) and (4) to (9) and 71.83(2)(a)3, relating to confidentiality of income, franchise and gift tax returns, apply to any information obtained from any person on a fermented malt beverage or intoxicating liquor tax return, report, schedule, exhibit or other document or from an audit report relating to any of those documents, except that the department of revenue shall publish brewery production and sales statistics, and shall publish or permit the publication of statistics on the total number of gallons of the types and brands of intoxicating liquor sold in this state and shall publish and make available on the department's website a current and regularly updated list of permit holders that minimally includes detailed information on the name, address, contact person and date of permit issuance for every manufacturer and rectifier permit issued under section 125.52, winery permit issued under section 125.53, direct wine shippers permits under section 125.535, wholesaler permit issued under section 125.54 and out-of-state shipper permit issued under section 125.58.

- **Severability**

125.001 Severability. If any provision or clause of this Chapter or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

use
1983

mn278232_3

Gary, Aaron

From: Gary, Aaron
Sent: Thursday, June 21, 2007 4:44 PM
To: Russell, Faith
Subject: RE: Direct wine shipper draft: LRBb0521

Hi Faith,

I need to get this draft into editing soon. Can you please forward this e-mail to the requester. I am finishing the first shot of the draft under the following assumptions:

1. The requester does not want to limit these new direct wine shippers' permits to state residents or corps. with state agents, and does not want to require beverage server training courses for permittees.
2. The requester does not want to alter current practice with respect to caterers.

If I am incorrect, please let me know as soon as possible. If I do not receive a response, the draft will assume the foregoing.

Thank you! Aaron

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

From: Russell, Faith
Sent: Thursday, June 21, 2007 2:48 PM
To: Gary, Aaron
Subject: RE: Direct wine shipper draft: LRBb0521

Hi, Aaron.

Do you mind if I forward your note to the initial requestor of this draft? I haven't heard back from her, and I'd like to make sure she understands that this is a drafting question.

Faith

From: Gary, Aaron
Sent: Thursday, June 21, 2007 1:46 PM
To: Russell, Faith
Subject: Direct wine shipper draft: LRBb0521

Hi Faith,

By its omission of certain provisions, the proposed draft provided to me would limit a direct wine shippers' permit to a resident of Wisconsin if the permittee is an individual or, if the permittee is a corporation, would require the corporation to appoint a resident agent. I suspect that this omission does NOT reflect the intent, but I want to

06/21/2007

double check. (A resident could own a winery in another state from which wine is shipped; the in-state agent requirement would not be unusual but does seem inconsistent with the expressed purpose of the draft.) Can you ask about this? Also, I assume there is no need for the out of state winery to complete a "responsible beverage server training course," right? (another requirement arising from an omission in the proposed draft) thanks.
Aaron

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

Gary, Aaron

From: Gary, Aaron
Sent: Thursday, June 21, 2007 3:00 PM
To: Russell, Faith
Subject: RE: Direct wine shipper draft: LRBb0521

FYI, another interesting point you might want to mention to the requester, this liquor wholesaler's proposal, in addition to having a potentially adverse impact on state wineries, will probably END caterers being able to serve alcohol under DOR's interpretation of current law. (I don't think DOR can "interpret around" the face-to-face requirement in the drafting request) I mention it because of the other request I've worked on with you related to ch. 125. Feel free to forward this e-mail to the requester. I'll put it in a drafter's note too.

Aaron

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

From: Russell, Faith
Sent: Thursday, June 21, 2007 2:48 PM
To: Gary, Aaron
Subject: RE: Direct wine shipper draft: LRBb0521

Hi, Aaron.

Do you mind if I forward your note to the initial requestor of this draft? I haven't heard back from her, and I'd like to make sure she understands that this is a drafting question.

Faith

From: Gary, Aaron
Sent: Thursday, June 21, 2007 1:46 PM
To: Russell, Faith
Subject: Direct wine shipper draft: LRBb0521

Hi Faith,

By its omission of certain provisions, the proposed draft provided to me would limit a direct wine shippers' permit to a resident of Wisconsin if the permittee is an individual or, if the permittee is a corporation, would require the corporation to appoint a resident agent. I suspect that this omission does NOT reflect the intent, but I want to double check. (A resident could own a winery in another state from which wine is shipped; the in-state agent requirement would not be unusual but does seem inconsistent with the expressed purpose of the draft.) Can you ask about this? Also, I assume there is no need for the out of state winery to complete a "responsible beverage server training course," right? (another requirement arising from an omission in the proposed draft) thanks.

Aaron

06/21/2007

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

m 6/21

Imk
D - Note

LFB:.....Russell - Direct wine shipments; intoxicating liquor wholesalers

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2007 SENATE BILL 40

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

2 1. Page 1248, line 14: after that line insert:

3 SECTION 2757r. 125.01 of the statutes is amended to read:

4 **125.01 Legislative intent.** This chapter shall be construed as an enactment
5 of the legislature's support for the 3-tier system for alcohol beverages production,
6 distribution, and sale that, through uniform statewide regulation, provides this
7 state regulatory authority over the production, storage, distribution, transportation,
8 sale, and consumption of alcohol beverages by and to its citizens, for the benefit of
9 the public health and welfare and this state's economic stability. Without the 3-tier
10 system, the effective statewide regulation and collection of state taxes on alcohol

1 beverages sales would be seriously jeopardized. It is further the intent of the
 2 legislature that without a specific statutory exception, all sales of alcohol beverages
 3 shall occur through the 3-tier system, from manufacturers to licensed wholesalers
 4 to retailers to consumers. Face-to-face retail sales at licensed premises directly
 5 advance the state's interest in preventing alcohol sales to underage or intoxicated
 6 persons.

History: 1981 c. 79; 2005 a. 103.

7 **SECTION 2757t.** 125.015 of the statutes is created to read:

8 **125.015 Severability.** If any provision or clause of this chapter or its
 9 application to any person or circumstance is held invalid, the invalidity shall not
 10 affect other provisions or applications of this chapter that can be given effect without
 11 the invalid provision or application, and to this end the provisions of this chapter are
 12 severable.

13 **SECTION 2757p.** 125.02 (3r) of the statutes is created to read:

14 125.02 (3r) "Caterer" means any person holding a restaurant permit under s.
 15 254.64 who is in the business of preparing food and transporting it for consumption
 16 on premises where gatherings, meetings, or events are held, if the sale of food at each
 17 gathering, meeting, or event accounts for greater than 50 percent of the gross
 18 receipts of all of the food and beverages served at the gathering, meeting, or event."

19 **2.** Page 1249, line 7: after that line insert:

20 **"SECTION 2759c.** 125.12 (5) of the statutes is amended to read:

21 125.12 (5) REVOCATIONS OR SUSPENSIONS OF, OR REFUSALS TO RENEW, PERMITS BY
 22 THE DEPARTMENT. The department may, after notice and an opportunity for hearing,
 23 revoke, suspend or refuse to renew any retail permit issued by it for the causes
 24 provided in sub. (4) and any other permit issued by it under this chapter for any

1 violation of this chapter or ch. 139, except that, for a violation of sub. (4) (ag) 6, with
2 respect to a license issued under s. 125.51 (4) (v) or a violation of s. 125.535 or
3 139.035, the department shall revoke the license or permit. A revocation, suspension
4 or refusal to renew is a contested case under ch. 227.

5 History: 1981 c. 79; 1983 a. 516; 1987 a. 93; 1993 a. 98; 1995 a. 27 s. 9126 (19); 1995 a. 417, 448; 1997 a. 27, 35, 166, 187; 1999 a. 9; 2005 a. 14, 25, 442.

6 **SECTION 2759d.** 125.51 (6) of the statutes is created to read:

7 125.51 (6) FACE-TO-FACE RETAIL SALES. Except as provided in sub. (3) (bm) and
8 (bs) and except with respect to caterers, a retail license issued under this section
9 authorizes only face-to-face sales to consumers at the licensed premises.

10 **SECTION 2759e.** 125.52 (1) of the statutes is amended to read:

11 125.52 (1) AUTHORIZED ACTIVITIES. The department shall issue manufacturers'
12 and rectifiers' permits which authorize the manufacture or rectification,
13 respectively, of intoxicating liquor on the premises covered by the permit. A person
14 holding a manufacturer's or rectifier's permit may manufacture, and bottle or
15 wholesale wine, pursuant to the terms of the permit, without procuring a winery
16 permit. A manufacturer's or rectifier's permit entitles the permittee to sell
17 intoxicating liquor to wholesalers holding a permit under s. 125.54 from the premises
18 described in the permit. ~~Holders of rectifiers' permits may sell intoxicating liquor~~
19 ~~rectified by the permittee to retailers without any other permit.~~ No sales may be
20 made for consumption on the premises of the permittee. Possession of a permit under
21 this section does not authorize the permittee to sell tax-free intoxicating liquor and
wines brought into this state under s. 139.03 (5).

22 History: 1981 c. 79; 1985 a. 302; 1989 a. 253; 1991 a. 39; 1993 a. 112, 259, 491; 1995 a. 27; 2001 a. 16.

23 **SECTION 2759f.** 125.52 (6) of the statutes is repealed.

24 **SECTION 2759g.** 125.52 (8) of the statutes is repealed.

SECTION 2759h. 125.53 (1) of the statutes is amended to read:

1 125.53 (1) The department shall issue only to a manufacturing winery in this
2 state that holds a valid certificate issued under s. 73.03 (50) a winery permit
3 authorizing the manufacture and bottling of wine on the premises covered by the
4 permit for sale ~~at wholesale to other licensees or permittees~~ to wholesalers holding
5 a permit under s. 125.54. A permittee winery holding a permit under this section
6 may offer on the premises taste samples of wine manufactured on the premises to
7 persons who have attained the legal drinking age. A permittee under this section
8 may also have either a "Class A" or "Class B" license, but not both. If a "Class A" or
9 "Class B" liquor license has also been issued to the winery, the winery may offer the
10 taste samples on the "Class A" or "Class B" premises.

History: 1981 c. 79; 1983 a. 74; 1989 a. 30; 1993 a. 112; 1995 a. 27; 2001 a. 16.

11 ~~SECTION 2759i.~~ 125.53 (3) of the statutes is repealed.

12 ~~SECTION 2759j.~~ 125.535 of the statutes is created to read:

13 **125.535 Direct wine shippers' permits.** (1) AUTHORIZED ACTIVITIES. The
14 department shall issue direct wine shippers' permits authorizing the permittee to
15 ship wine directly to an individual in this state who is of the legal drinking age, who
16 acknowledges in writing receipt of the wine shipped, and who is not intoxicated at
17 the time of delivery. A signature on the delivery form of the common carrier by a
18 person of legal drinking age acknowledges delivery in writing.

19 (2) ANNUAL PERMIT FEE. The department shall charge the following annual fee
20 for each permit issued under this section:

21 (a) For a permittee that ships more than 90 liters of wine annually to
22 individuals in this state, \$1,000.

23 (b) For a permittee that ships not less than 27 liters nor more than 90 liters of
24 wine annually to individuals in this state, \$500.

1 (c) For a permittee that ships less than 27 liters of wine annually to individuals
2 in this state, \$100. ✓

3 (3) PERSONS ELIGIBLE. (a) A direct wine shipper's permit may be issued under
4 this section to any person that manufactures and bottles wine^e on premises covered by
5 any of the following:

6 1. A manufacturer's or rectifier's permit under s. 125.52. ✓

7 2. A winery permit under s. 125.53. ✓

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

10 (b) A winery located outside of this state is eligible for a direct wine shipper's
11 permit under par. (a) 3. if all of the following apply: ✓

12 1. The winery holds a valid business tax registration certificate issued under
13 s. 73.03 (50). ✓

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

18 (c) Notwithstanding s. 125.04 (5) (a), natural persons obtaining direct wine
19 shippers' permits are not required to be residents of this state. Notwithstanding s.
20 125.04 (5) (a) 5., a person is not required to complete a responsible beverage server
21 training course to be eligible for a permit under this section. ✓ Notwithstanding s.
22 125.04 (6), corporations or limited liability companies obtaining direct wine shippers'
23 permits are not required to appoint agents. ✓

24 (4) ANNUAL REPORT REQUIRED. A permittee under this section shall submit a
25 report to the department, by January 31 of each year, on forms furnished by the

1 department, providing the identity, quantity, and price of all products shipped to
2 individuals in this state during the previous calendar year, along with the name,
3 address, and birthdate of each person who purchased these products and each person
4 to whom these products were shipped.

5 (5) LABELS. Containers of wine shipped to an individual in this state under this
6 section shall be clearly labeled to indicate that the package may not be delivered to
7 an underage person or to an intoxicated person.

8 (6) RESTRICTIONS. No individual may resell, or use for a commercial purpose,
9 wine received by the individual that is shipped under authority of this section.

10 (7) ANNUAL LIMIT. No individual in this state may receive more than 27 liters
11 of wine annually shipped under authority of the section, and no permittee under this
12 section may ship more than 27 liters of wine annually to an individual in this state.

13 This subsection does not apply to purchases made under a permit issued under s.
14 125.61.

15 **SECTION 2759k.** 125.54 (1) of the statutes is amended to read:

16 125.54 (1) AUTHORIZED ACTIVITIES. The department shall issue wholesalers'
17 permits authorizing the permittee to sell intoxicating liquor at wholesale from the
18 premises described in the permit. ~~Except as provided under s. 125.69 (1) (b) 3., the~~
19 The permittee may not sell intoxicating liquor for consumption on the premises. If
20 a wholesale permit is issued to a brewery that holds a "Class B" license, the permit
21 shall authorize the wholesale sale of wine only. Possession of a permit under this
22 section does not authorize the permittee to sell tax-free intoxicating liquor and wine
23 brought into this state under s. 139.03 (5).

1 **SECTION 2759L.** 125.58 (4) (a) (intro.) of the statutes is renumbered 125.58 (4)
2 and amended to read:

3 125.58 (4) (a) A winery located outside of this state may ship wine into this state
4 as provided under s. ~~125.68 (10) (bm)~~ if all of the following apply: 125.535 and is not
5 required to hold an out-of-state shipper's permit under this section. ✓

History: 1981 c. 79; 1983 a. 27; 1987 a. 399; 1989 a. 253; 1991 a. 39; 1993 a. 112, 259, 491; 1995 a. 27; 2001 a. 16; 2001 a. 104 s. 136.

6 **SECTION 2759m.** 125.58 (4) (a) 1, to 4. and (b) of the statutes are repealed.
7 ② ~~SECTION 2759mm. 125.58(4)(b) of the statutes is repealed.~~
8 **SECTION 2759n.** 125.68 (10) (a) of the statutes is amended to read:

9 125.68 (10) (a) Except as provided in ~~par. (bm)~~ s. 125.535, no intoxicating liquor
10 may be shipped into this state unless consigned to a person holding a wholesaler's
11 permit ^{plain} for the sale of intoxicating liquor, other than a retail "Class B" permit under
12 s. 125.54.

History: 1981 c. 79, 158, 202; 1983 a. 74; 1983 a. 189 s. 329 (6); 1983 a. 203 s. 47; 1983 a. 349; 1985 a. 28, 221, 317; 1987 a. 27, 121, 399; 1989 a. 30, 253; 1991 a. 28, 39; 1993 a. 27, 112; 1995 a. 27 s. 9126 (19); 1997 a. 283; 2001 a. 16, 109; 2005 a. 25, 268; 2007 a. 3.

12 **SECTION 2759o.** 125.68 (10) (b) of the statutes is amended to read:

13 125.68 (10) (b) Except as provided in ~~par. (bm)~~ s. 125.535, no common carrier
14 or other person may transport into and deliver within this state any intoxicating
15 liquor unless it is consigned to a person holding a wholesaler's permit for the sale of
16 intoxicating liquor, other than a retail "Class B" permit. Any common carrier
17 violating this paragraph shall forfeit \$100 for each violation under s. 125.54.

History: 1981 c. 79, 158, 202; 1983 a. 74; 1983 a. 189 s. 329 (6); 1983 a. 203 s. 47; 1983 a. 349; 1985 a. 28, 221, 317; 1987 a. 27, 121, 399; 1989 a. 30, 253; 1991 a. 28, 39; 1993 a. 27, 112; 1995 a. 27 s. 9126 (19); 1997 a. 283; 2001 a. 16, 109; 2005 a. 25, 268; 2007 a. 3.

18 **SECTION 2759p.** 125.68 (10) (bm), (bs), and (c) of the statutes are repealed.

19 **SECTION 2759q.** 125.69 (1) (a) of the statutes is amended to read:

20 125.69 (1) (a) No intoxicating liquor manufacturer, rectifier, winery,
21 out-of-state shipper permittee, or wholesaler may hold any direct or indirect
22 interest in any "Class A" license or establishment and no "Class A" licensee may hold
23 any direct or indirect interest in a wholesale permit or establishment, except that a

② ~~SECTION 2759pg. 125.68(10)(bs) of the statutes is repealed.~~

② ~~SECTION 2759pr. 125.68(10)(c) of the statutes is repealed.~~

1 winery that has a permit under s. 125.53 may have an ownership interest in a “Class
2 A” license.

3 History: 1981 c. 79, 202; 1983 a. 26, 69, 182; 1985 a. 5, 15, 302; 1987 a. 403; 1989 a. 30, 31, 253; 1991 a. 39; 1995 a. 27.

3 **SECTION 2759r.** 125.69 (1) (b) 1. of the statutes is amended to read:

4 125.69 (1) (b) 1. Except as provided under ~~subds. 2. to subd. 4.,~~ no intoxicating
5 liquor manufacturer, rectifier, winery, out-of-state shipper permittee, or wholesaler
6 may hold any direct or indirect interest in any “Class B” license or permit or
7 establishment or “Class C” license or establishment and no “Class B” licensee or
8 permittee or “Class C” licensee may hold any direct or indirect interest in a wholesale
9 permit or establishment.

10 History: 1981 c. 79, 202; 1983 a. 26, 69, 182; 1985 a. 5, 15, 302; 1987 a. 403; 1989 a. 30, 31, 253; 1991 a. 39; 1995 a. 27.

10 **SECTION 2759s.** 125.69 (1) (b) 2. and 3. of the statutes are repealed.

11 **SECTION 2759t.** 125.69 (1) (c) (intro.) of the statutes is renumbered 125.69 (1)
12 (c) and amended to read:

13 125.69 (1) (c) No manufacturer, whether located within or without this state,
14 may hold any direct or indirect interest in any wholesale permit or establishment,
15 except as provided in s. 125.53, ~~and except that a manufacturer that is also a brewer~~
16 ~~may hold a permit issued under s. 125.54 for the wholesale sale of wine only. This~~
17 ~~paragraph does not prohibit any of the following persons from obtaining a permit~~
18 ~~under s. 125.65:.~~ Except as provided in s. 125.53, no retail licensee may hold any
19 direct or indirect interest in any manufacturer, rectifier, or winery. ✓

20 History: 1981 c. 79, 202; 1983 a. 26, 69, 182; 1985 a. 5, 15, 302; 1987 a. 403; 1989 a. 30, 31, 253; 1991 a. 39; 1995 a. 27.

20 **SECTION 2759u.** 125.69 (1) (c) 1. to 3. of the statutes are repealed.

21 **SECTION 2759v.** 125.69 (4) (c) of the statutes is repealed.

22 **SECTION 2759w.** 125.69 (6) (a) of the statutes is amended to read:

23 125.69 (6) (a) No campus or retail licensee or permittee may purchase or
24 possess intoxicating liquor purchased from any person other than a manufacturer,

1 ~~rectifier or~~ wholesaler holding a permit under this chapter for the sale of intoxicating
2 liquor.” ✓

History: 1981 c. 79, 202; 1983 a. 26, 69, 182; 1985 a. 5, 15, 302; 1987 a. 403; 1989 a. 30, 31, 253; 1991 a. 39; 1995 a. 27.

3 **3.** Page 1253, line 2: after that line insert:

4 “**SECTION 2780b.** 139.035 of the statutes is repealed and recreated to read: ✓

5 **139.035 Wine shipped directly to individuals in this state.** (1) All wine
6 shipped directly to an individual located in Wisconsin by a person holding a direct
7 wine shipper’s permit under s. 125.535 shall be sold with the occupational tax
8 imposed under s. 139.03 included in the selling price. Each person holding a direct
9 wine shipper’s permit under s. 125.535 shall be required to file an addendum to the
10 monthly liquor tax return required under s. 139.06 (2) (a), on forms furnished by the
11 department, that provides, at minimum, the identity, quantity, and price of all wine
12 shipped to individuals in this state during the previous calendar month, along with
13 the name, address, and birthdate of each person who purchased the wine and a copy
14 of the signature provided by the person of legal drinking age who acknowledged
15 delivery of the wine. ✓ A form shall also be developed by the department for recording
16 an attestation of the delivery person who reviewed the proof of age identification
17 provided at the time of delivery and determined that the recipient was not
18 intoxicated. ✓

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

24 **SECTION 2780f.** 139.11 (4) of the statutes is amended to read:

1 139.11 (4) CONFIDENTIALITY. Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a)
2 3., relating to confidentiality of income, franchise and gift tax returns, apply to any
3 information obtained from any person on a fermented malt beverage or intoxicating
4 liquor tax return, report, schedule, exhibit or other document or from an audit report
5 relating to any of those documents, except that the department of revenue shall
6 publish brewery production and sales statistics and shall publish or permit the
7 publication of statistics on the total number of gallons of the types and brands of
8 intoxicating liquor sold in this state and shall publish and make available on the
9 department's ^{SRB} Internet Web site a current and regularly updated list of permit
10 holders that minimally includes detailed information on the name, address, contact
11 person, and date of permit issuance for every manufacturer's and rectifier's permit
12 issued under s. 125.52, winery permit issued under s. 125.53, direct wine shipper's
13 permit under s. 125.535, wholesaler's permit issued under s. 125.54, and
14 out-of-state shipper's permit issued under s. 125.58." ✓

15 History: 1981 c. 20; 1985 a. 120, 302; 1987 a. 312 ss. 10, 17; 1991 a. 39; 1993 a. 482; 1997 a. 27.

(END)

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0521/1dn

ARG:.....

lmk

(date)

I have added the legislative intent statement provided with the instructions, although LRB policy discourages statements of legislative intent because they sometimes create confusion and have at times been used by courts to avoid operative statutory provisions elsewhere in the legislation. ✓ I have made a slight modification to the legislative intent statement provided with the instructions to make it more accurate. ✓

I have also included the requested "severability" clause, despite LRB policy not to create a "severability" clause for particular provisions or chapters because s. 990.001 (11) already contains a global severability provision for all chapters. ✓ This global severability provision has specifically been given effect with respect to ch. 125, in a case involving intoxicating liquor wholesalers. *Wis. Wine & Spirit Institute v. Ley*, 141 Wis. 2d 958, 971-72 (Ct. App. 1987). The severability provision included in the attached draft is unnecessary. ✓

The treatment of s. 125.68 (10) (a) in the attached draft may affect ability of a manufacturer or rectifier to obtain intoxicating liquor for blending. ✓ For example, a winery that operates under a manufacturer's permit that wants to blend fortified wine would have to purchase the intoxicating liquor used to blend from a wholesaler rather than the source of supply, as is allowed under current law. ✓

The attached draft may be advantageous to state wineries in "legalizing" direct shipments to individual consumers (a practice that may be common now but is not considered authorized under current law) ✓ but may also have an adverse impact on state wineries. While the draft opens up the Wisconsin market to direct shipping from all states, which may be seen as a positive development in the context of the *Granholm* decision, to the extent other states' laws (such as California and Oregon) still require reciprocal agreements to direct ship into those states, the draft will put this state's wineries at a competitive disadvantage (at least as long as those states' laws are not struck down). ✓ The draft also negatively impacts state wineries in terms of their commercial distribution options. ✓

The attached draft assumes that the intent is not to eliminate hotel cooler, sky box cooler, or caterer authorization to provide alcohol beverages in other than a "face-to-face" manner. Please advise if my assumption is mistaken. ✓

The attached draft also assumes that the intent is not to limit direct wine shippers' permits to state residents or corporations with resident agents, and to not require such permittees to attend a responsible beverage server training course. Accordingly, I have added language in created s. 125.535 (3) (c).[✓] Please advise if my assumption is incorrect.[✓]

I have placed in amended s. 125.69 (1) (c) what was identified in created s. 125.69 (1) (d) of the drafting instructions and I did not include "wholesaler" because it is already covered in s. 125.69 (1) (a) and (b) 1.[✓]

I also amended s. 125.12 (5) in lieu of creating s. 125.535 (8) as provided in the drafting instructions.[✓]

Our tax drafter has not had the opportunity to review the draft. Additional changes may be required after he has reviewed the treatments in ss. 139.035 and 139.11 (4).[✓]

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0521/1dn
ARG:lmk:rs

June 22, 2007

I have added the legislative intent statement provided with the instructions, although LRB policy discourages statements of legislative intent because they sometimes create confusion and have at times been used by courts to avoid operative statutory provisions elsewhere in the legislation. I have made a slight modification to the legislative intent statement provided with the instructions to make it more accurate.

I have also included the requested "severability" clause, despite LRB policy not to create a "severability" clause for particular provisions or chapters because s. 990.001 (11) already contains a global severability provision for all chapters. This global severability provision has specifically been given effect with respect to ch. 125, in a case involving intoxicating liquor wholesalers. *Wis. Wine & Spirit Institute v. Ley*, 141 Wis. 2d 958, 971-72 (Ct. App. 1987). The severability provision included in the attached draft is unnecessary.

The treatment of s. 125.68 (10) (a) in the attached draft may affect ability of a manufacturer or rectifier to obtain intoxicating liquor for blending. For example, a winery that operates under a manufacturer's permit that wants to blend fortified wine would have to purchase the intoxicating liquor used to blend from a wholesaler rather than the source of supply, as is allowed under current law.

The attached draft may be advantageous to state wineries in "legalizing" direct shipments to individual consumers (a practice that may be common now but is not considered authorized under current law) but may also have an adverse impact on state wineries. While the draft opens up the Wisconsin market to direct shipping from all states, which may be seen as a positive development in the context of the Granholm decision, to the extent other states' laws (such as California and Oregon) still require reciprocal agreements to direct ship into those states, the draft will put this state's wineries at a competitive disadvantage (at least as long as those states' laws are not struck down). The draft also negatively impacts state wineries in terms of their commercial distribution options.

The attached draft assumes that the intent is not to eliminate hotel cooler, sky box cooler, or caterer authorization to provide alcohol beverages in other than a "face-to-face" manner. Please advise if my assumption is mistaken.

The attached draft also assumes that the intent is not to limit direct wine shippers' permits to state residents or corporations with resident agents, and to not require such

permittees to attend a responsible beverage server training course. Accordingly, I have added language in created s. 125.535 (3) (c). Please advise if my assumption is incorrect.

I have placed in amended s. 125.69 (1) (c) what was identified in created s. 125.69 (1) (d) of the drafting instructions and I did not include "wholesaler" because it is already covered in s. 125.69 (1) (a) and (b) 1.

I also amended s. 125.12 (5) in lieu of creating s. 125.535 (8) as provided in the drafting instructions.

Our tax drafter has not had the opportunity to review the draft. Additional changes may be required after he has reviewed the treatments in ss. 139.035 and 139.11 (4).

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

7-7597

6/25

Mc from Faith Russell

60521

- common carrier → keep penalty
 - don't strike
- "fertilized wine" → d-note
 - don't want to permit someone within same ter from buying or selling to someone else w/in same ter
- redraft