

2011 DRAFTING REQUEST

Bill

Received: 10/11/2010

Received By: agary

Wanted: As time permits

Companion to LRB:

For: Andre Jacque (608) 266-9870

By/Representing: Michael Murphy

May Contact:

Drafter: agary

Subject: Beverages

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Jacque@legis.wi.gov

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

Pre Topic:

No specific pre topic given

Topic:

Permitting or failing to take action against underage consumption of alcohol on premises owned by adult or under adult's control

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 10/11/2010	jdyer 10/11/2010	jfrantze 10/11/2010	_____	cduerst 10/11/2010		
/1	agary 06/21/2011	jdyer 06/21/2011	rschlue 06/21/2011	_____	sbasford 06/21/2011	lparisi 02/17/2012	
	agary 10/21/2011			_____			

FE Sent For:

none

<END>

2011 DRAFTING REQUEST

Bill

Received: 10/11/2010

Received By: **agary**

Wanted: **As time permits**

Companion to LRB:

For: **Andre Jacque (608) 266-9870**

By/Representing: **Michael Murphy**

May Contact:

Drafter: **agary**

Subject: **Beverages**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Jacque@legis.wi.gov**

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

Pre Topic:

No specific pre topic given

Topic:

Permitting or failing to take action against underage consumption of alcohol on premises owned by adult or under adult's control

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 10/11/2010	jdye 10/11/2010	jfrantze 10/11/2010	_____	cduerst 10/11/2010		
/1	agary 06/21/2011	jdye 06/21/2011	rschlue 06/21/2011	_____	sbasford 06/21/2011		
	agary			_____			

FE Sent For:

<END>

Gary, Aaron

From: Gary, Aaron
Sent: Friday, October 21, 2011 4:03 PM
To: Packnett, Greg
Cc: Murphy, Michael
Subject: RE: LRB 0250, regarding hosting underage drinking

Attachments: 11-0250_1.pdf

Good afternoon Michael and Greg.

Per our conversation, Michael, I have transferred the file so that Rep. Jacque is now the requester on this draft. I also see that the latest version of this draft is already an introducible "1". I am attaching that draft here. If you want it jacketed or if I can be of any other assistance, please let me know. Aaron



11-0250_1.pdf (28 KB)

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

From: Packnett, Greg
Sent: Wednesday, August 10, 2011 6:11 PM
To: Gary, Aaron
Cc: Murphy, Michael
Subject: LRB 0250, regarding hosting underage drinking

Aaron,

We'll be working with Rep. Jacque's office on this bill, so please release a draft to his office.

Thank you,

Greg Packnett
Office of Rep. Penny Bernard Schaber
57th Assembly District
608-266-3070

10/21 He w/ Michael Murphy
• transfer file to Rep. Jacque;
referred to this e-mail
• wants introducible "1"

2011 DRAFTING REQUEST

Bill

Received: 10/11/2010

Received By: agary

Wanted: As time permits

Companion to LRB:

For: Penny Bernard Schaber (608) 266-3070

By/Representing: Greg Packnett/Melissa Schmidt

May Contact:

Drafter: agary

Subject: Beverages

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.BernardSchaber@legis.wisconsin.gov

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

Pre Topic:

No specific pre topic given

Topic:

Permitting or failing to take action against underage consumption of alcohol on premises owned by adult or under adult's control

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 10/11/2010	jdyer 10/11/2010	jfrantze 10/11/2010	_____	cduerst 10/11/2010		
/1	agary 06/21/2011	jdyer 06/21/2011	rschlue 06/21/2011	_____	sbasford 06/21/2011		

FE Sent For:

<END>

2011 DRAFTING REQUEST

Bill

Received: 10/11/2010

Received By: agary

Wanted: As time permits

Companion to LRB:

For: Penny Bernard Schaber (608) 266-3070

By/Representing: Greg Packnett/Melissa Schmidt

May Contact:

Drafter: agary

Subject: Beverages

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.BernardSchaber@legis.wisconsin.gov

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

Pre Topic:

No specific pre topic given

Topic:

Permitting or failing to take action against underage consumption of alcohol on premises owned by adult or under adult's control

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 10/11/2010	jdyer 10/11/2010	jfrantze 10/11/2010	_____	cduerst 10/11/2010		

FE Sent For:

1/6/20 jld
SCL

<END>

2011 DRAFTING REQUEST

Bill

Received: 10/11/2010

Received By: agary

Wanted: As time permits

Companion to LRB:

For: Penny Bernard Schaber (608) 266-3070

By/Representing: Greg Packnett/Melissa Schmidt

May Contact:

Drafter: agary

Subject: Beverages

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.BernardSchaber@legis.wisconsin.gov

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

Pre Topic:

No specific pre topic given

Topic:

Permitting or failing to take action against underage consumption of alcohol on premises owned by adult or under adult's control

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	PI 10/11/10	Jb	10/11			

FE Sent For:

<END>

Gary, Aaron

From: Gary, Aaron
Sent: Monday, October 11, 2010 9:37 AM
To: Packnett, Greg
Subject: RE: FW: Assistance with Statutes

Hi Greg,

I have entered this request for the 2011 session as 2011 LRB-0250. The draft is now in editing.

To answer your question, in the prior draft I sent Melissa (2009 LRB-4736/P1), the following bill sections correspond as follows to 2003 AB-35 and its amendments:

Bill section 1 = original 2003 AB-35.
Bill section 2 = AB-35 w/ AA1.
Bill section 3 = AB-35 w/ AA4.
Bill section 6 = AB-35 w/ AA1 and AA4.

Aaron

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

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

From: Packnett, Greg
Sent: Wednesday, October 06, 2010 12:19 PM
To: Gary, Aaron
Subject: RE: FW: Assistance with Statutes

Aaron,

Rep. Bernard Schaber would like a draft of 2003 AB 35 with AA1 and AA4 incorporated. Which of the options in the preliminary draft is that?

Thanks,
Greg

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

From: Gary, Aaron
Sent: Friday, April 30, 2010 12:46 PM
To: Schmidt, Melissa
Cc: Packnett, Greg
Subject: RE: FW: Assistance with Statutes

Melissa,

As we discussed, this issue has come up before and, although the relevant statute (125.07 (1) (a) 3.) clearly has a technical error in it, there has yet to be sufficient political will to fix the mistake. (To me, Justice Abrahamson's analysis in the Supreme Court Nichols case is correct; if there were not a mistake in s. 125.07 (1) (a) 3., then it would make no sense in light of s. 125.07 (1) (a) 1.) I think the main obstacle to fixing the error is a reluctance to inadvertently expand the statute in a way that might impose liability on landlords for underage drinking in common areas of apartment buildings, etc.

In the 2001 session, 2001 AB-902 was introduced to correct the problem, but was introduced late in the session and was not acted upon. In the 2003 session, 2003 AB-35 was introduced and received much attention and debate. I think it was expected to move quickly but the day it reached the assembly floor the bill generated unanticipated opposition. I remember getting lots of calls from the floor that day. The bill was moved to the foot of the calendar that day and later tabled, where it died for the session.

There were four introduced amendments to it; I think AA2 and AA3 (adopted by committee) were unnecessary and potentially problematic.

The relevant statute (s. 125.07 (1) (a) 3.) hasn't changed since 2001. So I will refer you to 2003 AB-35 for the simplest solution and for the analysis. I am also doing something rather unconventional. There are many ways to address the "landlord" issue. I'll need more guidance in how you want to do this. I am attaching an UNEDITED version of the draft that contains several alternatives for how s. 125.07 (1) (a) 3. could be amended. The first version is identical to 2003 AB-35. Other versions are identical to AB-35 with AA1 or AA4 incorporated, and there are yet other possibilities included as well. Please review the attachment and let me know which version best meets your needs. Then I will proceed to prepare the draft accordingly.

Aaron

P.S. As far as the e-mail below goes, Mr. Frisch does not indicate whether he is referring to the unpublished court of appeals decision in Nichols or the later Supreme Court case. The only discussion of this issue in a published decision of precedential value is Justice Abrahamson's concurrence in Nichols v. Progressive N. Ins. Co., 2008 WI 20, 308 Wis. 2d 17, 746 N.W.2d 220, which was supported by 3 votes. The other 4 justices have expressed no opinion. I believe Justice Abrahamson's concurrence is correct and I have a different opinion than Mr. Frisch in the e-mail below: I believe that, if the matter were litigated, there is a good chance that the concurring opinion on this particular issue would find majority support. Accordingly, while I believe that correcting this problem is a good idea, I also believe that the courts will eventually arrive at the same result.

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

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

From: Schmidt, Melissa
Sent: Thursday, April 29, 2010 2:50 PM
To: Gary, Aaron
Cc: Packnett, Greg
Subject: FW: FW: Assistance with Statutes

Aaron,

Here is the information I gave you regarding a bill that would amend s. 125.07 (1) (a) 3., Stats.

Thank you for your help,

Melissa Schmidt
Staff Attorney
Wisconsin Legislative Council
(608) 266-2298

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

From: Wilson, Stephanie
Sent: Tuesday, February 23, 2010 9:08 AM
To: Schmidt, Melissa
Subject: FW: FW: Assistance with Statutes

Melissa,

Could you take a look at this for me?

Thanks!

Stephanie Wilson

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

From: Mike Frisch [mailto:Mike.Frisch@appleton.org]
Sent: Tuesday, January 05, 2010 9:26 AM
To: Wilson, Stephanie
Subject: RE: FW: Assistance with Statutes

Stephanie,

This is the response I received from our assistant City Attorney. I hope this helps.

125.07(1)(a)1 - No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by a parent

If there is no proof that the homeowner(s) provided the alcohol for the underage persons, then no one can be cited. In Alderman v. Topper Al Beer and Liquor, 272 Wis.2d 855 (Wis. App. 2004), the court stated "we agree that simply providing a place for an underage person to consume alcohol does not satisfy the definition of "procure" as that term is used within the statute." Clearly, the section requires an affirmative act of procuring, selling, dispensing or giving away alcohol.

125.07(1)(a)2 - No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with any underage person not accompanied by a parent.....

Obviously, a parent or homeowner is not a licensee or permittee.

125.07(1)(a)3 - No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adults control.

A homeowner or parent can not be cited because the home is not a "premise." Premise is defined as the area described in a license or permit. Obviously, a home is not going to be a place that has been licensed to sell alcohol. This principal is reiterated in Alderman v. Topper Al Beer and Liquor and Nichols V. Progressive Northern Ins.

*I think the intent of this section was not to limit it to licensed premises but unfortunately the language used has caused a limitation.

125.07(1)(a)4 - No adult may intentionally encourage or contribute to a violation of sub. (4)(a) or (b).

- 4(a) deals with obtaining alcohol from a licensed premise
- 4(b) deals with underage drinking not necessarily on a licensed premise.

The question is what is intentionally encourage or contribute? It appears that the person must do something to warrant this charge. How do you intentionally encourage something? Is failing to take action, intentionally encouraging? The dictionary definition of encourage is to urge. The dictionary definition of contribute is to give or supply or to play a significant part in bringing about an end result. Both definitions appear to require an affirmative act versus failing to take action.

I would also argue that providing a place to drink is not the same thing because 125.07(1)(a)3 uses the language "fail to take action to prevent" so it must mean something different otherwise the language would have been included in section 4 as well.

Now someone will say that by providing a place, they are urging or playing a significant part in the underage drinking, but the argument raised by the defense has been - yes, I knew about the drinking but I didn't say they could drink here - I just didn't stop it. This argument could go either way in my opinion. The statute would be much

better if the language was included that stated failing to prevent the underage drinking was also a violation.

Finally and probably the biggest hurdle, in Nichols v. Progressive Northern Ins., the court stated that the parents in the case who allowed underage drinking on their property were not negligent when the underage drinkers crashed. Therefore, how can one argue that they intentionally contributed or encouraged yet they can't be held negligent, which is a much lower standard.

How do you resolve this problem? I think that the best solution would be to add the word "licensed" to the definition in WSA 125.02(14m) - so it reads "licensed premises" means..... and then replace the wording were applicable throughout Chapter 125. Then we could easily argue that when the legislature just uses the word premises, the legislature is not referring to a place with a license or permit.

Thank again for your help,
Mike

>>> "Wilson, Stephanie" <Stephanie.Wilson@legis.wisconsin.gov>
12/11/2009 9:42 AM >>>
Great. I just wanted to make sure you weren't waiting for me!

Thanks Mike!

-----Original Message-----
From: Mike Frisch [mailto:Mike.Frisch@appleton.org]
Sent: Friday, December 11, 2009 8:35 AM
To: Wilson, Stephanie
Subject: Re: FW: Assistance with Statutes

I spoke with her yesterday. She is hoping to have something next week. I will send it to you when I get it.

Thanks,
Mike

>>> "Wilson, Stephanie" <Stephanie.Wilson@legis.wisconsin.gov>
12/8/2009
11:00 AM >>>
Mike,

I just wanted to check in with you. Where are we on this? Has the city attorney weighed in on the questions from Legislative Council?

Thanks!

Stephanie

From: Schmidt, Melissa
Sent: Thursday, October 29, 2009 1:54 PM
To: Wilson, Stephanie
Subject: RE: Assistance with Statutes

Stephanie,

I have some questions for the police officer or the City Attorney. Has the City Attorney has considered charging the parents under 125.07(1)(a)1. and 125.01(1)(a)4. If he or she hasn't, then why? These provisions say:

1. 125.07(1)(a)1.: " No person may procure for, sell, dispense or

give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age."

2. 125.07(1)(a)4.: "No adult may intentionally encourage or contribute to a violation of sub (4)(a) or (b). [(4)(a) and (b) prohibit minors from possessing alcohol, among other things.]

Section 125.07(1), Stats., prohibits a list of scenarios in which an adult may be cited when minors have alcohol. My understanding is that s. 125.07(3), Stats., is intended to allow bar owners or managers, etc., who may not hold retail alcohol licenses, to be cited if all they did was knowingly permit or fail to take action to prevent the consumption by minors. While s. 125.07(3), Stats., may not apply to the scenarios described by the police officer, there appear to be other options.

It would be helpful to hear from the City Attorney why the facts of the case don't fall into any of the restrictions listed in s.

125.07(1)(a), Stats., so that if the statutes need to be amended, we have a better understanding of what is needed.

Please do not hesitate to contact me with any further questions.

Thanks,

Melissa Schmidt
Staff Attorney
Wisconsin Legislative Council

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

From: Wilson, Stephanie
Sent: Thursday, October 29, 2009 12:17 PM
To: Schmidt, Melissa
Subject: FW: Assistance with statute

Melissa,

I left you a voice message about this. Could you take a look at this and give me your opinion?

Thanks!

Stephanie Wilson

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

From: Mike Frisch [mailto:Mike.Frisch@appleton.org]
Sent: Thursday, April 16, 2009 9:38 AM
To: Rep.BernardSchaber
Subject: Assistance with statute

Representative Schaber,

I first apologize for the email vs. an official letter on department letter head. I figured this would be the most efficient way to contact you regarding the following matter. As you see in the email my name is Michael Frisch. I am a sergeant with the Appleton Police Department, and you may remember me as the PSL at Franklin Elementary School when you husband Dale was there.

I am requesting assistance with rewording of a statute or at least the definition of a word in the statute. The statute in question is 125.07(1)(a)3, and states the following:

No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages
by an underage person on PREMISES owned by the adult or under
the adult's control. This subdivision

does not apply to alcohol beverages used exclusively as part of a religious service.

The problem we have run into with this is the word premises and its definition in statute 125.02(14m), which states:

"Premises means the area described in a license or permit"

Our city attorney staff takes the definition to mean bars, restaurants, or any other establishment with aliquor licence. The way the definition is written that sounds logical.

We have run into several instances in the past year alone in which we were summoned to large underage drinking parties with adults over 21, and in some cases the parents who own the home and are sponsoring the party. In one case we had a party with over 100 persons under 21. In yet another just a week ago our officers responded to a large party and the owner of the home refused to answer and started yelling "The Cops are here hide". It becomes problematic to prove who provided the alcohol. The underage drinkers claim they brought it with them or won't say where it came from. Without statements from those involved we can't prove the owners provided the alcohol. The way the above statute/definition is written it is problematic and actually not possible for us to hold those having these parties accountable for there actions.

I appreciate any time assistance you could give in this matter, and look forward to hearing from you.

Thank you,
Sergeant Michael Frisch
Appleton Police Department



in
10/11



JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

X

Gen

1 AN ACT ...; **relating to:** the prohibition against adults knowingly permitting or
 2 failing to take action to prevent the illegal consumption of alcohol beverages by
 3 underage persons. ✓

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, a person who has not reached the legal drinking age of 21 years (underage person) ✓, and who is not accompanied by his or her parent, guardian, or spouse who has attained the ✓ legal drinking age, may not knowingly possess or consume alcohol beverages. ✓ Current law prohibits an adult from knowingly permitting or failing ✓ to take action to prevent the illegal consumption of alcohol beverages by an underage person on "premises" ✓ owned by the adult or under the adult's control. "Premises" is defined as the area described in a license or permit for the sale of alcohol beverages. ✓

This bill prohibits an adult ✓ from knowingly permitting or failing to take action to prevent the illegal consumption of alcohol beverages by an ✓ underage person on property owned and occupied by the adult or occupied by the adult and under the adult's control. ✓ This prohibition applies regardless of whether the property is covered by an alcohol beverages license or permit. ✓

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

4 SECTION 1. 125.07 (1) (a) 3. ✓ of the statutes is amended to read:

Gary, Aaron

From: Packnett, Greg
Sent: Monday, June 20, 2011 4:12 PM
To: Gary, Aaron
Subject: LRB 0250

Aaron,

We have a preliminary draft for LRB 0250, regarding providing alcohol to minors. Could we have a non-preliminary version of the draft?

Thanks,

Greg Packnett

Office of Rep. Penny Bernard Schaber
57th Assembly District
608-266-3070



State of Wisconsin
2011 - 2012 LEGISLATURE

TODAY

in
10/21



LRB-0250/BA /
ARG:jld:jf

RMR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

No changes

Regen

x

1 AN ACT to amend 125.07 (1) (a) 3. of the statutes; relating to: the prohibition
2 against adults knowingly permitting or failing to take action to prevent the
3 illegal consumption of alcohol beverages by underage persons.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, a person who has not reached the legal drinking age of 21 years (underage person), and who is not accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age, may not knowingly possess or consume alcohol beverages. Current law prohibits an adult from knowingly permitting or failing to take action to prevent the illegal consumption of alcohol beverages by an underage person on "premises" owned by the adult or under the adult's control. "Premises" is defined as the area described in a license or permit for the sale of alcohol beverages.

This bill prohibits an adult from knowingly permitting or failing to take action to prevent the illegal consumption of alcohol beverages by an underage person on property owned and occupied by the adult or occupied by the adult and under the adult's control. This prohibition applies regardless of whether the property is covered by an alcohol beverages license or permit.

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

4 SECTION 1. 125.07 (1) (a) 3. of the statutes is amended to read:

Parisi, Lori

From: Murphy, Michael
Sent: Thursday, February 16, 2012 4:56 PM
To: LRB.Legal
Subject: LRB 0250 - Social Hosting Restrictions

Please send a jacketed version of this bill.

Thanks!

MICHAEL P. MURPHY

OFFICE OF STATE REPRESENTATIVE

André Jacque

2ND ASSEMBLY DISTRICT
P.O. Box 8953 • Madison, WI 53708-8952
(608) 266-9870 • Fax: (608) 282-3602
Toll-Free: (888) 534-0002
Rep.Jacque@legis.wi.gov

From: Jacque, Andre
Sent: Thursday, February 16, 2012 4:13 PM
To: Murphy, Michael
Subject: Please call LRB and request a jacketed version of LRB 0250