



1997 ASSEMBLY BILL 444

July 1, 1997 - Introduced by Representatives MUSSER, HUEBSCH, GREEN, MEYER, OWENS, DUFF, GRONEMUS, GARD, HASENOHRL, M. LEHMAN, HUBER, KAUFERT, BOYLE, KELSO, KUNICKI, KREIBICH, WASSERMAN, RYBA, SCHAFER, LA FAVE, SYKORA, OURADA, WALKER, WARD, KRUG, PLALE and ZIEGELBAUER, cosponsored by Senators SHIBILSKI, RUDE, BRESKE, SCHULTZ, JAUCH, WELCH, HUELSMAN, GROBSCHMIDT, ROSENZWEIG, DRZEWIECKI, GEORGE, FITZGERALD and WINEKE. Referred to Committee on State Affairs.

1 **AN ACT to amend** 125.30 (1); and **to create** 125.12 (2) (ag) 7., 125.33 (10) and
2 125.33 (11) of the statutes; **relating to:** fermented malt beverage wholesalers.

Analysis by the Legislative Reference Bureau

Under current law, a brewer or out-of-state shipper may sell fermented malt beverages (beer) only to a wholesaler. A “wholesaler” is a person, other than a brewer, who holds a license to sell beer to retailers and to other wholesalers.

This bill grants wholesalers compensable and perpetual rights to the brands of beer they currently distribute. Under the bill, if a brewer or out-of-state shipper chooses to have its brand of beer distributed by a different wholesaler, the wholesaler who previously distributed the brand must be compensated by the new wholesaler for the former wholesaler’s lost business. If the wholesalers cannot agree within 90 days on the amount of compensation owed to the former wholesaler, the wholesalers must submit the issue to binding arbitration. The wholesalers must split any costs of arbitration. The bill defines “brand” to include any word, name, group of letters, symbols or combinations thereof associated with a particular beer.

The bill prohibits a wholesaler who holds a retail license from selling beer to another retailer unless the wholesaler has a general distribution agreement with the brewer or out-of-state shipper of that beer. The bill creates a cause of action allowing any wholesaler who is aggrieved by a violation of this prohibition or the brewer to recover from the violator its damages sustained, together with the costs of pursuing the damages.

Also under current law, all shipments of beer from outside this state to a wholesaler must be unloaded in and distributed from the wholesaler’s warehouse.

This bill requires that such beer be unloaded, stored and inventoried for tax purposes in the wholesaler's warehouse before being sold or distributed to a retailer.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 125.12 (2) (ag) 7. of the statutes is created to read:

2 125.12 (2) (ag) 7. The person received the benefit from an act prohibited under
3 s. 125.33 (11).

4 **SECTION 2.** 125.30 (1) of the statutes is amended to read:

5 125.30 (1) The department shall issue out-of-state shippers' permits which
6 authorize the permittee to ship fermented malt beverages only to holders of a
7 wholesaler's license issued under s. 125.28. No person may receive fermented malt
8 beverages in this state which have been directly shipped from outside this state by
9 any person other than the holder of a permit issued under this section. All shipments
10 of fermented malt beverages ~~from outside this state~~ to a wholesaler of fermented
11 malt beverages in this state, whether shipped to the wholesaler from inside this state
12 or from outside this state, shall be unloaded, stored and inventoried for tax purposes
13 in, and distributed from, the wholesaler's warehouse in this state.

14 **SECTION 3.** 125.33 (10) of the statutes is created to read:

15 125.33 (10) COMPENSATION FOR LOSS OF BRAND. (a) In this subsection:

16 1. "Brand" means any word, name, group of letters, symbols, or combination
17 thereof, including the name of the brewer if the brewer's name is also a significant
18 part of the product name, adopted and used by a brewer to identify a specific
19 fermented malt beverage product and to distinguish that product from other
20 fermented malt beverages produced by that brewer or other brewers.

1 2. “Discontinued brand” means, with respect to a terminated wholesaler, any
2 brand of fermented malt beverages for which a brewer, a brewer’s agent or holder of
3 an out-of-state shipper’s permit has terminated, cancelled, or failed to renew an
4 agreement, whether oral or written, with that wholesaler to supply that brand.

5 3. “Successor wholesaler” means any wholesaler who enters an agreement,
6 whether oral or written, to obtain a supply of a brand of fermented malt beverages
7 from a brewer, a brewer’s agent or holder of an out-of-state shipper’s permit after
8 the brewer, the brewer’s agent or holder of an out-of-state shipper’s permit has
9 terminated, cancelled or failed to renew an agreement, whether oral or written, with
10 a terminated wholesaler to supply that same brand of fermented malt beverages.

11 4. “Terminated wholesaler” means a wholesaler with whom a brewer, a
12 brewer’s agent or holder of an out-of-state shipper’s permit has cancelled,
13 terminated or failed to renew an agreement, whether oral or written, to supply a
14 brand of fermented malt beverages to that wholesaler.

15 (b) A successor wholesaler shall pay a terminated wholesaler the fair market
16 value of the terminated wholesaler’s distribution rights to any discontinued brand
17 of fermented malt beverages assumed by the successor wholesaler. The brewer,
18 brewer’s agent or holder of an out-of-state shipper’s permit shall inform the
19 successor wholesaler, before the successor wholesaler acquires any discontinued
20 brand of fermented malt beverages, of its obligations under this subsection. If the
21 terminated wholesaler’s rights to sell a discontinued brand of fermented malt
22 beverages are divided among 2 or more successor wholesalers, each successor
23 wholesaler shall pay the terminated wholesaler the fair market value of the
24 distribution rights to the discontinued brand of fermented malt beverages obtained
25 by that successor wholesaler.

1 (c) The terminated wholesaler and the successor wholesaler may agree to the
2 fair market value of the terminated wholesaler's business related to a discontinued
3 brand of fermented malt beverages and the successor wholesaler shall pay that sum
4 to the terminated wholesaler within 30 days after the date that the parties agree on
5 the fair market value. If the parties cannot agree on the compensation due the
6 terminated wholesaler, the parties shall submit their dispute to binding arbitration
7 subject to the expedited process under the commercial arbitration rules of the
8 American Arbitration Association. The arbitration shall commence within 90 days
9 after the successor wholesaler obtains rights to receive a supply of a brand of
10 fermented malt beverages, that is a discontinued brand of fermented malt beverages,
11 of the terminated wholesaler, unless extended by the parties or the arbitrator. The
12 terminated wholesaler and the successor wholesaler shall each pay 50% of the costs
13 of arbitration.

14 **SECTION 4.** 125.33 (11) of the statutes is created to read:

15 125.33 (11) SOURCE OF FERMENTED MALT BEVERAGES. (a) No wholesaler who
16 holds a retail license issued under this chapter may sell a brand of fermented malt
17 beverages to another retail licensee unless the wholesaler has an agreement for
18 general wholesale distribution of that brand of fermented malt beverages with the
19 brewer, brewer's agent or holder of an out-of-state shipper's permit supplying that
20 brand.

21 (b) If a wholesaler who holds a retail license issued under this chapter violates
22 par. (a), any other wholesaler aggrieved by such violation or the brewer may bring
23 an action against such wholesaler in any court of competent jurisdiction for damages
24 sustained by the aggrieved wholesaler or the brewer as a consequence of the
25 violation, together with the actual costs of the action. Notwithstanding s. 814.04 (1),

1 a wholesaler or the brewer who prevails in an action under this paragraph may
2 recover reasonable actual attorney fees incurred in the action.

3 (END)