

**1999 DRAFTING REQUEST**

**Bill**

Received: 01/11/2000

Received By: nilsepe

Wanted: Soon

Identical to LRB:

For: Carol Roessler (608) 266-5300

By/Representing: Brad

This file may be shown to any legislator: NO

Drafter: nilsepe

May Contact:

Alt. Drafters:

Subject: Beverages - miscellaneous

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Number of Class "B" licenses held by a small brewer

**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>
/?	nilsepe 01/11/2000	gilfokm 01/12/2000		_____			State
/1			hhagen 01/12/2000	_____	lrb_docadmin 01/12/2000	lrb_docadmin 01/12/2000	

FE Sent For:

<END>

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1?	nilsepe	1-11-2000 King	hh/12	hh/12			

FE Sent For:

<END>

~~1999 ASSEMBLY BILL~~

41186/1

PEN:kmg:

1999 Senate Bill

(d-note)

*Sen. Conf.*

1 **AN ACT** *to renumber and amend* 125.31 (1); *to amend* 125.31 (3) (b); and *to*  
 2 *create* 125.02 (1m), 125.31 (1) (a) 1. and 125.31 (1) (a) 3. of the statutes;  
 3 **relating to:** the number of Class "B" licenses that may be issued to certain  
 4 small brewers.

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

Under current law, alcohol beverages are generally distributed from the manufacturer to the consumer under a three-tier distribution system: the manufacturer may sell only to a wholesaler or rectifier (a person who blends, refines or purifies distilled spirits or wines); the wholesaler or rectifier may sell only to a wholesaler or to a retailer; the retailer may sell only to the consumer. With specific exceptions, no person may sell outside the three-tier system and no person may sell alcohol beverages to a consumer unless the seller possesses a license or permit authorizing the sale. A specific exception allows a brewer to provide its fermented malt beverages (beer) free of charge, for consumption on the brewery premises. Another exception allows a brewer to sell beer, for consumption on or off the premises, at not more than two licensed locations: one location on brewery premises and one location on real property owned by the brewery, or its subsidiary or affiliate.

A brewer is required to hold a Class "B" license (authorizing the retail sale of beer for consumption on or off the premises where sold) for each such location.

This bill allows small brewers to hold Class "B" licenses for any number of qualifying restaurants, in addition to the two other licensed locations. The bill defines a "small brewer" as a brewer that, together with all related brewers, produces

**ASSEMBLY BILL**

less than 10,000 barrels (310,000 U.S. gallons) of beer in one year. The following are all considered related brewers: brewers that are owned by a common majority owner, whether the brewers are corporations, sole proprietorships or partnerships; brewers that are considered with the brewer in question as one taxpayer under federal occupational tax law; brewers that are franchisees or the franchisor of the brewer; and brewers that are franchisees of the brewer's franchisor. A "qualifying restaurant" is a restaurant in which the sale of alcohol beverages accounts for less than 50% of its gross receipts.

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

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

1           **SECTION 1.** 125.02 (1m) of the statutes is created to read:

2           125.02 (1m) "Barrel" means 31 U.S. gallons.

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

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

11           **(b)** Notwithstanding ss. 125.29 (2) and 125.33 (1), a brewer may also own,  
12 maintain or operate places for the sale of fermented malt beverages at the state fair  
13 park or on any county fairgrounds located in this state, in addition to places  
14 authorized under par. (a).

15           **(c)** Any Class "B" license necessary in connection with this subsection shall be  
16 issued to the brewer.

**ASSEMBLY BILL**

1           (d) Notwithstanding s. 125.33 (1), a brewer may own the furniture, fixtures,  
2 fittings, furnishings and equipment on such premises and shall pay any license fee  
3 or tax required for the operation of the premises.

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

5           125.31 (1) (a) 1. In this paragraph, “small brewer” means a brewer that,  
6 together with the fermented malt beverages manufactured during the same year by  
7 all of the following, manufactures less than 10,000 barrels of beer annually:

8           a. All brewers that share membership with the brewer in a controlled group of  
9 brewers, as determined under 26 USC 5051 (a) (2) (B).

10           b. All brewers considered with the brewer as one taxpayer under 27 CFR  
11 25.111b (b).

12           c. All franchisees, as defined in s. 553.03 (5), of the brewer.

13           d. All franchisees, as defined in s. 553.03 (5), of the brewer’s franchisor, as  
14 defined in s. 553.03 (6).

15           e. The franchisor, as defined in s. 553.03 (6), of the brewer.

16           **SECTION 4.** 125.31 (1) (a) 3. of the statutes is created to read:

17           125.31 (1) (a) 3. Notwithstanding ss. 125.29 (2) and 125.33 (1), a small brewer  
18 may maintain and operate, for the sale of fermented malt beverages, one place on  
19 brewery premises; one place on real estate owned by the brewer or a subsidiary or  
20 affiliate corporation or limited liability company; and any number of restaurants in  
21 each of which the sale of alcohol beverages accounts for less than 50% of its gross  
22 receipts. A Class “B” license is required for each place described in this subdivision.

23           **SECTION 5.** 125.31 (3) (b) of the statutes is amended to read:



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

LRB-3358/3dn

PEN:kmg:mrc

December 1, 1999

4186/1dn

Senator Roesler:

Representative Underheim,

Because 26 USC 1563 (referenced in LRB-3358/2) excludes certain franchised corporations from consideration as a "component member of a controlled group of corporations", this draft also specifically counts the beer produced by the brewer's franchisor and by all franchises related to the brewer.

Because 26 USC 1563 contains an 80% ownership requirement to be considered "under common ownership", I substituted a reference to 26 USC 5051 (a) (2) (B), which reduces the minimum ownership requirement to "more than 50%" (a controlling ownership). 26 USC 5051 (a) (2) (B) is used to determine whether a brewer manufactures less than 2,000,000 barrels of beer (and so is entitled to a reduced rate of federal occupational tax).

For purposes of determining whether a brewer is a "small brewer" (and eligible for an unlimited number of Class "B" licenses for qualified restaurants), that brewer's production is considered along with the production of all of the following:

1. All corporations connected to the brewer through stock ownership with a common parent corporation, or owned by the same 5 or fewer owners. Corporations in which the parent corporation, or other owners, owns at least 50% of the voting stock are considered connected to the brewer. See 26 USC 5051 (a) (2) (B).
2. All partnerships and sole proprietorships that are at least 50% owned by an owner common to the brewer. See 27 CFR 25.111b (b).
3. All franchises granted by the brewer. Note that the definition of "franchise", taken from Wisconsin's Franchise Investment Law, is very broad. See s. 553.22 for franchises that are excluded from the Franchise Investment Law but which are considered franchises under this draft.
4. The franchisor of the brewer.
5. All franchises granted by the franchisor of the brewer.

Finally, note that this draft inverts LRB-3358/2. That draft limited the 2-license limitation to larger brewers. Instead, this LRB-3358/3 allows additional Class "B" licenses to be issued to a "small brewer" for qualifying restaurants.

Please read this draft very closely to ensure that it meets your needs.

Paul E. Nilsen  
Legislative Attorney  
Phone: (608) 261-6926



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

LRB-4186/1dn  
PEN:kmg:hmh

January 12, 2000

Senator Roessler:

For purposes of determining whether a brewer is a "small brewer" (and eligible for an unlimited number of Class "B" licenses for qualified restaurants), that brewer's production is considered along with the production of all of the following:

1. All corporations connected to the brewer through stock ownership with a common parent corporation, or owned by the same 5 or fewer owners. Corporations in which the parent corporation, or other owners, owns at least 50% of the voting stock are considered connected to the brewer. See 26 USC 5051 (a) (2) (B).

2. All partnerships and sole proprietorships that are at least 50% owned by an owner common to the brewer. See 27 CFR 25.111b (b).

3. All franchises granted by the brewer. Note that the definition of "franchise", taken from Wisconsin's Franchise Investment Law, is very broad. See s. 553.22 for franchises that are excluded from the Franchise Investment Law but which are considered franchises under this draft.

4. The franchisor of the brewer.

5. All franchises granted by the franchisor of the brewer.

Please read this draft very closely to ensure that it meets your needs.

Paul E. Nilsen  
Legislative Attorney  
Phone: (608) 261-6926

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU**  
**Legal Section Telephone: 266-3561**  
**5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

**Date:** 01/12/2000

**To:** Senator Roessler

**Relating to LRB drafting number:** LRB-4186

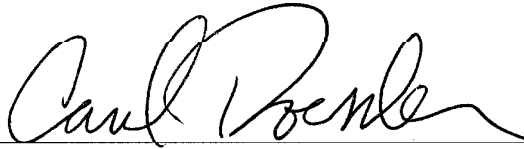
**Topic**

Number of Class "B" licenses held by a small brewer

**Subject(s)**

Beverages - miscellaneous

1. **JACKET** the draft for introduction



in the Senate  or the Assembly  (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Paul E. Nilsen, Legislative Attorney  
Telephone: (608) 261-6926