

2001 DRAFTING REQUEST

Bill

Received: 02/22/2002

Received By: agary

Wanted: Soon

Identical to LRB:

For: John La Fave (608) 266-0486

By/Representing:

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Beverages - drinking age

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Underage consumption of alcohol on premises

Instructions:

See Attached. Wants to correct this glitch in the law resulting from combination of language of statute and definition of premises.

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 02/26/2002	hhagen 02/27/2002	rschluet 02/27/2002	_____	lrb_docadmin 02/27/2002	lrb_docadmin 02/27/2002	

FE Sent For:

<END>

2001 DRAFTING REQUEST

Bill

Received: **02/22/2002**

Received By: **agary**

Wanted: **Soon**

Identical to LRB:

For: **John La Fave (608) 266-0486**

By/Representing:

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

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Beverages - drinking age**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Underage consumption of alcohol on premises

Instructions:

See Attached. Wants to correct this glitch in the law resulting from combination of language of statute and definition of premises.

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 02/26/2002	hhagen 02/27/2002	rschluet 02/27/2002	_____	lrb_docadmin 02/27/2002		

FE Sent For:

<END>

2001 DRAFTING REQUEST

Bill

Received: **02/22/2002**

Received By: **agary**

Wanted: **Soon**

Identical to LRB:

For: **John La Fave (608) 266-0486**

By/Representing:

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

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Beverages - drinking age**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Underage consumption of alcohol on premises

Instructions:

See Attached. Wants to correct this glitch in the law resulting from combination of language of statute and definition of premises.

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>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

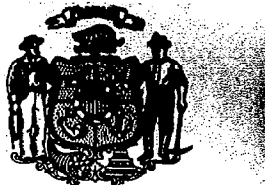
/?	agary	11 hmk 2/26/02					
----	-------	-------------------	---	---	--	--	--

FE Sent For:

2-27-2

<END>

John La Fave
State Representative
23rd Assembly District



Date: 2-22-02

TO: AARON GARY

FROM: JOHN LAFAVE

RE: Draft & bill that
Mark Zupnik describes

- In response to your recent request.
- I thought you might be interested in the enclosed materials.

Capitol Office
Post Office Box 8952
Madison, WI 53708

Phone (608) 266-0486
FAX (608) 282-3623
Toll-Free 1-888-534-0023

E-Mail: Rep.Lafave@legis.state.wi.us

(262) 242-3500
FAX (262) 242-7655



MARK A. ZUPNIK
CAPTAIN

MEQUON POLICE DEPARTMENT
11300 N. BUNTROCK AVE. • MEQUON, WI 53092



11300 N. Buntrack Avenue 64W
Mequon, Wisconsin 53092-1843
(262) 242-3500 F:(262) 242-7655

POLICE DEPARTMENT

January 29, 2002

Mr. John LaFave, State Representative
P O Box 8952
Madison, WI. 53708

Dear John,

I again want to thank you for the continuous updates you send concerning the driver's license photo law we created. To date, it is working very well for the Mequon Police Department and was recently utilized for identification purposes in a Mequon homicide.

As we discussed on the phone last week, I am once again asking for your assistance as it relates to a law enforcement issue. Underage alcohol consumption continues to be of great concern to all, and the law makers have given the police the ability to vigorously enforce recently created statutes addressing this problem. Specifically, the ability to issue a charge against an adult for permitting underage consumption has extended our authority under Wisconsin State Statute 125.07(1)(a)3.

125.07(1)(a)3 provides:

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 issue at hand is the definition given for the word "premises". Pursuant to Wisconsin State Statute 125.02(14m), "**premises**" means the area described in a license or permit.

On August 22, 2001, Mequon Police Officers responded to a residence on a report of an underage alcohol party. Upon arrival and investigation, it was determined several individuals both juvenile and underage were in the residence and had consumed alcohol in the residence prior to the arrival of the police. Alcohol was found in various locations throughout the residence. A nineteen (19) year old girl who resides at the residence assumed responsibility for allowing the underage alcohol party and was issued a citation pursuant to ss. 125.07(1)(a)3.

Prior to the scheduled court date, the definition for "premises" was brought to the attention of the Mequon City Attorney. The definition technically does not apply to a residence or any other location that is not under a license or permit. It was further revealed that the Court Of Appeals Of Wisconsin, Case No. 97-1201-FT, gave an unpublished opinion in a similar situation, that the definition of "premises" must be taken strictly therefor reversing a lower court conviction. The attached Court Of Appeals opinion uses the term "loophole" which it is. It is a loophole that prevents law enforcement from enforcing such incidents. I highly doubt it was the intent of the lawmakers to handcuff the police in this manner. As a result, The Mequon City Attorney was forced to dismiss the citation issued to the nineteen year old who was in control of the residence and allowed underage alcohol consumption.

Wisconsin State Statute 125.07(1)4 provides:

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

This Statute could be a substitute for 125.07(1)(a)3, however, and again, I believe it was an oversight by the legislature when they created 125.07(1)(a)3. I believe this "loophole" can be easily resolved by rewording the statute as follows:

No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on any premise or at any location owned by an adult or under the adult's control. This subsection shall not apply to alcohol beverages used exclusively as part of a religious service.

By utilizing this or similar terminology, the "location" could be a home, premise (license or permit), garage, yard, or any curtilage owned or under the adult's control. It could include a motor vehicle, relatives home, a barn, or any other location conceivable and utilized for underage consumption.

I have conferred with our Juvenile/School Liaison Officer Mario Valdes who agrees that there is a strong need to make such changes to benefit his work and efforts. Officer Valdes like most other officers specializing in youth services, provides talks to kids and their parents on a regular basis. One topic of discussion always prevails, that being the issue of underage alcohol, alcohol parties, in home alcohol use, and the authority the police have to charge individuals with allowing this conduct. It becomes difficult for us to have to tell people that a loophole in an otherwise viable law makes it non-enforceable.

I am asking that you review this information and if you so agree, sponsor a bill to reword this State Statute to make it enforceable for law enforcement officers.

As always, I appreciate your response and concerns to the needs of law enforcement. I know you will keep me informed and look forward to talking with you.

Sincerely,


Captain Mark Zupnik

ATTORNEYS AT LAW

JOHN F. FUCHS
MARCIA A. SNOW
JOHN L. DESTEFANIS
REBECCA D. BOYLE
PAUL H. BEARD

*received
1/16/02
Captain M. Zapark*

MEMORANDUM

TO: E. Doyle Barker, Chief - Mequon P.D.
FROM: Marcia A. Snow, Assistant City Attorney
RE: A Loop-Hole in Sec. 125.07(1)(a)(3), Wis. Stats.
DATE: January 14, 2002

I was recently forced to dismiss a case written under Sec. 125.07(1)(a)3., Stats., therefore, I wanted to inform the entire department of a loop-hole in this statute they should be aware of.

Sec. 125.07(1)(a)3., Stats., provides:

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.

In the case I dismissed, a young lady (19 years old) had some friends over to her parent's home. At the time, her father was upstairs sleeping. Ultimately the police were called regarding an underage drinking party at the girl's residence. The father was awakened, and gave permission for the police to enter his residence, where alcohol was found in various places throughout the residence in cups mixed with fruit juice. The girl alleged she had no idea there was alcohol in her residence and that the other kids who were drinking it must have brought it. Although the girl admitted she had something alcoholic to drink, she alleged she drank in her father's presence, which he affirmed. The girl was cited with a violation of Sec. 125.07(1)(a)(3), Stats..

In a 1997, unpublished opinion of the District II Court of Appeals (a copy of which is attached), the court ruled that Sec. 125.07(1)(a)(3), Stats., only applies to adults who own or

control a "premises" as specifically defined in Chpt. 125, that being an "area described in a license or permit." This section does NOT apply to private residences or any other unlicensed premises. The court based its decision on long-standing rules of statutory construction, which mandate that when interpreting a statute the court first look to the plain language of the statute in order to determine the intent of the legislature. If the language of the statute is unambiguous, the court cannot look to other sources to determine legislative intent.

In this case, the court noted that the statute specifically uses the term "premises." For purposes of Chpt. 125, premises is defined as "the area described in a license or permit." Sec. 125.02(14m), Stats. Accordingly, the court concluded that the legislature must have been aware it was limiting the scope of Sec. 125.07(1)(a)3., Stats., when it used this specific language.

Although this 1997 case is unpublished, it was rendered by our Court of Appeals, therefore, I did not think it was appropriate to continue our case, and take an appeal. First, we already know where the court stands on the interpretation of Sec. 125.07(1)(a)3., Stats.. Second, I had no evidence that the girl involved in our case had any knowledge that other underage persons were drinking alcohol in her residence. In fact, she provided me with affidavits from the other partygoers indicating they brought their own alcohol to her home, and she had no idea they were drinking. Hopefully, the right circumstances will arise for someone to take an appeal of this issue to the Supreme Court, or we can convince the legislature to modify the language of this statute. In the meantime, Sec. 125.07(1)(a)3., Stats., does not apply to private residences.

END OF MEMO

MAS/rls

Wisconsin Case Law (Unpublished)

STATE v. WILLOUGHBY, Unpublished Decision (Ct.App. 1997)

STATE OF WISCONSIN, PLAINTIFF-RESPONDENT, v. AMY WILLOUGHBY, DEFENDANT-APPELLANT.

COURT OF APPEALS OF WISCONSIN.

Case No.: 97-1201-FT.

Opinion Released: August 13, 1997.

Opinion Filed: August 13, 1997.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.

APPEAL from a judgment of the circuit court for Waukesha County: ROGER P. MURPHY, Judge. Reversed.

ANDERSON, J.

Amy Willoughby appeals from a judgment of conviction for two counts of permitting underage drinking on her premises in violation of § 125.07(1)(a)3, STATS. On appeal, Willoughby argues that no violation occurred because her premises is not an area described in a license or permit as required by the statute. We agree and therefore reverse.

The facts are undisputed. On the evening of June 23, 1996, officers Latona and Garry responded to a complaint of marijuana odor in the apartment complex where Willoughby lived. The officers determined that the odor was coming from Willoughby's apartment. After Latona knocked at the door and announced his presence, a female answered and allowed the officer into the apartment.

Inside the apartment, Latona noticed a few empty beer cans lying around the apartment. He also observed several males, who appeared to be under age twenty-one, fleeing through the patio doors. Three of the fleeing males were eventually apprehended and arrested. All three males were under the legal drinking age, and at least one was issued a citation for underage drinking.

At the apartment, Willoughby, age twenty-two at the time, disclosed that she rented the apartment in question and that her friend had brought the people who were inside the apartment. Willoughby also stated that she was aware that these people were drinking inside her apartment. Willoughby was later issued two citations for violating § 125.07(1)(a)3, STATS.

During trial, two of the arrested males testified that they had been drinking alcoholic beverages at Willoughby's apartment, but that Willoughby had not provided or offered them alcohol. No evidence was introduced to show that Willoughby procured for, sold, dispensed, or gave away alcoholic beverages to any underage person. Moreover, the State stipulated that no liquor license or any other license was issued to Willoughby's residence.

Prior to trial, as well as after the State's presentation of its case, Willoughby moved to dismiss for failure of the State to put forth a prima facie case of a § 125.07(1)(a)3,

Post-It® Fax Note	7671	Date	1-10-02	# of Pages	3
To	Marcia Snow	From	Jay Urban		
Co./Dept.		Co.			
Phone #		Phone #	276-8202		
Fax #	257-1510	Fax #			

STATS., violation. The trial court denied both motions and found Willoughby guilty of two counts of permitting illegal underage drinking on her premises. This appeal followed.

The only issue on appeal is whether § <125.07>(1)(a)3, STATS., applies broadly to include Willoughby's apartment, or whether it is limited in scope to those premises described in a license or permit. This involves the interpretation or construction of a statute and its application to a set of undisputed facts. As such, it presents a question of law which this court reviews de novo. See *Kwiatkowski v. Capitol Indem. Corp.*, 157 Wis.2d 768, 774-75, 461 N.W.2d 150, 153 (Ct. App. 1990).

The sole purpose for determining the meaning of a statute is to ascertain and give effect to the legislature's intent. See *Cynthia E. v. LaCrosse County Human Servs. Dept.*, 172 Wis.2d 218, 225, 493 N.W.2d 56, 59 (1992). To find that intent we look to the plain language of the statute. See *Peter B. v. State*, 184 Wis.2d 57, 71, 516 N.W.2d 746, 752 (Ct. App. 1994). If the statute is clear and unambiguous on its face, our inquiry ends, and we must simply apply the statute to the facts of the case. See *id.* Moreover, when a word is specifically defined by statute, that meaning must be given effect. See *Smith v. Kappell*, 147 Wis.2d 380, 385, 433 N.W.2d 588, 590 (Ct. App. 1988). This court would be setting a dangerous precedent if it assumed that the legislative body did not mean what it clearly said. See *Buening v. DHSS*, 205 Wis.2d 32, 58, 556 N.W.2d 116, 126 (Ct. App. 1996).

Section <125.07>(1)(a)3, STATS., provides:

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 trial court and the State contend that this statute applies broadly to prevent an adult from permitting an underage person from illegally consuming alcoholic beverages on any premises owned by or under the adult's control. However, the clear and unambiguous language of the statute indicates the statute is more narrow in scope. The statute specifically limits the scope of "premises" to that area described in a license or permit to sell alcoholic beverages under ch. 125, STATS. See § 125.02(9), (13) and (14m), STATS. Section 125.02 also states that "[e]xcept as otherwise provided" these definitions are controlling in ch. 125.

Applying the clear language of the statute to this case, Willoughby's premises is not covered under the statute. Willoughby lives in a residential apartment that has not been issued a license or permit under ch. 125, STATS. Moreover, there is no indication from the language of § <125.07>(1)(a)3, STATS., that the definition of "premises" as defined in § 125.02(14m), STATS., is not controlling here. The State contends that because this section did not use the word "license" or "permit," it is an indication that "premises" is meant to be broader here than elsewhere in the statute. However, by definition, the word "premises" is an area described in a license or permit; therefore, to use the word "license" or "permit" again is not required. [fn1]

Finally, although this court has had few opportunities to

address § <125.07>(1)(a)3, STATS., the two primary cases that discuss this section provide support for the conclusion reached here that "premises" does not include Willoughby's apartment. In *Miller v. Thomack*, 204 Wis.2d 242, 253-54, 555 N.W.2d 130, 135 (Ct. App. 1996), *aff'd*, Nos. 95-1684 and 95-1766 (Wis. June 13, 1997), this court assumed for purposes of § <125.07>(1)(a)3 that "premises" was "the area described in a license or permit" as defined in § 125.02(14m), STATS. [fn2] Furthermore, in *Smith*, 147 Wis.2d at 385, 433 N.W.2d at 590, we determined that the clear language of § <125.07>(1)(a)3 must govern, and that if a word is specifically defined by statute, that meaning must be given effect. Therefore, consistent with our previous holdings and discussions on statutory construction and § <125.07>(1)(a)3, this section does not apply to Willoughby's apartment. Accordingly, we reverse the trial court's judgment of conviction.

By the Court. - Judgment reversed.

[fn1] The State also argues that § <125.07>(1)(a)4, STATS., read together with § <125.07>(4)(a)2, renders § <125.07>(1)(a)3 superfluous. Moreover, the State argues that to interpret § <125.07>(1)(a)3 as applying to only premises covered by a license or permit would leave a loophole for social hosts. Although § <125.07>(1)(a)4 may overlap with § <125.07>(1)(a)3, the clear and unambiguous language of § <125.07>(1)(a)3 must be given effect. See *Smith v. Kappell*, 147 Wis.2d 380, 385, 433 N.W.2d 588, 590 (Ct. App. 1988). Furthermore, the statute does not necessarily leave a "loophole" for social hosts in cases such as the one here. The State could have conceivably brought charges against the defendant under § <125.07>(1)(a)4 in conjunction with § <125.07>(4)(b). However, the State never did so, nor did it make this argument at trial or on appeal.

[fn2] We did not base our holding in *Miller v. Thomack*, 204 Wis.2d 242, 254-55, 555 N.W.2d 130, 135 (Ct. App. 1996), *aff'd*, Nos. 95-1684 and 95-1766 (Wis. June 13, 1997), on the definition of "premises," but rather on the fact that the defendant did not know underage drinking was occurring on his business parking lot and beach area.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-4993/1
ARG: hmh

2001 BILL

soon
turned in
2/26

Regenerate

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 specifies that an adult may not knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on any property owned by the adult or under the adult's control, 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:

BILL

SECTION 1

1 125.07 (1) (a) 3. No adult may knowingly permit or fail to take action to prevent
2 the illegal consumption of alcohol beverages by an underage person on premises
3 property owned by the adult or under the adult's control. This subdivision does not
4 apply to alcohol beverages used exclusively as part of a religious service.

5

(END)



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

February 27, 2002

MEMORANDUM

To: Representative La Fave

From: Aaron R. Gary, Attorney

Re: LRB-4993/1 Underage consumption of alcohol on premises

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 261-6926 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.