

**2001 DRAFTING REQUEST**

**Bill**

Received: **01/30/2001**

Received By: **smiller**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget 266-8593**

By/Representing: **Holden**

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

Drafter: **agary**

May Contact:

Alt. Drafters:

Subject: **Beverages - miscellaneous**

Extra Copies: **RCT**

**Pre Topic:**

DOA:.....Kerry Holden -

**Topic:**

Alcohol beverage tied house, dealership, and out-of-state shipper laws

**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 02/01/2001	csicilia 02/01/2001	kfollet 02/01/2001	_____	lrb_docadmin 02/02/2001		S&L
/2	agary 02/04/2001 traderc 02/04/2001	hhagen 02/04/2001	jfrantze 02/05/2001	_____ _____ _____	lrb_docadmin 02/05/2001		S&L
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FE Sent For:

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FE Sent For:

12 hmt  
2/4/01

Jb 2/6

Jb/KM  
2/6

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**WISCONSIN DEPARTMENT OF  
ADMINISTRATION**

**TOMMY G. THOMPSON**  
GOVERNOR

**GEORGE LIGHTBOURN**  
SECRETARY

Office of the Secretary  
Post Office Box 7864  
Madison, WI 53707-7864  
Voice (608) 266-1741  
Fax (608) 267-3842  
TTY (608) 267-9629

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**Date:** January 30, 2001

**To:** Steve Miller

**From:** Kerry Holden *KH*  
State Budget Office (266-8593)

**Subject:** Statutory language request: tied house language

Please draft the attached for inclusion in the Governor's budget. Please let me know if you have any questions. Thanks!

# Reform of Alcoholic Beverages 3-Tier System --- Industry Proposal

(as of 1/29/01)

## 1. Point of Sale Inside Signs

A brewer or wholesaler may:

**125.33 (2)(a):** Give to any campus or Class "B" licensee or permittee, for placement inside the premises, signs, clocks, or menu boards with an aggregate value at any one time of not more than **\$2,500**. If a gift of any item would cause the **\$2,500** limit to be exceeded, the recipient shall pay the brewer or wholesaler the amount of the item's value in excess of **\$2500**. Each recipient shall keep an invoice or credit memo containing the name of the donor and the number and value of items received under this paragraph. The value of an item is its cost to the donor. Each recipient shall make the records kept under this paragraph available to the department for inspection upon request.

*DOR believes the term 'credit memo' can be removed from the law. DOR also suggests that these records be kept by both the donor and recipient. DOR Industry group agrees with both of these points.*

## 2. Inside Temporary Signs

A brewer or wholesaler may:

**125.33(2)(b):** Give to any campus or Class "B" licensee or permittee any of the following:

1. Fermented malt beverage tab/knobs.
2. Signs made from paper, cardboard, *plastic, vinyl or other temporary materials* for placement inside the premises.

*DOR has concerns about what 'other temporary materials' includes and would like more specific language.*

## 3. Entertainment

**125.33(2)(n)(2):** Notwithstanding subd. 1., no brewer or wholesaler may provide business entertainment to a Class "B" licensee or permittee under subd. 1 in one day that has a value exceeding **\$500**.

*DOR is concerned about this having no limit on the amount of days involved. DOR proposes this be limited to no more than 12 times a year. Industry group agrees.*

4. **Media Pre-Promotion Advertising**

Permit wholesalers or brewer to purchase advertising from a non-licensed third party, such as a radio station or promoter, which conducts national or regional sweepstakes, contest or promotions at Class "B" licensee(s) or permittee(s) selling its product. Such non-licensed third-parties may promote the event or activity, including the location of the event or activity, as long as the advertisement lists four or more unaffiliated Class "B" licenses, and as long as no money is given directly or indirectly to the retailer by a brewer or wholesaler for the privilege of conducting the sweepstakes, contest or promotion.

Notwithstanding any other provision of the law to the contrary, wholesalers or brewers may conduct national or regional sweepstakes, contests and/or promotions as described in Section 125.33(2)(c) upon Class "B" premises and promote the event or activity, including the location of the event or activity, as long as the promotion includes four or more unaffiliated Class "B" licenses per event or activity. However, no money or ~~some~~thing of value may be given directly or indirectly to the retailer for the privilege or opportunity of conducting the sweepstakes, contest or promotion.

*DOR suggests changing to brewer or wholesaler sponsored sweepstakes rather than "national or regional sweepstakes." We also think that a requirement that the permittee is 'selling its product' is not necessary recommend it be eliminated.*

5. **Retail License Transfer**

No ~~campus~~, Class "A" or "B" license or permit or "Class A" or "Class B" license or permit may be issued to a purchaser, lessee, or donee of a ~~campus~~ or retail premises unless at least 15 days before and no more than 30 days before issuance the seller, lessor or donor of the premises provides to the purchaser, lessee, or donee the name and addresses of all fermented malt beverage wholesalers of alcohol beverages to whom the seller, lessor or donor is indebted, and the purchaser, lessee or donee notifies each wholesaler of the pending purchase and provides proof of such notification to the issuing authority and if any of the following conditions are present:

1. If the seller, lessor, or donor of the premises is indebted to any licensee or permittee in violation of Section 125.33(7), this subparagraph shall not apply if the indebtedness has been discharged in bankruptcy.
2. If the seller, lessor, or donor is subject to a pending proceeding to revoke or suspend its license or permit.



*Should strike 'campus' from this section because they don't get a license.*

*It is DOR's belief that the penalty that applies in this situation would be the general penalties under s. 125.11 - up to a \$1000 fine and imprisonment for not more than 90 days or both. In addition, any license issued may be revoked by the court.*

*The language of the proposal covers both beer and liquor licenses - Class "A" and Class "B" as well as "Class A" and "Class B". Need to also change the proposal to make reference to s. 125.69(4) as already done with s.125.33(7). Industry group agrees with this.*

6. **Mail Order Beer Sales**

Any person who violates sub. (1) of 125.30 shall, for the first offence, be issued a warning letter from the department ordering that person to cease and desist any shipments of alcohol beverages to person in this state. For a 2<sup>nd</sup> or subsequent offence, any person who violates sub. (1) of 125.30 may be subject to a fine not to exceed \$10,000 or imprisonment of not more than 2 years, or both.

Notwithstanding s. 971.19 (6), an action to enforce sub. (1) shall be commenced by the department of justice in the circuit court for Dane county.

*This provision should be limited to the seller. DOR doesn't think a buyer of small quantities should be charged with a felony. This penalty should be only for the out-of-state shipper.*

7. **Conditional Sales**

No Class "A" or "B" licensee may condition the purchase of fermented malt beverage from a brewer or wholesaler upon the furnishing of any thing of value by the brewer or wholesaler to the licensee or to any person for the use, benefit or relief of any licensee.

8. **Sales Without Retail License**

A secured party may not sell alcohol beverages which it repossesses from a person holding a retail license or holding both wholesaler and retail licenses, which is collateral under a security agreement between the party and the licensee, and which is held by the licensee for retail sales unless the secured party holds an appropriate license authorizing the sale.

*DOR sees a possible problem with communities with quotas or waiting periods for licenses. Not sure that the secure party will be able to get a license. Language of 125.06 (8) is in conflict. Industry group will be suggesting fix language to allow a second party to get a temporary license --- Sharon Cook will forward it to DOA/DOR.*

9. **Compensation for Loss of Brand**

1. "Brand" means any word, name, group of letters, symbols, or combination thereof, including the name of the brewer if the brewer's name is also a significant part of the product name, adopted and used by a brewer to identify a specific fermented malt beverage product and to distinguish that product from other fermented malt beverages produced by that brewer or other brewers.
2. "Discontinued brand" means, with respect to a terminated wholesaler, any brand of fermented malt beverages for which a brewer, a brewer's agent or holder of any out-of-state shipper's permit has terminated, canceled, or failed to renew an agreement, whether oral or written, with that wholesaler to supply that brand.
3. "Successor wholesaler" means any wholesaler who enters an agreement, whether oral or written, to obtain a supply of a brand of fermented malt beverages from a brewer, a brewer's agent or holder of an out-of-state shipper's permit has terminated, canceled or failed to renew an agreement, whether oral or written, with a terminated wholesaler to supply that same brand of fermented malt beverages.
4. "Terminated wholesaler" means a wholesaler with whom a brewer, a brewer's agent or holder of an out-of-state shipper's permit has canceled, terminated or failed to renew an agreement, whether oral or written, to supply a brand of fermented malt beverage to that wholesaler. Terminated wholesaler does not include a wholesaler whose agreement was cancelled, terminated or not renewed because the wholesaler or a principal of the wholesaler (1) engaged in material fraudulent conduct or substantial misrepresentation in its dealings with the brewer or with others concerning the brewer's brands; or (2) has been convicted by a trial court or pleaded no contest to a felony; or (3) knowingly sells the brewer's brands outside the wholesaler's authorized territory for those brands.

(a) A successor wholesaler shall pay a terminated wholesaler the fair market value of the terminated wholesaler's distribution rights to any discontinued brand of fermented malt beverages assumed by the successor wholesaler. The brewer, brewer's agent or holder of an out-of-state shipper's permit shall inform the successor wholesaler, before the successor wholesaler acquires any discontinued brand of fermented malt beverages, of its obligations under this subsection. If the terminated wholesaler's right to sell a discontinued brand of fermented malt beverages are divided among 2 or more successor wholesalers, each successor wholesaler shall pay the terminated wholesaler the fair market value of the distribution rights to the discontinued brand of fermented malt beverages obtained by that successor wholesaler.

(b) the terminated wholesaler and successor wholesaler may agree to the fair market value of the terminated wholesaler's business related to a discontinued brand of fermented malt beverages and the successor wholesaler shall pay that sum to the terminated wholesaler within 30 days after the date that the parties agree on the fair market value. If the parties cannot agree on the compensation due the terminated wholesaler, the parties shall submit their dispute to binding arbitration subject to the expedited process under the commercial arbitration rule of the American Arbitration

Association. The arbitration shall commence within 90 days after the successor wholesaler obtains rights to receive a supply of a brand of fermented malt beverages, that is a discontinued brand of fermented malt beverages, of the terminated wholesaler, unless extended by the parties or the arbitration. The terminated wholesaler and successor wholesaler shall each pay 50% of the costs of arbitration.

*DOR does not want to administer this --- Beer Wholesalers agree that this is not their intent.*

10. **Retailer Association Membership**

**125.33 (2s):** Notwithstanding the prohibitions in sub. (1), a brewer or wholesaler may contribute money or other things of value to a bona fide national or statewide trade association which derives its principle income from membership dues of Class "B" licensees.

(Note: eliminates 350,000 annual barrel requirement for brewer)

*This would still prohibit membership in county or local tavern leagues - proposal needs to be amended to allow the contribution to be made to local (county or municipal) trade associations as well (i.e. Dane County Tavern League, Madison Tavern League).*

11. **Web-Based Server Training**

**125.17 (6) TRAINING COURSE (a)** Except as provided in par. (b), no municipal governing body may issue an operator's license unless the applicant has successfully completed a responsible beverage server training course at any location that is offered by a technical college district and that conforms to curriculum guidelines specified by the technical college system board or a comparable training course, *which may include secure computer-based training and testing*, that is approved by the department or the educational approval board, or unless the applicant fulfills one of the following requirements:

12. **Mail Order Sales of Wine**

Repeal direct mail order of wine shipment provisions under s. 125.58(4) and s. 125.68(10)(bm).

*The Wine & Spirit Institute has been working on a related proposal to create a clearinghouse permit. Sharon Cook of the Beer Wholesalers will be forwarding to DOA/DOR information on a compromise proposal between the Wine & Spirit Institute and the Beer Wholesalers regarding the clearinghouse permit proposal.*

**COOK & FRANKE S. C.**

ATTORNEYS AT LAW

660 EAST HADSON STREET

MILWAUKEE, WISCONSIN 53202-3877

MEMBER:

COMMERCIAL LAW AFFILIATES.  
INDEPENDENT BUSINESS & LITIGATION LAW FIRMS.  
WORLDWIDESHARON COOK  
GOVERNMENT RELATIONS ADVISORTELEPHONE: (414) 271-5900  
FACSIMILE: (414) 271-2002

January 29, 2001

Via Facsimile

TO: Tom Ourada  
Paul Ziegler  
John Koskinen

FROM: Sharon Cook

RE: WWBDA Tied House Language

I forwarded comments to you earlier by email regarding Tom Ourada's suggestions on retail licensing language. What he proposes is fine.

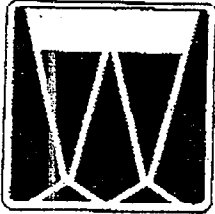
The attached clarifies two other issues.

The first is Tom Sheforgen's revision of "Sale By a Secured Party".

The second is an edited version of the proposed language regarding mail order sales of wine. The edits remove beer from the proposal to create a clearinghouse permit. This is consistent with the discussions we've had with other industry representatives.

If you have questions, please call me at 414-227-1237 or email scook@cf-law.com.

Enclosures



Wisconsin Wholesale Beer Distributors Association  
 2805 East Washington Avenue  
 Madison, WI 53704  
 (608) 249-6464  
 FAX (608) 249-4142

To: Sharon Cook	From: Thomas R. Sheforgen
Fax #: -1-414-271-2840	Fax #: 608-249-4142
Company: Cook & Franke	Tel #: 608-249-6464
Subject:	
Sent: 2/1/01 at 2:54:34 PM	
Pages: 1 (including cover)	

## MESSAGE:

Dear Sharon:

Here is the revision to section 125.06(8):

SALE BY SECURED PARTY. The sale of alcohol beverages by a secured party in good faith under the terms of a security agreement, if the sale is not for the purpose of avoiding this chapter or ch. 139. The sale must be in the ordinary course of the business of lending money secured by a security interest in alcohol beverages or warehouse receipts or other evidence of ownership, and if the sale is of fermented malt beverages it must be made within 15 days on which the secured party takes possession of the fermented malt beverages.

Sincerely,

Tom

1 AN ACT to amend 125.085(2), (3) and (4)(a) and (b)(intro.), 125.04(9),  
 2 125.07(4)(bm)3. and 5., 125.25(1), 125.26(1), 125.51(2)(a)(3)(a) and (b),  
 3 125.58 (1) and (4); to create 125.205<sup>a wine</sup> of the statutes; relating to: ~~an alcohol~~  
 4 ~~beverage~~ clearinghouse permit; and to create 125.195 of the statutes  
 5 prohibiting the direct shipment of alcohol beverages to consumers; and to  
 6 create 125.205 of the Wisconsin statutes establishing a consumer assistance  
 7 toll free line; and to repeal 139.035.

---

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.  
 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:*

4 SECTION 1. 125.035 (2), (3) and (4) (a) and (b) (intro.) of the statutes are  
 5 amended to read:

1           125.035 (2) A person is immune from civil liability arising out of the act of  
2           procuring alcohol beverages for or selling, dispensing, delivering under § 125.285  
3           or giving away alcohol beverages to another person.

1           (3) Subsection (2) does not apply if the person procuring, selling, dispensing,  
2           delivering under § 125.285 or giving away alcohol beverages causes their  
3           consumption by force or by representing that the beverages contain no alcohol.

4           (4) (a) In this subsection, "provider" means a person, including a licensee or  
5           permittee, who procures alcohol beverages for or sells, dispenses, delivers under §  
6           125.285 or gives away alcohol beverages to an underage person in violation of §  
7           125.07 (1) (a).

8           (b) (intro.) Subsection (2) does not apply if the provider knew or should have  
9           known that the underage person was under the legal drinking age and if the alcohol  
10          beverages provided to the underage person were a substantial factor in causing injury  
11          to a 3rd party. In determining whether a provider knew or should have known that  
12          the underage person was under the legal drinking age, all relevant circumstances  
13          surrounding the procuring, selling, dispensing, delivering under § 125.285 or giving  
14          away of the alcohol beverages may be considered, including any circumstance under  
15          subds. 1. to 4. In addition, sub (2) does apply if all of the following occur.

16          SECTION 2. 125.04 (9) of the statutes is amended to read:

17          125.04 (9) SEPARATE LICENSE OR PERMIT REQUIRED. Except as  
18          provided under §§ 125.27 (2) (a) and 125.51 (5) (c) 1., wholesalers, manufacturers,  
19          rectifiers, brewers and retailers shall have a separate permit or license covering each  
20          location or premises, except a licensed public warehouse, from which deliveries and

1 sales of alcohol beverages are made or at which alcohol beverages are stored.

2 ~~Alcohol beverage clearinghouse permittees shall have a separate permit covering each~~  
3 ~~location or premises from which deliveries of alcohol beverages are made or at which~~  
4 ~~alcohol beverages are stored.~~

5 SECTION 3. 125.07 (4) (bm) 3. of the statutes is amended to read:

6 125.07 (4) (bm) 3. A permittee other than a Class "B" , or "Class B" or  
7 ~~alcohol beverage clearinghouse permittee.~~

8 SECTION 4. 125.07 (4) (bm) 5. of the statutes is amended to read:

9 125.07 (4) (bm) 5. A retail licensee or permittee under the conditions  
10 specified in § 125.82 (2) or 125.68 (2) or for delivery of unopened containers to the  
11 vehicle of a customer provided the vehicle is parked in the customary parking area  
12 for the retail licensee or permittee.

13 SECTION 5. 125.20 of the statutes is created to read:

14 125.20 ~~Alcohol beverage~~ <sup>Wine</sup> clearinghouse permit. (1) ISSUANCE. The  
15 department shall issue an ~~alcohol beverage~~ <sup>Wine</sup> clearinghouse permit which authorizes the  
16 permittee to receive alcohol beverages only from a wholesaler, to store the alcohol  
17 ~~beverages~~ <sup>Wine</sup> in premises covered by the permit and to deliver the alcohol ~~beverages~~ <sup>Wine</sup> in  
18 unopened containers to an individual who has attained the legal drinking age. Except  
19 as provided in s. ~~125.51(1), 125.51(4),~~ 125.51(2), 125.51(3) and 125.07(4)(bm)3.,  
20 no retailer may deliver ~~alcohol beverages~~ <sup>Wine</sup> unless he/she possesses a clearinghouse  
21 permit. The permit does not authorize the sale of any alcohol ~~beverages~~ <sup>Wine</sup>.

22 (2) ELIGIBILITY. The department may issue ~~an alcohol beverage~~ <sup>Wine</sup>  
23 clearinghouse permit only to a retailer possessing a valid Class A license. The permit



1 authorizes the permittee to receive, store and deliver only ~~those alcohol beverages~~ <sup>the wine for</sup> for  
2 which the Class A license is authorized to sell.

3 (3) DELIVERY. (a) No permittee may deliver ~~alcohol beverages~~ <sup>wine</sup> under this  
4 section unless he or she possesses an operator's license issued under § 125.17, a  
5 manager's license issued under § 125.18, a license issued under this chapter for the  
6 retail sale of ~~alcohol beverages~~ <sup>wine</sup> or is deemed to have operator privilege is under s.  
7 ~~125.52(2)~~ <sup>wine</sup> or 125.69(2), Wis. Stats.

8 (b) No permittee may deliver ~~alcohol beverages~~ <sup>wine</sup> under this section to any  
9 location within a municipality that does not issue licenses for the retail sale of ~~alcohol~~  
10 ~~beverages~~ <sup>wine</sup> or to any location at which the sale, possession or deliver of ~~alcohol~~  
11 ~~beverages~~ <sup>wine</sup> is prohibited by this chapter or by municipal ordinance. No permittee may  
12 deliver ~~alcohol beverages~~ <sup>wine</sup> under this section to any location between the hours of 9  
13 p.m. and 8 a.m.

14 (c) Whenever a permittee is delivering ~~alcohol beverages~~ <sup>wine</sup> under this section,  
15 he or she shall possess a delivery invoice which provides the following information:

- 16 (1) date of delivery;
- 17 (2) name and address of purchaser;
- 18 (3) name and address of licensee;
- 19 (4) name of delivery person; and
- 20 (5) an itemization of the number, size, and brands of ~~alcohol~~  
21 ~~beverages~~ <sup>wine</sup> delivered.

1 (d) No permittee may deliver ~~alcohol beverages~~ <sup>Wine</sup> unless the individual accepting  
 2 the delivery signs the invoice and provides proof of legal drinking age by proper  
 3 identification if the person appears under the legal drinking age.

4 (e) Any delivery under this section must be made in a package which clearly  
 5 indicates that ~~alcohol beverages~~ <sup>Wine is</sup> are contained within.

6 (f) No underage person may accept delivery of ~~alcohol beverages~~ <sup>Wine</sup>.

7 (4) RECORDS. The permittee shall maintain all original signed invoices for  
 8 2 years from the date of invoice at the premises covered by the permit.

9 SECTION 6. 125.25 (1) of the Statute is amended to read:

10 125.25 CLASS "A" LICENSES. (1) Every municipal governing body may issue  
 11 Class "A" licenses for the sale of fermented malt beverages from premises within the  
 12 municipality. A Class "A" license authorizes retail sales of fermented malt beverages  
 13 for consumption off the premises where sold and in original packages, containers and  
 14 bottles ~~and also authorizes the delivery of original sealed containers of fermented malt~~  
 15 ~~beverages to the vehicle of a customer provided the vehicle is parked in the licensee's~~  
 16 ~~customer parking area.~~ A license may be issued after July 1. That license shall  
 17 expire on the following June 30.

18 SECTION 7. 125.26 (1) of the Statutes is amended to read:

19 125.26 CLASS "B" LICENSES. (1) Every municipal governing body may issue  
 20 Class "B" licenses for the sale of fermented malt beverages from premises within the  
 21 municipality and may authorize an official or body of the municipality to issue  
 22 temporary Class "B" licenses under sub. (6). A Class "B" license authorizes retail  
 23 sales of fermented malt beverages to be consumed either on the premises where sold

1 or off the premises ~~and also authorizes the delivery of original sealed containers of~~  
2 ~~fermented malt beverages to the vehicle of a customer provided the vehicle is parked~~  
3 ~~in the licensee's customary parking area.~~ A license may be issued after July 1. That  
4 license shall expire on the following June 30. Persons holding a Class "B" license  
5 may sell beverages containing less than 0.5% of alcohol by volume without obtaining  
6 a license under s. 66.053(1).

7 SECTION 8. 125.51 (2) of the Statutes is amended to read:

8 (2) RETAIL, "CLASS A" LICENSE. (a) A "Class A" license authorizes the  
9 retail sale of intoxicating liquor for consumption off the premises where sold and in  
10 original packages and containers and also authorizes the delivery of original sealed  
11 containers of intoxicating liquor in the vehicle of a customer provided the vehicle is  
12 parked in the licensee's customary parking area.

13 SECTION 9. 125.51 (3)(a) of the Statutes is amended to read:

14 (3) RETAIL "CLASS B" LICENSE. (a) A "Class B" license authorizes the retail  
15 sale of intoxicating liquor for consumption on the premises where sold by the glass  
16 and not in the original package or container. In addition, wine may be sold in the  
17 original package or container in any quantity to be consumed off the premises where  
18 sold and may be delivered to the vehicle of a customer provided the vehicle is parked  
19 in the licensee's customary parking area. This paragraph does not apply in  
20 municipalities in which the governing body elects to come under par. (b) or to a  
21 winery that has been issued a "Class B" license. Paragraph (am) applies to all  
22 wineries that have been issued a "Class B" license.

23 SECTION 10. 125.51 (3)(b) of the Statutes is amended to read:

1 (b) In all municipalities electing by ordinance to come under this paragraph,  
2 a retail "Class B" license authorizes the sale of intoxicating liquor to be consumed by  
3 the glass only on the premises where sold and also authorizes the sale of intoxicating  
4 liquor in the original package or container, in multiples not to exceed 4 liters at any  
5 one time, and to be consumed off the premises where sold. Wine, however, may be  
6 sold for consumption off the premises in the original package or otherwise in any  
7 quantity. The license also authorizes the delivery of original sealed containers of  
8 intoxicating liquor and wine to the vehicle of a customer provided the vehicle is  
9 parked in the licensee's customary parking area. This paragraph does not apply to  
10 a winery that has been issued a "Class B" license. Paragraph (am) applies to all  
11 wineries that have been issued a "Class B" license.

12 SECTION 11. 125.58 (1), (4) of the Statutes is amended to read:

13 ~~Out-of-state shippers' permit; exception to requirement.~~ (1) The  
14 department shall issue out-of-state shippers' permits which authorize persons located  
15 outside this state to sell or ship intoxicating liquor into this state. ~~Except as provided~~  
16 ~~under sub. (4),~~ Intoxicating liquor may be shipped into this state only to a person  
17 holding a manufacturer's, rectifier's, wholesaler's, industrial alcohol or medicinal  
18 alcohol permit. ~~Except as provided under sub. (4),~~ a separate out-of-state shipper's  
19 permit is required for each location from which any intoxicating liquor is sold or  
20 shipped into this state, including the location from which the invoices are issued for  
21 the sales or shipments. Any person holding an out-of-state shipper's permit issued  
22 under this section may solicit orders for sales or shipments by the permittee without  
23 obtaining the sales solicitation permit required by s. 125.65 , but every agent,

1 salesperson or other representative who solicits orders for sales or shipments by an  
 2 out-of-state shipper shall first obtain a permit for soliciting orders under s. 125.65.  
 3 No holder of an out-of-state shipper's permit issued under this section may sell  
 4 intoxicating liquor in this state or ship intoxicating liquor into this state unless the  
 5 out-of-state shipper is the primary source of supply for that intoxicating liquor.

6 ~~(4) A winery located outside of this state may ship wine into this state as~~  
 7 ~~provided under s. 125.68 (10)(bm) if the winery is located in a state which has a~~  
 8 ~~reciprocal agreement with this state under s. 139.035. An out of state shipper's~~  
 9 ~~permit is not required for shipments into this state under this subsection.~~

10 SECTION 12. 125.68 (10) (a), (b) (bm) and (c) are amended to read:

11 (10) SHIPMENTS INTO STATE. (a) ~~Except as provided in par. (bm),~~ [N]o  
 12 intoxicating liquor may be shipped into this state unless consigned to a person holding  
 13 a permit for the sale of intoxicating liquor, other than a retail "Class B" permit.

14 (b) ~~Except as provided in par. (bm),~~ [N]o common carrier or other person may  
 15 transport into and deliver within this state any intoxicating liquor unless it is  
 16 consigned to a person holding a permit for the sale of intoxicating liquor, other than  
 17 a retail "Class B" permit. Any common carrier violating this paragraph shall forfeit  
 18 \$100 for each violation.

19 ~~(bm) A winery may ship wine into this state under s. 125.58 (4) from a state~~  
 20 ~~which has a reciprocal agreement with this state under s. 139.035 to an individual~~  
 21 ~~who is of the legal drinking age if the shipping container is clearly labeled to indicate~~  
 22 ~~that the package may not be delivered to an underage person or to an intoxicated~~

1 ~~person. A person who receives wine under this paragraph may not sell it or use it~~  
 2 ~~for a commercial purpose.~~

3 ~~(b) No individual may resell wine received under par. (b) or receive more than~~  
 4 ~~9 liters of wine annually under par. (b).~~

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

7 SECTION 13. Section 125.195 of the statutes is created to read:

8 125.195 Sale and shipment by out-of-state seller directly to an in-state  
 9 consumer prohibited. (1) A person in the business of selling alcohol beverages in  
 10 another state or country shall not ship or cause to be shipped any alcohol beverage  
 11 directly to a person in this state who does not hold a valid license or permit to receive  
 12 such alcohol beverages issued under this chapter.

13 (2) Any person who violates sub. (1) shall, for the first offense, be ~~issued~~  
 14 ~~a warning letter from the department ordering that person to cease and desist any~~  
 15 ~~shipments of alcohol beverages to persons in this state fined not more than \$10,000~~  
 16 ~~or imprisoned not more than 9 months or both.~~ For a second or subsequent offense,  
 17 any person who violates sub. (1) may be subject to a fine not to exceed \$10,000 or  
 18 imprisonment of not more than 2 years, or both.

19 SECTION 14. Section 125.205 of the <sup>Wine</sup> Statutes is created to read:

20 125.205 Consumer Assistance. (1) Wholesalers issued licenses under  
 21 ~~125.54~~ 125.54 shall establish and maintain at their cost a toll-free telephone  
 22 line through which consumers may obtain assistance in obtaining through licensed

Wine

1 ~~wholesalers, retailers and clearinghouse permittees formulated with laws and rules~~  
2 ~~intended to be otherwise unavailable for sale in this State.~~

3 (2) The secretary shall within 180 days of the effective date of this act  
4 promulgate emergency rules necessary to implement subsection (1) of this section.

5 SECTION 15. Section 139.035 of the Statutes is repealed.

ARLS...  
CS

DOA:.....Kerry Holden - Alcohol beverage tied house, dealership, and out-of-state shipper laws

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

today

D-Note

Do NOT GEN

1 AN ACT...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*  
**COMMERCE AND ECONOMIC DEVELOPMENT**

**COMMERCE**

Under current law (Wisconsin Fair Dealership Law), which applies to most types of product distributors, a wholesaler of fermented malt beverages that operates under a contract or agreement, expressed or implied, with a brewer (known as the grantor) for distribution of a brewer's products, and that maintains a "community of interest" (i.e. a sufficiently close continuing financial interest) with the brewer, is considered a dealer and may not have its distribution rights terminated, cancelled, not renewed, or substantially changed in terms of competitive circumstances, without good cause. The burden of establishing good cause lies with the brewer. Good cause means failure by the wholesaler to comply substantially with essential and reasonable requirements imposed (or sought to be imposed) upon the wholesaler by the brewer, which requirements are not discriminatory as compared to their application by the brewer to other similarly situated wholesalers. Good cause also means bad faith by the wholesaler in carrying out the brewer's distribution business. A brewer must also provide a wholesaler with notice of an intent to terminate, cancel, ~~fail to~~ renew, or substantially change the competitive circumstances of the wholesaler's distribution rights, and the wholesaler is entitled to an opportunity to

STET



cure any deficiency alleged by the brewer. A brewer that terminates, cancels, fails to renew, or substantially changes the wholesaler's distribution rights without good cause may be held liable, and injunctive relief preventing the brewer's actions may be obtained. ✓

Under this bill, a fermented malt beverages wholesaler that does not maintain a "community of interest" with a brewer may be considered a dealer of the brewer, such that the wholesaler's product distribution rights may not be terminated by the brewer without "good cause." The bill does not otherwise directly affect the relationship between the brewer and the fermented malt beverages wholesaler. However, the bill requires that, if a fermented malt beverages wholesaler's authorization to distribute products is terminated in whole or in part by a brewer (even for "good cause"), any succeeding fermented malt beverages wholesaler must compensate the terminated wholesaler for the fair market value of the distributorship that was terminated by the brewer. If the brewer terminates a wholesaler's distribution rights to some but not all of the brewer's products or brands, the terminated wholesaler must be compensated for the fair market value of the distribution rights for the products or brands terminated. An exception exists if the terminated wholesaler was terminated by the brewer because the terminated wholesaler: engaged in material fraudulent conduct or made material and substantial misrepresentations in its dealings with the brewer or others; was convicted of a felony substantially related to operation of the dealership; or knowingly distributed products outside the territory authorized by the brewer. Disputes regarding the amount of compensation owed by a succeeding wholesaler to a terminated wholesaler must be mutually resolved between the parties or resolved through binding arbitration through a nationally recognized arbitration association.

Under current law, the outright sale, transfer, or assignment of a license to sell alcohol beverages at retail is illegal and unenforceable, except as specifically authorized by statute. The statutes authorize such direct transfers only if the license holder dies, becomes bankrupt, or makes an assignment for the benefit of creditors. However, current licensees or permittees at times agree to surrender their license or permit to the issuing authority upon promise of payment by another party on the condition that the surrender of the license or permit results in the other party being awarded the liquor license or permit by the issuing authority. ✓

This bill prohibits municipalities and the department of revenue from issuing to an applicant a retail license or permit to sell alcohol beverages if the premises described in the application are already covered by a current license or permit of the same kind unless each fermented malt beverage wholesaler to whom the current licensee or permittee is indebted is first notified that another person has applied for a license or permit that is subject to a surrender agreement. ✓

Under current law, a person who in good faith and in the ordinary course of business of lending money holds a security interest in alcohol beverages or warehouse receipts may, without a license or permit, sell alcohol beverages. This bill requires that a sale of fermented malt beverages by a secured party be made within 30 days after the secured party takes possession of the fermented malt beverages unless the secured party demonstrates good cause why this time period is

insufficient to make a sale that is commercially reasonable or in conformity with the parties' security agreement.

Under current law, a person located outside this state who ships intoxicating liquor (including wine) into this state must hold an out-of-state shippers' permit and must ship the intoxicating liquor only to a person holding a manufacturer's, rectifier's, wholesaler's, industrial alcohol, or medicinal alcohol permit. An exception exists for a qualifying winery. If a winery is located in a state which has a reciprocal agreement with this state, the winery may ship wine into this state without an out-of-state shippers' permit and may ship wine directly to a person who does not hold a license or permit if the person is of legal drinking age and the shipment is properly labeled. The recipient may not resell the wine received and may not receive more than 9 liters of wine annually. This bill repeals the statutes that allow persons who do not hold a license or permit to receive mail-order shipments of wine.

Under current law, any person who ships fermented malt beverages from out-of-state must hold an out-of-state shippers' permit, which authorizes the permittee to ship fermented malt beverages only to licensed wholesalers within the state. Violators shall be fined not more than \$1,000 or imprisoned for not more than 90 days or both, and their out-of-state shippers' permit may be revoked. This bill requires DOR to issue a written warning for an out-of-state shipper's first violation, and requires that any subsequent violation result in a fine of not more than \$10,000 or imprisonment for not more than 2 years or both.

Current law generally prohibits any brewer or wholesaler of fermented malt beverages from furnishing anything of value to a retailer of fermented malt beverages. A specific exception allows brewers and wholesalers to give to any fermented malt beverage retailer, for placement inside the premises, signs, clocks, or menu boards with an aggregate value of not more than \$150. A retailer that receives a gift in excess of the limit must repay the value of the gift to the extent it exceeds the limit. The fermented malt beverage retailer must keep an invoice or credit memo that includes information about the gift, and these records are subject to inspection by DOR. This bill increases the aggregate limit on the value of signs, clocks, or menu boards from \$150 to \$2,500 during any 12-month period. The bill also requires both the brewer or wholesaler, as well as the fermented malt beverage retailer, to keep written documentation containing information about the gift, and subjects the brewer's or wholesaler's records to inspection by DOR as well.

Under current law, another exception to the prohibition against gifts from brewers or wholesalers to fermented malt beverage retailers allows a brewer or wholesaler to provide signs made from paper or cardboard for placement inside the retailer's premises. This bill allows a brewer or wholesaler to also provide signs made from plastic, vinyl, or other materials with a useful life of less than one year.

Under current law, another exception to the prohibition against gifts from brewers or wholesalers to fermented malt beverage retailers allows a brewer or wholesaler to purchase advertising for a fair consideration from a bona fide national or statewide trade association which derives its principle income from membership dues of retailers. This bill allows a brewer or wholesaler to purchase advertising

Five

from a bona fide advertising agency or media company to promote brewer or wholesaler sponsored sweepstakes, contests, or promotions on the premises of retailers if the promotional material includes at least 5 unaffiliated retailers and if the retailer on whose premises the sweepstakes, contest, or promotion will occur does not receive compensation for hosting the event. The bill also allows a brewer or wholesaler to conduct its own sweepstakes, contest, or promotion on the premises of a retailer if these same conditions are satisfied.

Under current law, another exception to the prohibition against gifts from brewers or wholesalers to fermented malt beverage retailers allows a brewer or wholesaler to provide business entertainment to a fermented malt beverage retailer in one day that has a value of \$75 or less. This bill increases this business entertainment daily limit from \$75 to \$500 and limits the number of days that business entertainment may be provided to not more than 12 in a calendar year.

Under current law, another exception to the prohibition against gifts from brewers or wholesalers to fermented malt beverage retailers allows a brewer that produces 350,000 or more barrels of fermented malt beverages annually to contribute money or other things of value to bona fide national or statewide trade associations which derive their principle income from membership dues of retailers. This bill allows any brewer or wholesaler to contribute money or other things of value to a bona fide national, statewide, or local trade association of retailers. This would include allowing brewers or wholesalers to join local tavern leagues.

Current law requires an applicant for an operator's license (commonly called a bartender's license) to successfully complete a responsible beverage server training course at any location that is offered by a technical college district and that conforms to specified curriculum guidelines or a comparable training course that is approved by DOR or the educational approval board. This bill permits an applicant to complete a responsible beverage server training course by means of a computer-based training and testing, including curriculum offered through the Internet.

For further information see the *state and local* 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. 125.04 (12) (c) of the statutes is created to read:  
2 125.04 (12) (c) Retail license or permit <sup>for the same premises</sup> ~~subject to surrender agreement~~ No  
3 municipality may issue a Class "A", "Class A", Class "B", "Class B" or "Class C"  
4 license, and the department may not issue a Class "B" or "Class B" permit, to an  
5 applicant if the premises described in the application for a license or permit is

STET

1 already covered by a current license or permit of the same kind unless all of the  
2 following apply:

3 1. The applicant provides proof that, not less than 15 days nor more than 30  
4 days before submitting the application, the current licensee or permittee for the  
5 premises has provided to the applicant the name and address of each fermented malt  
6 beverages wholesaler to whom the current licensee or permittee is indebted. ✓

7 2. The applicant provides proof that, not less than 15 days nor more than 30  
8 days before submitting the application, the applicant has notified each wholesaler  
9 identified under subd. 1. of the address and current name of the premises for which  
10 the license or permit application is made, of the name and address of the current  
11 licensee or ✓ permittee, and that the applicant is applying for a license or permit for  
12 the premises. ✓

13 3. The current licensee or permittee is not in violation of s. 125.33 (7) or 125.69  
14 (4) unless the violation consists of an indebtedness discharged in bankruptcy. ✓ ✓

15 4. The current licensee or permittee is not the subject of any proceeding under  
16 s. 125.12. ✓

17 SECTION 2. 125.06 (8) of the statutes is amended to read:

18 125.06 (8) SALE BY SECURED PARTY. The sale of alcohol beverages by a secured  
19 party in good faith under the terms of a security agreement, if the sale is not for the  
20 purpose of avoiding this chapter or ch. 139. The sale must be in the ordinary course  
21 of the business of lending money secured by a security interest in alcohol beverages  
22 or warehouse receipts or other evidence of ownership. A sale of fermented malt  
23 beverages must be made within 30 days after the secured party takes possession of  
24 the fermented malt beverages unless the secured party demonstrates good cause

1 why a sale in compliance with s. 409.504 or the security agreement cannot be made  
2 within this time period.

3 SECTION 3. 125.145 of the statutes is amended to read:

4 125.145 **Prosecutions by attorney general.** Upon request by the secretary  
5 of revenue, the attorney general may represent this state or assist a district attorney  
6 in prosecuting any case arising under this chapter. Notwithstanding s. 971.19 (6),  
7 upon request by the secretary of revenue, the attorney general may commence any  
8 action to enforce s. 125.30 (1) in the circuit court for Dane County.

9 SECTION 4. 125.17 (6) (a) (intro.) of the statutes is amended to read:

10 125.17 (6) (a) (intro.) Except as provided in par. (b), no municipal governing  
11 body may issue an operator's license unless the applicant has successfully completed  
12 a responsible beverage server training course at any location that is offered by a  
13 technical college district and that conforms to curriculum guidelines specified by the  
14 technical college system board or a comparable training course, which may include  
15 computer-based training and testing, that is approved by the department or the  
16 educational approval board, or unless the applicant fulfills one of the following  
17 requirements:

18 SECTION 5. 125.30 (6) of the statutes is created to read:

19 125.30 (6) Notwithstanding s. 125.11, the department shall issue a written  
20 warning to any person located outside this state who sells or ships intoxicating liquor  
21 into this state in violation of sub. (1) if the person has not previously received a  
22 warning under this section. Any person located outside this state who sells or ships  
23 intoxicating liquor into this state in violation of sub. (1) and who has been previously  
24 issued a written warning under this section shall be fined not more than \$10,000 or  
25 imprisoned for not more than 2 years or both.

Subsection

1           **SECTION 6.** 125.33 (2) (a) of the statutes is amended to read:

2           125.33 (2) (a) Give to any campus or Class "B" licensee or permittee, during any  
3 12 month period, for placement inside the premises, signs, clocks, or menu boards  
4 with an aggregate value of not more than \$150 \$2,500. If a gift of any item would  
5 cause the ~~\$150~~ \$2,500 limit to be exceeded, the recipient shall pay the brewer or  
6 wholesaler the amount of the item's value in excess of \$150 \$2,500. ~~Each recipient~~  
7 ~~shall keep an invoice or credit memo containing the name of the donor~~ Both the  
8 donating brewer or wholesaler and the recipient shall keep written documentation  
9 containing the name of the recipient and donor and the number and value of items  
10 received provided under this paragraph. The value of an item is its cost to the donor.  
11 Each donor and recipient shall make the records kept under this paragraph available  
12 to the department for inspection upon request. ✓

13           **SECTION 7.** 125.33 (2) (b) 2. of the statutes is amended to read:

14           125.33 (2) (b) 2. Signs made from paper ~~or~~, cardboard, plastic, vinyl, or other  
15 materials with a useful life of less than one year for placement inside the premises. ✓

16           **SECTION 8.** 125.33 (2) (L) of the statutes is renumbered 125.33 (2) (L) 1. ✓

17           **SECTION 9.** 125.33 (2) (L) <sup>^</sup>2. of the statutes is created to read:

18           125.33 (2) (L) 2. Purchase advertising from any person who does not hold a  
19 license or permit under this chapter and who conducts a bona fide advertising,  
20 promotional, or media business, to promote brewer or wholesaler sponsored  
21 sweepstakes, contests, or promotions on the premises of Class "B" licensees or  
22 permittees if the advertising or promotional material or media includes at least 5  
23 unaffiliated Class "B" licensees and if the Class "B" licensee on whose premises the  
24 event will occur does not receive compensation, directly or indirectly, for hosting the  
25 event.

1           **SECTION 10.** 125.33 (2) (L) 3. of the statutes is created to read:

2           125.33 (2) (L) 3. Conduct its own sweepstakes, contests, or promotions on the  
3 premises of Class "B" licensees or permittees if the advertising or promotional  
4 material or media for the event includes at least 5 unaffiliated Class "B" licensees  
5 and if the Class "B" licensee on whose premises the event will occur does not receive  
6 compensation, directly or indirectly, for hosting the event. ✓

7           **SECTION 11.** 125.33 (2) (n) 2. of the statutes is amended to read:

8           125.33 (2) (n) 2. Notwithstanding subd. 1., no brewer or wholesaler may  
9 provide business entertainment to a Class "B" licensee or permittee under subd. 1.  
10 in one day that has a value exceeding ~~\$75~~ \$500, and no brewer or wholesaler may  
11 provide business entertainment to a Class "B" licensee or permittee under subd.1. ✓  
12 on more than 12 days in any calendar year. ✓

13           **SECTION 12.** 125.33 (2s) of the statutes is amended to read:

14           125.33 (2s)   EXCEPTION FOR RETAIL TRADE ASSOCIATION CONTRIBUTIONS.  
15 Notwithstanding the prohibitions in sub. (1), a brewer ~~that produces 350,000 or more~~  
16 ~~barrels of fermented malt beverages annually~~ or wholesaler may contribute money  
17 or other things of value to a bona fide national ~~or~~, statewide, or local trade association  
18 which derives its principle income from membership dues of Class "B" licensees. ✓

19           **SECTION 13.** 125.58 (1) of the statutes is amended to read:

20           125.58 (1) The department shall issue out-of-state shippers' permits which  
21 authorize persons located outside this state to sell or ship intoxicating liquor into this  
22 state. ~~Except as provided under sub. (4), intoxicating~~ Intoxicating liquor may be  
23 shipped into this state only to a person holding a manufacturer's, rectifier's,  
24 wholesaler's, industrial alcohol or medicinal alcohol permit. ~~Except as provided~~  
25 ~~under sub. (4), a~~ A separate out-of-state shipper's permit is required for each

1 location from which any intoxicating liquor is sold or shipped into this state,  
2 including the location from which the invoices are issued for the sales or shipments.  
3 Any person holding an out-of-state shipper's permit issued under this section may  
4 solicit orders for sales or shipments by the permittee without obtaining the sales  
5 solicitation permit required by s. 125.65, but every agent, salesperson or other  
6 representative who solicits orders for sales or shipments by an out-of-state shipper  
7 shall first obtain a permit for soliciting orders under s. 125.65. No holder of an  
8 out-of-state shipper's permit issued under this section may sell intoxicating liquor  
9 in this state or ship intoxicating liquor into this state unless the out-of-state shipper  
10 is the primary source of supply for that intoxicating liquor.

11 SECTION 14. 125.58 (4) of the statutes is repealed.

12 SECTION 15. 125.68 (10) (a) of the statutes is amended to read:

13 125.68 (10) (a) ~~Except as provided in par. (bm),~~<sup>✓</sup> No intoxicating liquor may  
14 be shipped into this state unless consigned to a person holding a permit for the sale  
15 of intoxicating liquor, other than a retail "Class B" permit.

16 SECTION 16. 125.68 (10) (b) of the statutes is amended to read:

17 125.68 (10) (b) ~~Except as provided in par. (bm),~~<sup>✓</sup> No common carrier or other  
18 person may transport into and deliver within this state any intoxicating liquor  
19 unless it is consigned to a person holding a permit for the sale of intoxicating liquor,  
20 other than a retail "Class B" permit. Any common carrier violating this paragraph  
21 shall forfeit \$100 for each violation.

22 SECTION 17. 125.68 (10) (bm) of the statutes is repealed.

23 SECTION 18. 125.68 (10) (bs) of the statutes is repealed.

24 SECTION 19. 135.02 (3) (c)<sup>↑</sup> of the statutes is created to read:



## SECTION 19

1 135.02 (3) (c) A contract or agreement, either expressed or implied, whether  
2 oral or written, between 2 or more persons by which a wholesaler, as defined in s.  
3 125.02 (21), is granted the right to sell or distribute fermented malt beverages or use  
4 a trade name, trademark, service mark, logotype, brand, advertising, or other  
5 commercial symbol related to fermented malt beverages.

6 SECTION 20. 135.067 of the statutes is created to read:

7 135.067 Fermented malt beverage dealerships. (1) COMPENSATION OF PRIOR  
8 DEALER. Notwithstanding ~~s. 135.02 (3) and~~ 135.03, any person who assumes, in  
9 whole or in part, a dealership ~~under~~ <sup>described in</sup> s. 135.02 (3) (c) following the grantor's  
10 termination, cancellation, or nonrenewal in whole or in part of a prior dealership  
11 agreement shall compensate the prior dealer for the fair market value of that portion  
12 of the dealership assumed unless the grantor terminated, canceled, or failed to renew  
13 for any of the following reasons:

14 (a) The prior dealer engaged in material fraudulent conduct or made material  
15 and substantial misrepresentations in its dealings with the grantor or with others  
16 related to the dealership.

17 (b) The prior dealer was convicted of, or pleaded no contest to, a felony crime  
18 substantially related to the dealer's ability to operate the dealership.

19 (c) The prior dealer knowingly distributed dealership products outside the  
20 territory authorized by the grantor.

21 (2) BINDING ARBITRATION. The grantor shall advise the person assuming the  
22 dealership of the person's obligations under sub. (1) prior to the person's assumption  
23 of the dealership. If the person assuming a dealership under sub. (1) and the prior  
24 dealer agree in writing to the fair market value of that portion of the dealership  
25 assumed, the person assuming the dealership shall pay the agreed upon sum to the

1 prior dealer within 30 days of the date on which the parties reached the agreement.  
 2 If no written agreement for compensation of the prior dealer is reached within 30  
 3 days after the grantor's termination, cancellation, or nonrenewal of the prior  
 4 dealership agreement, the prior dealer may submit the dispute for binding  
 5 arbitration, subject to ch. 788, through a nationally recognized arbitration  
 6 association. Unless the parties agree otherwise, the arbitration shall be conducted  
 7 on an expedited basis to the extent an expedited proceeding is reasonably available  
 8 through the arbitration association, and each party shall pay an equal share of the  
 9 cost of the arbitration.

10 SECTION 21. 139.035 of the statutes is repealed.

11 SECTION 9344. Initial applicability; revenue.

12 (1) TRANSFER OF RETAIL LICENSE OR PERMIT. The treatment of section 125.04 (12)  
 13 (c) of the statutes first applies to an application for a license or permit submitted to  
 14 an issuing authority on the effective date of this subsection.

15 (2) SALE BY SECURED PARTY. The treatment of section 125.06 (8) of the statutes  
 16 first applies to security interests entered into on the effective date of this subsection.

17 (3) OUT-OF-STATE SHIPPERS; PENALTIES. The treatment of section 125.30 (6) first  
 18 applies to violations on the effective date of this ~~section~~ subsection.

19 (4) DEALERSHIPS. The treatment of sections 135.02 (3) (c) and 135.067 of the  
 20 statutes first applies to dealerships entered into on the effective date of ~~these~~  
 21 ~~sections~~ this subsection.

22 SECTION 9444. Effective dates; revenue.

23 (1) TRANSFER OF RETAIL LICENSE OR PERMIT. The treatment of section 125.04 (12)  
 24 (c) of the statutes takes effect on the first day of the <sup>12th</sup> twelfth month beginning after  
 25 publication.

and <sup>CS</sup> SECTION 9344 (↑) of this act

use auto-ref "A"

create auto-ref "A"

create auto-ref "B"

of the statutes

subsection

committed

12th

this subsection

and SECTION 9344 (↑) of this act

use auto-ref "B" (from p. 11)

1 (2) OUT-OF-STATE SHIPPERS; PENALTY. The treatment of section 125.30 (6) of  
2 statutes takes effect on the first day of the sixth month beginning after publication.

3 (3) OUT-OF-STATE SHIPPERS; MAIL ORDER WINE SALES. The treatment of sections  
4 125.58 (1), 125.58 (4), 125.68 (10), (b), (bm), and (bs), and 139.035 of the statutes  
5 takes effect on the first day of the sixth month beginning after publication.

6

(END)

and

(a)

6th

6th

D-Note

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

LRB 2318/1 dn  
APG:.....  
CS

Your request, in the form of an Industry proposal with various DOR-related comments, is divided into 12 items, and I will correlate my comments on the attached draft to these items 1 through 12.

1. Item 1 of the Industry proposal, relating to s. 125.33 (2) (a). The paragraph provided by the Industry includes a modification, not in bold type, which adds the phrase "at any one time." Because this phrase is too vague, I have attempted to carry out the intent of the phrase (a time component for determining aggregate value) by using the phrase "during any 12 month period." Any fixed time frame will work, but a reasonably definite time frame is necessary.

2. Item 4 of the Industry proposal, relating to promotional events on retail licensee premises. I find the practical application relating to the request difficult to ascertain. One would not expect a retail licensee to advertise unaffiliated retail licensees on its premises. It appears the request would allow a brewer or wholesaler to promote an event or series of events through advertising or media that identifies the event and the locations (on retail licensee premises) and dates the event will occur. If this is the intent, a clearer description could be drafted.

3. Item 5 of the Industry proposal, relating to transfer of retail licenses. The Industry proposal would preclude transfer of a retail license unless notice is given. Transfer of a retail license may only be effected through a municipality. The attached draft precludes a municipality from transferring a retail license unless statutory notice is satisfied. Accordingly, it is unnecessary to reference penalties against licensees for a transfer in violation of the statute. If you would prefer the statute allow transfer, but provide for a penalty or revocation upon transfer in violation of notice requirements on licensees, please advise.

4. Item 7 of the Industry proposal is essentially covered as to Class "B" licensees under existing statutes, and is therefore not included in the draft. Section 125.33 (1) provides that a brewer or wholesaler may not provide money or any thing of value to a Class "B" licensee or permittee (although sub. (2) provides a lengthy list of exceptions). Subsection (5) provides that a licensee or permittee who is a party to a violation of sub. (1) or who receives the benefits thereof (i.e. who conditions the purchase of fermented malt beverages on the brewer or wholesaler furnishing items of value in violation of sub. (1)) is guilty of a violation. With regard to Class "A" licensees, the request does

to statute

that

125.33(1)

parents

not mesh with the statutory framework and the lateness of the drafting request precludes me from developing such a framework.

5. Item 8 of the Industry proposal relates to sales of alcohol beverages by secured parties. Section 125.06 (8), stats., currently exempts secured parties selling collateral under a security agreement from licensing requirements, and allows lenders holding security interests to make good faith sales. Based upon the Industry proposal, it appears the Industry initially requested that this provision be repealed and that secured parties be required to hold licenses to sell collateral after default by the creditor, but DOR was against such a change and the Industry offered a second proposal limiting the time frame during which a sale by a secured party could be made. I have adopted the Industry group's second suggestion, with modifications to reconcile the proposal with a secured creditor's obligations under s. 409.504 (3), stats., to make a commercially reasonable disposition of secured property and to provide the debtor reasonable notice of the disposition.

6. Item 11 of the Industry proposal refers to "secure" computer-based training and testing. The meaning of the term "secure" is unclear. Does it mean a secure internet transmission, and if so, how secure? Is encryption necessary and why do the circumstances require <sup>that</sup> the encryption technology be used? Or does the term mean that access by the user must be secure or verifiable (i.e. passwords or other measures)? If a course is taken via the Internet, how will the course provider verify that the person is actually engaging in training (rather than merely turning the computer on) and, more importantly, verify that the person enrolled is actually the person taking the test? I have omitted the term "secure" in this draft.

7. The comment to Item 12 of the Industry proposal is unclear. I have drafted item 12 (repeal of direct mail order wine shipments). To the extent that the Industry also desires to create a wine clearinghouse permit along the lines of the sample bill attached to the request, the sample bill is unworkable and appears to contemplate significant changes to chapter 125's statutory framework. Due to the lateness of the request, we cannot draft provisions relating to wine clearinghouse permits at this time.

8. I have included a delay of 11 months in the effective date of s. 125.04 (12) <sup>(c)</sup> because municipalities will need time to prepare to administer the statute. I have included a delay of 5 months in the effective date of s. 125.30 (6) to allow DOR agents to adjust to the change in enforcement procedure. I have included a delay of 5 months in the effective date of ss. 125.58 (1) ~~(1)~~ (4), 125.68 (10) (b), (bm), and (bs), and 139.035 to allow the public and law enforcement to be informed that the conduct at issue will now be illegal.

Please call if you would like to discuss any of these matters further.

and

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

(a),

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

LRB-2318/1dn  
ARG:cs:kjf

February 1, 2001

Your request, in the form of an Industry proposal with various DOR-related comments, is divided into 12 items, and I will correlate my comments on the attached draft to these items 1 through 12.

1. Item 1 of the Industry proposal, relating to s. 125.33 (2) (a). The paragraph provided by the Industry includes a modification, not in bold type, which adds the phrase "at any one time." Because this phrase is too vague, I have attempted to carry out the intent of the phrase (a time component for determining aggregate value) by using the phrase "during any 12 month period." Any fixed time frame will work, but a reasonably definite time frame is necessary.
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licensees, the request does not mesh with the statutory framework and the lateness of the drafting request precludes me from developing such a framework.

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Please call if you would like to discuss any of these matters further.

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

**Gary, Aaron**

**From:** Holden, Kerry  
**Sent:** Sunday, February 04, 2001 11:11 AM  
**To:** Gary, Aaron  
**Subject:** FW: tied house comments - LRB 2318/1

**Kerry Holden**

Tax, Finance & Local Government Team  
DOA State Budget Office  
Phone: (608)266-8593  
Fax: (608)267-0372  
Email: [Kerry.Holden@doa.state.wi.us](mailto:Kerry.Holden@doa.state.wi.us)

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

**From:** Gates-Hendrix, Sherrie  
**Sent:** Friday, February 02, 2001 1:44 PM  
**To:** Holden, Kerry  
**Subject:** tied house comments - LRB 2318/1

Hi Kerry ---

Here are our (late) comments on the tied house proposal. I know I mentioned this before, but just wanted to reiterate that while we have been discussing this with industry representatives, we have not expressed formal support for the package.

**SECTION 1**

This section requires a license applicant for an existing licensed premises to prove that the current licensee has revealed all his beer debts. The language should state to whom the proof is provided.

As an aside, this detracts from the licensing authority's discretion, and this will likely be resisted by the municipalities.

**SECTION 2**

The state alcohol beverage laws are criminal laws meaning that they are enforced in the criminal justice system. We have some concerns about whether the provisions under section 2 would actually be enforced by DAs given other pressing priorities.

**SECTION 5**

Since this is a beer law, line 17 should read "...who sells or ships fermented malt beverages..."

**SECTION 6**

We suggest specifying "a calendar year" rather than "during any 12 month period," which would likely present administrative/audit difficulties. Another option would be to stipulate no time period at all eg: we would allow \$2500 worth of items at any one time. This would be easier to enforce, and we believe this is what industry representatives want.

**SECTION 7**

In this section it is not clear how the term "materials with a useful life of less than one year" will be applied. For example, how long can a plastic sign be used? Also, it is not clear whether it is the plastic or vinyl materials that must have a useful life of less than a year, or if it is the "other



materials" and the plastic or vinyl are exempted from the one year requirement. We do not believe the plastic/vinyl should be subject to the 1-year limit.

Also, as under section 6, if the 12 month phrase is used, it would be best to specify a calendar year.

#### SECTION 8

OK except for a technical change. This should be a small case "I" rather than a large case "L"

x/c w/ Kerry Holden

2/4/01  
noon

DOR would like wine clearinghouse permit but understands it is too late to do it in the budget. DOR is concerned w/ Internet wine sales and wants mail-order exception closed if a wine clearinghouse permit bill is drafted. Kerry directed that we should pull all sections repealing mail-order wine permit from this budget draft. Also discussed all items in e-mail and what we would do on redraft.