

RMR

Monday a.m.

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

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

Do not

SOON

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

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 nine 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 two 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 that 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 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

calendar year.

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 five 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.

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***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 for the same premises.* No municipality
- 3           may issue a Class "A," "Class A," Class "B," "Class B," or "Class C" license, and the
- 4           department may not issue a Class "B" or "Class B" permit, to an applicant if the
- 5           premises described in the application for a license or permit is already covered by a
- 6           current license or permit of the same kind unless all of the following apply:

*to the municipality  
or department*

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

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

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

13           4. The current licensee or permittee is not the subject of any proceeding under  
14 s. 125.12.

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

16           125.06 (8) SALE BY SECURED PARTY. The sale of alcohol beverages by a secured  
17 party in good faith under the terms of a security agreement, if the sale is not for the  
18 purpose of avoiding this chapter or ch. 139. The sale must be in the ordinary course  
19 of the business of lending money secured by a security interest in alcohol beverages  
20 or warehouse receipts or other evidence of ownership. A sale of fermented malt  
21 beverages must be made within 30 days after the secured party takes possession of  
22 the fermented malt beverages unless the secured party demonstrates good cause  
23 why a sale in compliance with s. 409.504 or the security agreement cannot be made  
24 within this time period.

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

1

125.145 <sup>B</sup>

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

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

125.17 (6) (a) (intro.) 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 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:

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

125.30 (6) Notwithstanding s. 125.11, the department shall issue a written warning to any person located outside this state who sells or ships ~~intoxicating liquor~~ <sup>fermented malt beverages</sup> into this state in violation of sub. (1) if the person has not previously received a warning under this section. Any person located outside this state who sells or ships ~~intoxicating liquor~~ <sup>fermented malt beverages</sup> into this state in violation of sub. (1) and who has been previously issued a written warning under this subsection shall be fined not more than \$10,000 or imprisoned for not more than 2 years or both.

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

125.33 (2) (a) Give to any campus or Class "B" licensee or permittee, during any calendar year ~~12-month period~~ for placement inside the premises, signs, clocks, or menu boards

1 with an aggregate value of not more than ~~\$150~~ \$2,500. If a gift of any item would  
 2 cause the ~~\$150~~ \$2,500 limit to be exceeded, the recipient shall pay the brewer or  
 3 wholesaler the amount of the item's value in excess of ~~\$150~~ \$2,500. ~~Each recipient~~  
 4 ~~shall keep an invoice or credit memo containing the name of the donor~~ Both the  
 5 donating brewer or wholesaler and the recipient shall keep written documentation  
 6 containing the name of the recipient and donor and the number and value of items  
 7 received provided under this paragraph. The value of an item is its cost to the donor.  
 8 Each donor and recipient shall make the records kept under this paragraph available  
 9 to the department for inspection upon request.

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

11 125.33 (2) (b) 2. Signs made from <sup>plain space</sup> paper <sup>or</sup> cardboard, <sup>signs made from</sup> plastic, vinyl, or other <  
 12 materials with a useful life of less than one year, <sup>+</sup> for placement inside the premises. <

13 SECTION 8. 125.33 (2) (L) of the statutes is renumbered 125.33 (2) (L) 1.

14 SECTION 9. 125.33 (2) (L) 2. of the statutes is created to read:

15 125.33 (2) (L) 2. Purchase advertising from any person who does not hold a  
 16 license or permit under this chapter and who conducts a bona fide advertising,  
 17 promotional, or media business, to promote brewer or wholesaler sponsored  
 18 sweepstakes, contests, or promotions on the premises of Class "B" licensees or  
 19 permittees if the advertising or promotional material or media includes at least 5  
 20 unaffiliated Class "B" licensees and if the Class "B" licensee on whose premises the  
 21 event will occur does not receive compensation, directly or indirectly, for hosting the  
 22 event.

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

24 125.33 (2) (L) 3. Conduct its own sweepstakes, contests, or promotions on the  
 25 premises of Class "B" licensees or permittees if the advertising or promotional

1 material or media for the event includes at least 5 unaffiliated Class "B" licensees  
2 and if the Class "B" licensee on whose premises the event will occur does not receive  
3 compensation, directly or indirectly, for hosting the event.

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

5 125.33 (2) (n) 2. Notwithstanding subd. 1., no brewer or wholesaler may  
6 provide business entertainment to a Class "B" licensee or permittee under subd. 1.  
7 in one day that has a value exceeding ~~\$75~~ \$500, and no brewer or wholesaler may  
8 provide business entertainment to a Class "B" licensee or permittee under subd. 1.  
9 on more than 12 days in any calendar year.

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

11 125.33 (2s) EXCEPTION FOR RETAIL TRADE ASSOCIATION CONTRIBUTIONS.  
12 Notwithstanding the prohibitions in sub. (1), a brewer ~~that produces 350,000 or more~~  
13 ~~barrels of fermented malt beverages annually~~ or wholesaler may contribute money  
14 or other things of value to a bona fide national ~~or, statewide, or local~~ trade association  
15 which derives its principle income from membership dues of Class "B" licensees.

16 SECTION 13. ~~125.58 (1) of the statutes is amended to read:~~

17 125.58 (1) The department shall issue out-of-state shippers' permits which  
18 authorize persons located outside this state to sell or ship intoxicating liquor into this  
19 state. ~~Except as provided under sub. (4), intoxicating~~ Intoxicating liquor may be  
20 shipped into this state only to a person holding a manufacturer's, rectifier's,  
21 wholesaler's, industrial alcohol or medicinal alcohol permit. ~~Except as provided~~  
22 ~~under sub. (4), a~~ Δ separate out-of-state shipper's permit is required for each  
23 location from which any intoxicating liquor is sold or shipped into this state,  
24 including the location from which the invoices are issued for the sales or shipments.  
25 Any person holding an out-of-state shipper's permit issued under this section may



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

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

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

10 ~~125.68 (10) (a) Except as provided in par. (bm), no No intoxicating liquor may~~  
11 ~~be shipped into this state unless consigned to a person holding a permit for the sale~~  
12 ~~of intoxicating liquor, other than a retail "Class B" permit.~~

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

14 ~~125.68 (10) (b) Except as provided in par. (bm), no No common carrier or other~~  
15 ~~person may transport into and deliver within this state any intoxicating liquor~~  
16 ~~unless it is consigned to a person holding a permit for the sale of intoxicating liquor,~~  
17 ~~other than a retail "Class B" permit. Any common carrier violating this paragraph~~  
18 ~~shall forfeit \$100 for each violation.~~

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

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

21 ~~SECTION 19. 135.02 (3) (c) of the statutes is created to read:~~

22 ~~135.02 (3) (c) A contract or agreement, either expressed or implied, whether~~  
23 ~~oral or written, between 2 or more persons by which a wholesaler, as defined in s.~~  
24 ~~125.02 (21), is granted the right to sell or distribute fermented malt beverages or use~~

1 a trade name, trademark, service mark, logotype, brand, advertising, or other  
2 commercial symbol related to fermented malt beverages.

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

4 **135.067 Fermented malt beverage dealerships.** (1) COMPENSATION OF  
5 PRIOR DEALER. Notwithstanding s. 135.03, any person who assumes, in whole or in  
6 part, a dealership described in s. 135.02 (3) (c) following the grantor's termination,  
7 cancellation, or nonrenewal in whole or in part of a prior dealership agreement shall  
8 compensate the prior dealer for the fair market value of that portion of the dealership  
9 assumed unless the grantor terminated, canceled, or failed to renew for any of the  
10 following reasons:

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

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

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

18 (2) BINDING ARBITRATION. The grantor shall advise the person assuming the  
19 dealership of the person's obligations under sub. (1) prior to the person's assumption  
20 of the dealership. If the person assuming a dealership under sub. (1) and the prior  
21 dealer agree in writing to the fair market value of that portion of the dealership  
22 assumed, the person assuming the dealership shall pay the agreed upon sum to the  
23 prior dealer within 30 days of the date on which the parties reached the agreement.  
24 If no written agreement for compensation of the prior dealer is reached within 30  
25 days after the grantor's termination, cancellation, or nonrenewal of the prior

1 dealership agreement, the prior dealer may submit the dispute for binding  
2 arbitration, subject to ch. 788, through a nationally recognized arbitration  
3 association. Unless the parties agree otherwise, the arbitration shall be conducted  
4 on an expedited basis to the extent an expedited proceeding is reasonably available  
5 through the arbitration association, and each party shall pay an equal share of the  
6 cost of the arbitration.

7 ~~SECTION 21. 139.035 of the statutes is repealed.~~

8 **SECTION 9344. Initial applicability; revenue.**

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

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

14 (3) OUT-OF-STATE SHIPPERS; PENALTIES. The treatment of section 125.30 (6) of the  
15 statutes first applies to violations committed on the effective date of this subsection.

16 (4) DEALERSHIPS. The treatment of sections 135.02 (3) (c) and 135.067 of the  
17 statutes first applies to dealerships entered into on the effective date of this  
18 subsection.

19 **SECTION 9444. Effective dates; revenue.**

20 (1) TRANSFER OF RETAIL LICENSE OR PERMIT. The treatment of section 125.04 (12)  
21 (c) of the statutes and SECTION 9344 (1) of this act take effect on the first day of the  
22 12th month beginning after publication.

23 (2) OUT-OF-STATE SHIPPERS; PENALTY. The treatment of section 125.30 (6) of  
24 statutes and SECTION 9344 (3) of this act take effect on the first day of the 6th month  
25 beginning after publication.

1 (3) ~~OUT-OF-STATE SHIPPERS; MAIL ORDER WINE SALES.~~ The treatment of sections  
2 125.58 (1) and (4), 125.68 (10) (a), (b), (bm), and (bs), and 139.035 of the statutes takes  
3 effect on the first day of the 6th month beginning after publication.

4 (END)

*D. Note*

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

LRB 2318/2dn

ARG.: *hmb*

*Date*

Attn: Kerry Holden

This draft is identical to LRB-2318/1, except for the following:

1. In proposed s. 125.04 (12) (c) 1. and 2. ~~I added~~ I added the phrase "to the municipality or department" to clarify to whom the proof is provided, in response to SECTION 1 of your February 4 e-mail. (CS)

2. In proposed s. 125.30 (6), I replaced the term "intoxicating liquor" with "fermented malt beverages," in response to SECTION 5 of your e-mail.

3. In s. 125.33 (2) (a), stats., as amended, I replaced the phrase "during any 12 month period" with the phrase "during any calendar year," in response to SECTION 6 of your e-mail. (CS)

4. In s. 125.33 (2) (b) 2., stats., as amended, I replaced the phrase "plastic, vinyl, or other materials with a useful life of less than one year" with the phrase "plastic or vinyl, or signs made from other materials with a useful life of less than one year," in response to SECTION 7 of your e-mail. (CS)

5. I deleted from the draft those sections effecting repeal of the statutes that allow persons who do not hold a license or permit to receive mail-order shipments, for non-commercial use, of up to 9 liters of wine annually (i.e. LRB-2318/1 sections 13 to 18, 21, and 9444 (3), affecting ss. 125.58 (1) and (4), 125.68 (10) (a), (b), (bm), and (bs), and 139.035, stats.), pursuant to our telephone conversation on February 4.

As we discussed, no change in the draft is necessary in response to SECTIONS 2 and 8 of your e-mail. (CS)

Please call if you have any questions. As you know, we will need final draft approval by 2:00 p.m. on February 5.

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

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ARG:hmh:jf

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State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-2318/2  
ARG:cs&hmf:jf

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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, 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 two 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 that 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 calendar year. The bill also requires 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 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 five 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 for the same premises.* No municipality  
3           may issue a Class "A," "Class A," Class "B," "Class B," or "Class C" license, and the  
4           department may not issue a Class "B" or "Class B" permit, to an applicant if the  
5           premises described in the application for a license or permit is already covered by a  
6           current license or permit of the same kind unless all of the following apply:

7           1. The applicant provides proof to the municipality or department that, not less  
8           than 15 days nor more than 30 days before submitting the application, the current  
9           licensee or permittee for the premises has provided to the applicant the name and  
10          address of each fermented malt beverages wholesaler to whom the current licensee  
11          or permittee is indebted.

1           2. The applicant provides proof to the municipality or department that, not less  
2 than 15 days nor more than 30 days before submitting the application, the applicant  
3 has notified each wholesaler identified under subd. 1. of the address and current  
4 name of the premises for which the license or permit application is made, of the name  
5 and address of the current licensee or permittee, and that the applicant is applying  
6 for a license or permit for the premises.

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

9           4. The current licensee or permittee is not the subject of any proceeding under  
10 s. 125.12.

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

12           **125.06 (8) SALE BY SECURED PARTY.** The sale of alcohol beverages by a secured  
13 party in good faith under the terms of a security agreement, if the sale is not for the  
14 purpose of avoiding this chapter or ch. 139. The sale must be in the ordinary course  
15 of the business of lending money secured by a security interest in alcohol beverages  
16 or warehouse receipts or other evidence of ownership. A sale of fermented malt  
17 beverages must be made within 30 days after the secured party takes possession of  
18 the fermented malt beverages unless the secured party demonstrates good cause  
19 why a sale in compliance with s. 409.504 or the security agreement cannot be made  
20 within this time period.

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

22           **125.145 Prosecutions by attorney general.** Upon request by the secretary  
23 of revenue, the attorney general may represent this state or assist a district attorney  
24 in prosecuting any case arising under this chapter. Notwithstanding s. 971.19 (6),

1 upon request by the secretary of revenue, the attorney general may commence any  
2 action to enforce s. 125.30 (1) in the circuit court for Dane County.

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

4 125.17 (6) (a) (intro.) Except as provided in par. (b), no municipal governing  
5 body may issue an operator's license unless the applicant has successfully completed  
6 a responsible beverage server training course at any location that is offered by a  
7 technical college district and that conforms to curriculum guidelines specified by the  
8 technical college system board or a comparable training course, which may include  
9 computer-based training and testing, that is approved by the department or the  
10 educational approval board, or unless the applicant fulfills one of the following  
11 requirements:

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

13 125.30 (6) Notwithstanding s. 125.11, the department shall issue a written  
14 warning to any person located outside this state who sells or ships fermented malt  
15 beverages into this state in violation of sub. (1) if the person has not previously  
16 received a warning under this section. Any person located outside this state who  
17 sells or ships fermented malt beverages into this state in violation of sub. (1) and who  
18 has been previously issued a written warning under this subsection shall be fined not  
19 more than \$10,000 or imprisoned for not more than 2 years or both.

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

21 125.33 (2) (a) Give to any campus or Class "B" licensee or permittee, during any  
22 calendar year, for placement inside the premises, signs, clocks, or menu boards with  
23 an aggregate value of not more than ~~\$150~~ \$2,500. If a gift of any item would cause  
24 the ~~\$150~~ \$2,500 limit to be exceeded, the recipient shall pay the brewer or wholesaler  
25 the amount of the item's value in excess of ~~\$150~~ \$2,500. Each recipient shall keep

1 ~~an invoice or credit memo containing the name of the donor~~ Both the donating brewer  
2 or wholesaler and the recipient shall keep written documentation containing the  
3 name of the recipient and donor and the number and value of items received provided  
4 under this paragraph. The value of an item is its cost to the donor. Each donor and  
5 recipient shall make the records kept under this paragraph available to the  
6 department for inspection upon request.

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

8 125.33 (2) (b) 2. Signs made from paper ~~or~~, cardboard, plastic, or vinyl, or signs  
9 made from other materials with a useful life of less than one year, for placement  
10 inside the premises.

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

12 **SECTION 9.** 125.33 (2) (L) 2. of the statutes is created to read:

13 125.33 (2) (L) 2. Purchase advertising from any person who does not hold a  
14 license or permit under this chapter and who conducts a bona fide advertising,  
15 promotional, or media business, to promote brewer or wholesaler sponsored  
16 sweepstakes, contests, or promotions on the premises of Class "B" licensees or  
17 permittees if the advertising or promotional material or media includes at least 5  
18 unaffiliated Class "B" licensees and if the Class "B" licensee on whose premises the  
19 event will occur does not receive compensation, directly or indirectly, for hosting the  
20 event.

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

22 125.33 (2) (L) 3. Conduct its own sweepstakes, contests, or promotions on the  
23 premises of Class "B" licensees or permittees if the advertising or promotional  
24 material or media for the event includes at least 5 unaffiliated Class "B" licensees

1 and if the Class “B” licensee on whose premises the event will occur does not receive  
2 compensation, directly or indirectly, for hosting the event.

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

4 125.33 (2) (n) 2. Notwithstanding subd. 1., no brewer or wholesaler may  
5 provide business entertainment to a Class “B” licensee or permittee under subd. 1.  
6 in one day that has a value exceeding ~~\$75~~ \$500, and no brewer or wholesaler may  
7 provide business entertainment to a Class “B” licensee or permittee under subd. 1.  
8 on more than 12 days in any calendar year.

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

10 125.33 (2s) EXCEPTION FOR RETAIL TRADE ASSOCIATION CONTRIBUTIONS.  
11 Notwithstanding the prohibitions in sub. (1), a brewer ~~that produces 350,000 or more~~  
12 ~~barrels of fermented malt beverages annually~~ or wholesaler may contribute money  
13 or other things of value to a bona fide national ~~or~~, statewide, or local trade association  
14 which derives its principle income from membership dues of Class “B” licensees.

15 **SECTION 13.** 135.02 (3) (c) of the statutes is created to read:

16 135.02 (3) (c) A contract or agreement, either expressed or implied, whether  
17 oral or written, between 2 or more persons by which a wholesaler, as defined in s.  
18 125.02 (21), is granted the right to sell or distribute fermented malt beverages or use  
19 a trade name, trademark, service mark, logotype, brand, advertising, or other  
20 commercial symbol related to fermented malt beverages.

21 **SECTION 14.** 135.067 of the statutes is created to read:

22 **135.067 Fermented malt beverage dealerships.** (1) COMPENSATION OF  
23 PRIOR DEALER. Notwithstanding s. 135.03, any person who assumes, in whole or in  
24 part, a dealership described in s. 135.02 (3) (c) following the grantor’s termination,  
25 cancellation, or nonrenewal in whole or in part of a prior dealership agreement shall

1 compensate the prior dealer for the fair market value of that portion of the dealership  
2 assumed unless the grantor terminated, canceled, or failed to renew for any of the  
3 following reasons:

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

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

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

11 (2) **BINDING ARBITRATION.** The grantor shall advise the person assuming the  
12 dealership of the person's obligations under sub. (1) prior to the person's assumption  
13 of the dealership. If the person assuming a dealership under sub. (1) and the prior  
14 dealer agree in writing to the fair market value of that portion of the dealership  
15 assumed, the person assuming the dealership shall pay the agreed upon sum to the  
16 prior dealer within 30 days of the date on which the parties reached the agreement.  
17 If no written agreement for compensation of the prior dealer is reached within 30  
18 days after the grantor's termination, cancellation, or nonrenewal of the prior  
19 dealership agreement, the prior dealer may submit the dispute for binding  
20 arbitration, subject to ch. 788, through a nationally recognized arbitration  
21 association. Unless the parties agree otherwise, the arbitration shall be conducted  
22 on an expedited basis to the extent an expedited proceeding is reasonably available  
23 through the arbitration association, and each party shall pay an equal share of the  
24 cost of the arbitration.

25 **SECTION 9344. Initial applicability; revenue.**





CRB (2318)

2/6/01

file w/ Kerry Holden

- Discussed potential conflict between S. 125.33(2)(a) and (2)(b) ~~§2.~~; directed to revise draft to add "notwithstanding" so signs made from the ~~and~~ identified materials fall outside the scope of the dollar limit

RMR

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

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

Soon turned in 2/6/01  
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

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, 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 two 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 that 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 calendar year. The bill also requires 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 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 five 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.

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without limitation on  
the aggregate value of these signs.

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.

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***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 for the same premises.* No municipality  
3 may issue a Class "A," "Class A," Class "B," "Class B," or "Class C" license, and the  
4 department may not issue a Class "B" or "Class B" permit, to an applicant if the  
5 premises described in the application for a license or permit is already covered by a  
6 current license or permit of the same kind unless all of the following apply:

7           1. The applicant provides proof to the municipality or department that, not less  
8 than 15 days nor more than 30 days before submitting the application, the current  
9 licensee or permittee for the premises has provided to the applicant the name and  
10 address of each fermented malt beverages wholesaler to whom the current licensee  
11 or permittee is indebted.

1           2. The applicant provides proof to the municipality or department that, not less  
2 than 15 days nor more than 30 days before submitting the application, the applicant  
3 has notified each wholesaler identified under subd. 1. of the address and current  
4 name of the premises for which the license or permit application is made, of the name  
5 and address of the current licensee or permittee, and that the applicant is applying  
6 for a license or permit for the premises.

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

9           4. The current licensee or permittee is not the subject of any proceeding under  
10 s. 125.12.

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

12           **125.06 (8) SALE BY SECURED PARTY.** The sale of alcohol beverages by a secured  
13 party in good faith under the terms of a security agreement, if the sale is not for the  
14 purpose of avoiding this chapter or ch. 139. The sale must be in the ordinary course  
15 of the business of lending money secured by a security interest in alcohol beverages  
16 or warehouse receipts or other evidence of ownership. A sale of fermented malt  
17 beverages must be made within 30 days after the secured party takes possession of  
18 the fermented malt beverages unless the secured party demonstrates good cause  
19 why a sale in compliance with s. 409.504 or the security agreement cannot be made  
20 within this time period.

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

22           **125.145 Prosecutions by attorney general.** Upon request by the secretary  
23 of revenue, the attorney general may represent this state or assist a district attorney  
24 in prosecuting any case arising under this chapter. Notwithstanding s. 971.19 (6),

1 upon request by the secretary of revenue, the attorney general may commence any  
2 action to enforce s. 125.30 (1) in the circuit court for Dane County.

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

4 125.17 (6) (a) (intro.) Except as provided in par. (b), no municipal governing  
5 body may issue an operator's license unless the applicant has successfully completed  
6 a responsible beverage server training course at any location that is offered by a  
7 technical college district and that conforms to curriculum guidelines specified by the  
8 technical college system board or a comparable training course, which may include  
9 computer-based training and testing, that is approved by the department or the  
10 educational approval board, or unless the applicant fulfills one of the following  
11 requirements:

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

13 125.30 (6) Notwithstanding s. 125.11, the department shall issue a written  
14 warning to any person located outside this state who sells or ships fermented malt  
15 beverages into this state in violation of sub. (1) if the person has not previously  
16 received a warning under this section. Any person located outside this state who  
17 sells or ships fermented malt beverages into this state in violation of sub. (1) and who  
18 has been previously issued a written warning under this subsection shall be fined not  
19 more than \$10,000 or imprisoned for not more than 2 years or both.

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

21 125.33 (2) (a) Give to any campus or Class "B" licensee or permittee, during any  
22 calendar year, for placement inside the premises, signs, clocks, or menu boards with  
23 an aggregate value of not more than ~~\$150~~ \$2,500. If a gift of any item would cause  
24 the ~~\$150~~ \$2,500 limit to be exceeded, the recipient shall pay the brewer or wholesaler  
25 the amount of the item's value in excess of ~~\$150~~ \$2,500. ~~Each recipient shall keep~~

1 ~~an invoice or credit memo containing the name of the donor~~ Both the donating brewer  
2 or wholesaler and the recipient shall keep written documentation containing the  
3 name of the recipient and donor and the number and value of items received provided  
4 under this paragraph. The value of an item is its cost to the donor. Each donor and  
5 recipient shall make the records kept under this paragraph available to the  
6 department for inspection upon request.

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

8 125.33 (2) (b) 2. Signs made from paper ~~or~~, cardboard, plastic, or vinyl, or signs  
9 made from other materials with a useful life of less than one year, for placement  
10 inside the premises *notwithstanding the aggregate value limitation of par. (a)*

11 SECTION 8. 125.33 (2) (L) of the statutes is renumbered 125.33 (2) (L) 1. *plain*

12 SECTION 9. 125.33 (2) (L) 2. of the statutes is created to read:

13 125.33 (2) (L) 2. Purchase advertising from any person who does not hold a  
14 license or permit under this chapter and who conducts a bona fide advertising,  
15 promotional, or media business, to promote brewer or wholesaler sponsored  
16 sweepstakes, contests, or promotions on the premises of Class "B" licensees or  
17 permittees if the advertising or promotional material or media includes at least 5  
18 unaffiliated Class "B" licensees and if the Class "B" licensee on whose premises the  
19 event will occur does not receive compensation, directly or indirectly, for hosting the  
20 event.

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

22 125.33 (2) (L) 3. Conduct its own sweepstakes, contests, or promotions on the  
23 premises of Class "B" licensees or permittees if the advertising or promotional  
24 material or media for the event includes at least 5 unaffiliated Class "B" licensees



1 and if the Class "B" licensee on whose premises the event will occur does not receive  
2 compensation, directly or indirectly, for hosting the event.

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

4 125.33 (2) (n) 2. Notwithstanding subd. 1., no brewer or wholesaler may  
5 provide business entertainment to a Class "B" licensee or permittee under subd. 1.  
6 in one day that has a value exceeding ~~\$75~~ \$500, and no brewer or wholesaler may  
7 provide business entertainment to a Class "B" licensee or permittee under subd. 1.  
8 on more than 12 days in any calendar year.

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

10 125.33 (2s) EXCEPTION FOR RETAIL TRADE ASSOCIATION CONTRIBUTIONS.  
11 Notwithstanding the prohibitions in sub. (1), a brewer ~~that produces 350,000 or more~~  
12 ~~barrels of fermented malt beverages annually~~ or wholesaler may contribute money  
13 or other things of value to a bona fide national ~~or, statewide, or local~~ trade association  
14 which derives its principle income from membership dues of Class "B" licensees.

15 SECTION 13. 135.02 (3) (c) of the statutes is created to read:

16 135.02 (3) (c) A contract or agreement, either expressed or implied, whether  
17 oral or written, between 2 or more persons by which a wholesaler, as defined in s.  
18 125.02 (21), is granted the right to sell or distribute fermented malt beverages or use  
19 a trade name, trademark, service mark, logotype, brand, advertising, or other  
20 commercial symbol related to fermented malt beverages.

21 SECTION 14. 135.067 of the statutes is created to read:

22 **135.067 Fermented malt beverage dealerships.** (1) COMPENSATION OF  
23 PRIOR DEALER. Notwithstanding s. 135.03, any person who assumes, in whole or in  
24 part, a dealership described in s. 135.02 (3) (c) following the grantor's termination,  
25 cancellation, or nonrenewal in whole or in part of a prior dealership agreement shall

1 compensate the prior dealer for the fair market value of that portion of the dealership  
2 assumed unless the grantor terminated, canceled, or failed to renew for any of the  
3 following reasons:

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

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

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

11 (2) BINDING ARBITRATION. The grantor shall advise the person assuming the  
12 dealership of the person's obligations under sub. (1) prior to the person's assumption  
13 of the dealership. If the person assuming a dealership under sub. (1) and the prior  
14 dealer agree in writing to the fair market value of that portion of the dealership  
15 assumed, the person assuming the dealership shall pay the agreed upon sum to the  
16 prior dealer within 30 days of the date on which the parties reached the agreement.  
17 If no written agreement for compensation of the prior dealer is reached within 30  
18 days after the grantor's termination, cancellation, or nonrenewal of the prior  
19 dealership agreement, the prior dealer may submit the dispute for binding  
20 arbitration, subject to ch. 788, through a nationally recognized arbitration  
21 association. Unless the parties agree otherwise, the arbitration shall be conducted  
22 on an expedited basis to the extent an expedited proceeding is reasonably available  
23 through the arbitration association, and each party shall pay an equal share of the  
24 cost of the arbitration.

25 **SECTION 9344. Initial applicability; revenue.**

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

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

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

8 (4) DEALERSHIPS. The treatment of sections 135.02 (3) (c) and 135.067 of the  
9 statutes first applies to dealerships entered into on the effective date of this  
10 subsection.

11 **SECTION 9444. Effective dates; revenue.**

12 (1) TRANSFER OF RETAIL LICENSE OR PERMIT. The treatment of section 125.04 (12)  
13 (c) of the statutes and SECTION 9344 (1) of this act take effect on the first day of the  
14 12th month beginning after publication.

15 (2) OUT-OF-STATE SHIPPERS; PENALTY. The treatment of section 125.30 (6) of the  
16 statutes and SECTION 9344 (3) of this act take effect on the first day of the 6th month  
17 beginning after publication.

18 (END)

*S-Note*

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

LRB-2318/3dn

ARG:.....

↑  
Jld

Attn: Kerry Holden

This draft reconciles the potential conflict between amended s. 125.33 (2) (a) (allowing gifts of signs and other items with a value not exceeding \$2,500) and amended s. 125.33 (2) (b) 2. (allowing gifts of signs made of paper, cardboard, plastic, vinyl, and other material with a short useful life, without limitation on value) by adding the phrase "notwithstanding the aggregate value limitation of par. (a)" to s. 125.33 (2) (b) 2. on page 7 of the draft.

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

LRB-2318/3dn  
ARG:jld:ch

February 6, 2001

Attn: Kerry Holden

This draft reconciles the potential conflict between amended s. 125.33 (2) (a) (allowing gifts of signs and other items with a value not exceeding \$2,500) and amended s. 125.33 (2) (b) 2. (allowing gifts of signs made of paper, cardboard, plastic, vinyl, and other material with a short useful life, without limitation on value) by adding the phrase "notwithstanding the aggregate value limitation of par. (a)" to s. 125.33 (2) (b) 2. on page 7 of the draft.

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State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-2318/3  
ARG:cs&hnh:ch

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

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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

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*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

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, 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 two 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 that 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 calendar year. The bill also requires 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, without limitation on the aggregate value of these signs.

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 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 five 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.

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*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 for the same premises.* No municipality  
3 may issue a Class "A," "Class A," Class "B," "Class B," or "Class C" license, and the  
4 department may not issue a Class "B" or "Class B" permit, to an applicant if the  
5 premises described in the application for a license or permit is already covered by a  
6 current license or permit of the same kind unless all of the following apply:

7           1. The applicant provides proof to the municipality or department that, not less  
8 than 15 days nor more than 30 days before submitting the application, the current  
9 licensee or permittee for the premises has provided to the applicant the name and  
10 address of each fermented malt beverages wholesaler to whom the current licensee  
11 or permittee is indebted.

1           2. The applicant provides proof to the municipality or department that, not less  
2 than 15 days nor more than 30 days before submitting the application, the applicant  
3 has notified each wholesaler identified under subd. 1. of the address and current  
4 name of the premises for which the license or permit application is made, of the name  
5 and address of the current licensee or permittee, and that the applicant is applying  
6 for a license or permit for the premises.

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

9           4. The current licensee or permittee is not the subject of any proceeding under  
10 s. 125.12.

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

12           125.06 (8) **SALE BY SECURED PARTY.** The sale of alcohol beverages by a secured  
13 party in good faith under the terms of a security agreement, if the sale is not for the  
14 purpose of avoiding this chapter or ch. 139. The sale must be in the ordinary course  
15 of the business of lending money secured by a security interest in alcohol beverages  
16 or warehouse receipts or other evidence of ownership. A sale of fermented malt  
17 beverages must be made within 30 days after the secured party takes possession of  
18 the fermented malt beverages unless the secured party demonstrates good cause  
19 why a sale in compliance with s. 409.504 or the security agreement cannot be made  
20 within this time period.

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

22           **125.145 Prosecutions by attorney general.** Upon request by the secretary  
23 of revenue, the attorney general may represent this state or assist a district attorney  
24 in prosecuting any case arising under this chapter. Notwithstanding s. 971.19 (6).

1 upon request by the secretary of revenue, the attorney general may commence any  
2 action to enforce s. 125.30 (1) in the circuit court for Dane County.

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

4 125.17 (6) (a) (intro.) Except as provided in par. (b), no municipal governing  
5 body may issue an operator's license unless the applicant has successfully completed  
6 a responsible beverage server training course at any location that is offered by a  
7 technical college district and that conforms to curriculum guidelines specified by the  
8 technical college system board or a comparable training course, which may include  
9 computer-based training and testing, that is approved by the department or the  
10 educational approval board, or unless the applicant fulfills one of the following  
11 requirements:

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

13 125.30 (6) Notwithstanding s. 125.11, the department shall issue a written  
14 warning to any person located outside this state who sells or ships fermented malt  
15 beverages into this state in violation of sub. (1) if the person has not previously  
16 received a warning under this section. Any person located outside this state who  
17 sells or ships fermented malt beverages into this state in violation of sub. (1) and who  
18 has been previously issued a written warning under this subsection shall be fined not  
19 more than \$10,000 or imprisoned for not more than 2 years or both.

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

21 125.33 (2) (a) Give to any campus or Class "B" licensee or permittee, during any  
22 calendar year, for placement inside the premises, signs, clocks, or menu boards with  
23 an aggregate value of not more than ~~\$150~~ \$2,500. If a gift of any item would cause  
24 the ~~\$150~~ \$2,500 limit to be exceeded, the recipient shall pay the brewer or wholesaler  
25 the amount of the item's value in excess of ~~\$150~~ \$2,500. ~~Each recipient shall keep~~

1 ~~an invoice or credit memo containing the name of the donor~~ Both the donating brewer  
2 or wholesaler and the recipient shall keep written documentation containing the  
3 name of the recipient and donor and the number and value of items received provided  
4 under this paragraph. The value of an item is its cost to the donor. Each donor and  
5 recipient shall make the records kept under this paragraph available to the  
6 department for inspection upon request.

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

8 125.33 (2) (b) 2. Signs made from paper ~~or~~, cardboard, plastic, or vinyl, or signs  
9 made from other materials with a useful life of less than one year, for placement  
10 inside the premises, not withstanding the aggregate value limitation of par. (a).

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

12 **SECTION 9.** 125.33 (2) (L) 2. of the statutes is created to read:

13 125.33 (2) (L) 2. Purchase advertising from any person who does not hold a  
14 license or permit under this chapter and who conducts a bona fide advertising,  
15 promotional, or media business, to promote brewer or wholesaler sponsored  
16 sweepstakes, contests, or promotions on the premises of Class "B" licensees or  
17 permittees if the advertising or promotional material or media includes at least 5  
18 unaffiliated Class "B" licensees and if the Class "B" licensee on whose premises the  
19 event will occur does not receive compensation, directly or indirectly, for hosting the  
20 event.

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

22 125.33 (2) (L) 3. Conduct its own sweepstakes, contests, or promotions on the  
23 premises of Class "B" licensees or permittees if the advertising or promotional  
24 material or media for the event includes at least 5 unaffiliated Class "B" licensees

1 and if the Class “B” licensee on whose premises the event will occur does not receive  
2 compensation, directly or indirectly, for hosting the event.

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

4 125.33 (2) (n) 2. Notwithstanding subd. 1., no brewer or wholesaler may  
5 provide business entertainment to a Class “B” licensee or permittee under subd. 1.  
6 in one day that has a value exceeding ~~\$75~~ \$500, and no brewer or wholesaler may  
7 provide business entertainment to a Class “B” licensee or permittee under subd. 1.  
8 on more than 12 days in any calendar year.

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

10 125.33 (2s) EXCEPTION FOR RETAIL TRADE ASSOCIATION CONTRIBUTIONS.  
11 Notwithstanding the prohibitions in sub. (1), a brewer ~~that produces 350,000 or more~~  
12 barrels of fermented malt beverages annually or wholesaler may contribute money  
13 or other things of value to a bona fide national ~~or~~, statewide, or local trade association  
14 which derives its principle income from membership dues of Class “B” licensees.

15 **SECTION 13.** 135.02 (3) (c) of the statutes is created to read:

16 135.02 (3) (c) A contract or agreement, either expressed or implied, whether  
17 oral or written, between 2 or more persons by which a wholesaler, as defined in s.  
18 125.02 (21), is granted the right to sell or distribute fermented malt beverages or use  
19 a trade name, trademark, service mark, logotype, brand, advertising, or other  
20 commercial symbol related to fermented malt beverages.

21 **SECTION 14.** 135.067 of the statutes is created to read:

22 **135.067 Fermented malt beverage dealerships.** (1) COMPENSATION OF  
23 PRIOR DEALER. Notwithstanding s. 135.03, any person who assumes, in whole or in  
24 part, a dealership described in s. 135.02 (3) (c) following the grantor’s termination,  
25 cancellation, or nonrenewal in whole or in part of a prior dealership agreement shall

1       compensate the prior dealer for the fair market value of that portion of the dealership  
2       assumed unless the grantor terminated, canceled, or failed to renew for any of the  
3       following reasons:

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

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

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

11            **(2) BINDING ARBITRATION.** The grantor shall advise the person assuming the  
12       dealership of the person's obligations under sub. (1) prior to the person's assumption  
13       of the dealership. If the person assuming a dealership under sub. (1) and the prior  
14       dealer agree in writing to the fair market value of that portion of the dealership  
15       assumed, the person assuming the dealership shall pay the agreed upon sum to the  
16       prior dealer within 30 days of the date on which the parties reached the agreement.  
17       If no written agreement for compensation of the prior dealer is reached within 30  
18       days after the grantor's termination, cancellation, or nonrenewal of the prior  
19       dealership agreement, the prior dealer may submit the dispute for binding  
20       arbitration, subject to ch. 788, through a nationally recognized arbitration  
21       association. Unless the parties agree otherwise, the arbitration shall be conducted  
22       on an expedited basis to the extent an expedited proceeding is reasonably available  
23       through the arbitration association, and each party shall pay an equal share of the  
24       cost of the arbitration.

25            **SECTION 9344. Initial applicability; revenue.**

