

2001 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB55)

Received: 06/15/2001

Received By: jkreye

Wanted: Soon

Identical to LRB:

For: Senate Democratic Caucus

By/Representing: Keckhaver

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Beverages - miscellaneous

Extra Copies: RCT

Submit via email: NO

Requester's email:

Pre Topic:

SDC:.....Keckhaver - CN1127,

Topic:

Alcohol beverages - yank provisions re transfer of municipal licenses, out - of- state beer shippers, and fair dealership laws

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	agary 06/16/2001	wjackson 06/16/2001	pgreensl 06/16/2001	_____	lrb_docadmin 06/16/2001		

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/1	agary	11 WLJ 6/16	6/16 Self	_____	_____		

FE Sent For:

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Agency: General Fund Taxes

caucus number 1127

duplicate flag:
duplicate with:

Other reference numbers:	LFB Sum #:
bill number/amendment number:	
LRB draft #	LRB P-draft:

other notes

Description2: Exise Taxes and Regulation of Alcohol and Tobacco. Modify provisions related to Tied House regulation to delete the items related to retail beer and liquor licenses, beer shipped from out of state, and fair dealership provision for beer wholesalers.

drafting instructions:
more instructions:

Agency: General Fund Taxes

Number of Amendments: 1

JK

**GENERAL FUND TAXES—EXCISE TAXES AND REGULATION OF ALCOHOL
AND TOBACCO**

CN1187

Modify provisions related to Tied House regulation to delete the items related to retail beer and liquor licenses, beer shipped from out of state, and fair dealership provision for beer wholesalers.

Retail Beer and Liquor Licenses. The bill would prohibit municipalities and DOR from issuing a retail license or permit for the sale of beer, wine or liquor for a premises that is already covered by the same kind of current license or permit unless all of the following apply:

- OUT**
- a. The applicant provides proof that, not less than 15 days nor more than 30 days before submitting the application, the current licensee has provided the applicant the name and address of each beer wholesaler to whom the current licensee is indebted.
 - b. The applicant provides proof that, not less than 15 days nor more than 30 days before submitting the application, the applicant has notified each such wholesaler of the name and address of the current licensee and that the applicant is applying for the license or permit.
 - c. The current licensee is not in violation of statutory restrictions regarding purchases of beer, wine or liquor on credit unless the violation consists of an indebtedness discharged in bankruptcy.
 - d. The current licensee is not the subject of any proceeding related to revocation, suspension or nonrenewal of an alcohol license or permit.

This provision would first apply to an application for a license or permit submitted on the first day of the 12th month beginning after publication.

Sales of Alcohol by Secured Third Parties. Under current law, no license or permit is required for the sale of alcohol by a secured third party in good faith under the terms of a security agreement if the sale is not for purpose of avoiding state alcoholic beverage regulations or the state excise taxes on alcoholic beverages. Such sales must be in the ordinary course of the business of lending money secured by a security interest in alcoholic beverages, warehouse receipts or other evidence of ownership.

The bill would specify that a sale of beer under this provision would have to be made within 30 days after the third party takes possession of the beer unless the third party demonstrates good cause why a sale in compliance with the statutes on secured transactions or the security agreement cannot be made within this time period. This restriction would first apply to security interests entered into on the day after publication.

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Beer Shipped from Out of State. Under current law, DOR must issue out-of-state shippers' permits, which authorize the permittee to ship beer only to licensed wholesalers. No person may receive beer in this state that has been directly shipped from outside this state by any person other than the holder of an out-of-state shipper's permit. All shipments of beer to a wholesaler in this state, whether shipped from inside or from outside this state, must be unloaded in and distributed from the wholesaler's warehouse in this state.

The bill would require DOR to issue a written warning to any person located outside Wisconsin that sells or ships beer into this state in violation of these provisions if the person has not previously received a warning. Any person located outside of this state that sells or ships beer in violation of these provisions and that has received a warning from DOR would be

Out { subject to a fine of up to \$10,000, imprisonment for up to two years or both. This provision would first apply to violations on the first day of the sixth month beginning after publication.

Currently, upon request by the Secretary of DOR, the Attorney General may represent the state or assist a local district attorney in prosecuting any case arising from the statutes regulating the sale of alcoholic beverages. The bill would also authorize the Attorney General, upon request by the Secretary of DOR, to commence an action to enforce the provisions regarding shipments of beer to Wisconsin wholesalers in the Dane County circuit court.

Operator's License Training Course. Currently, in order to obtain an alcoholic beverages operator's license (bartender's license), an individual may be required to complete a responsible beverage-server training course that is offered by a technical college district and that conforms to guidelines specified by the WTCS Board, or a comparable course that is approved by DOR or the Educational Approval Board. The bill would specify that such courses could include computer-based training and testing.

Gifts Provided by Brewers or Wholesalers to Retailers. Current law, with a number of exceptions, prohibits brewers or wholesalers from furnishing, giving, lending, leasing or selling furniture, fixtures, fittings, equipment, money or other things of value to any campus or person holding a Class "B" license or permit (for the retail sale of beer for on-premises consumption), or to any person for the use, benefit or relief of any campus or Class "B" retailer.

One exception to this provision is that a brewer or wholesaler may provide, for placement inside the premises, signs, clocks or menu boards with an aggregate value of not more than \$150. Each recipient must keep an invoice or credit memo containing the name of the donor and the number and value of items received and must make these records available to DOR for inspection upon request. The bill would modify this provision by increasing the dollar limit from \$150 to \$2,500. In addition, both the donor and the recipient would be required to keep written documentation containing the name of the recipient and donor and the number and value of items provided, and make these records available to DOR.

Another exception under current law is that a brewer or wholesaler may provide signs made from paper or cardboard for placement inside the premises. The bill would modify this provision to include signs made from plastic or vinyl or from other materials with a useful life of less than one year. In addition, the bill would specify that signs could be provided without regard to the \$2,500 limit (\$150 under current law) on the aggregate value of items provided by brewers and wholesalers.

A third exception permits brewers and wholesalers to purchase advertising for fair compensation from a bona fide national or statewide trade association which derives its principal income from membership dues of Class "B" retailers. The bill would also allow brewers and wholesalers to purchase advertising from any person who does not hold an alcoholic beverages license or permit and who conducts a bona fide advertising, promotional or media business, to promote brewer- or wholesaler-sponsored sweepstakes, contests or promotions on the premises of Class "B" retailers if: (a) the advertising or promotion includes at

least five unaffiliated retailers; and (b) the retailer on whose premises the event will occur does not receive compensation, directly or indirectly, for hosting the event. In addition, the bill would allow brewers and wholesalers to conduct their own sweepstakes, contests or promotions on the premises of Class "B" retailers if the above conditions are satisfied.

An additional provision of current law allows brewers and wholesalers to provide, in this state, reasonable business entertainment that is deductible under federal tax law to a Class "B" retailer by: (a) providing tickets or free admissions to athletic events, concerts or similar activities; or (b) providing food and beverages and paying for local ground transportation in connection with such activities and business meetings. However, the value of business entertainment provided may not exceed \$75 per day. The bill would increase this limit to \$500 per day and specify that such business entertainment could be provided on no more than 12 days per year.

Current law also specifically permits brewers that produce 350,000 or more barrels of beer annually to contribute money or other things of value to a bona fide national or statewide trade association that derives its principal income from membership dues of Class "B" licensees. The bill would modify this provision by allowing any brewer to make such contributions, allowing wholesalers to make such contributions and allowing contributions to local trade associations.

Fair Dealership Provisions for Beer Wholesalers. Under current provisions of the Fair Dealership Law (Chapter 135 of the statutes), the grantor of a dealership may not (directly or through any officer, agent or employee) terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor of the dealership. In general, a "dealership" is a contract or agreement by which a person is granted the right to sell or distribute goods or services or use a trade name, advertising or other commercial symbol, in which there is a community of interest in the business of offering, selling or distributing goods or services. The bill would specify that a contract or agreement by which an alcoholic beverages wholesaler is granted the right to sell or distribute beer would be a dealership, even if no community of interest exists. Such agreements would be subject to the provision described above regarding the termination of a dealership. A similar provision exists under current law for wholesalers of intoxicating liquor, but not for beer wholesalers.

The bill would also create a separate provision in Chapter 135 for dealerships that involve beer wholesalers. Under the bill, any person who assumes, in whole or in part, such a dealership following the grantor's termination, cancellation, or nonrenewal in whole or in part of a prior dealership agreement would be required to compensate the prior dealer for the fair market value of that portion of the dealership unless the grantor terminated the dealership for any of the following reasons: (a) the prior dealer engaged in material fraudulent conduct or made material and substantial misrepresentations in its dealings with the grantor or with others related to the dealership; (b) the prior dealer was convicted of, or pleaded no contest to, a felony crime substantially related to the dealer's ability to operate the dealership; or (c) the prior dealer knowingly distributed dealership products outside the territory authorized by the grantor.

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The grantor would be required to advise the person assuming the dealership of these obligations prior to the person's assumption of the dealership. If the person assuming the dealership and the prior dealer agree in writing to the fair market value of that portion of the dealership, the person assuming the dealership would have to pay the agreed upon sum within 30 days of the agreement. If no written agreement for compensation of the prior dealer is reached within 30 days after the grantor's termination of the prior dealership agreement, the prior dealer could submit the dispute for binding arbitration through a nationally recognized arbitration association. Unless the parties agree otherwise, the arbitration would be conducted on an expedited basis to the extent an expedited proceeding is reasonably available through the arbitration association, and each party would have to pay an equal share of the cost of the arbitration.

These provisions would first apply to dealerships entered into on the day after publication.

Joint Finance: Modify the provisions of the bill relating to the regulation of alcoholic beverages as follows:

Sale of Alcohol by Secured Third Parties

Reduce the period during which a secured third party may sell beer without a license from 30 days to 15 days.

Gifts Provided by Brewers or Wholesalers to Retailers

Modify the provisions regarding gifts provided by brewers or wholesalers to retailers so that the aggregate value of signs, clocks, or menu boards given by a brewer or wholesaler may not exceed \$2,500 at "any given time" rather than "during any calendar year."

Modify the record-keeping requirements under the provisions regarding gifts by brewers or wholesalers to retailers so that only the recipient, not the donor and the recipient, must keep written records of the number of and value of items received, subject to inspection by the Department of Revenue.

Modify the provisions regarding gifts of signs made by brewers or wholesalers to retailers to allow signs made of plastic, vinyl "or other like material" rather than plastic, vinyl or "signs made from other materials with a useful life of less than one year."

Delete the Governor's provisions regarding advertising and promotional events held on retailers' premises. Instead, allow brewers and wholesalers to purchase advertising from a non-licensed third party, such as a radio station or promoter, which conducts national or regional sweepstakes, contests or promotions at the premises of retailers which sell the brewer's or wholesaler's products. In general, specify that the non-licensed third party could promote the event or activity, including the location of the event or activity, if the advertisement lists four or more unaffiliated retail licensees, and if no money is given to the retail licensee for the privilege

Please fix
Request sheet

Seen

WJ
turned in
6/16 9:45 am

SDC:.....Keckhaver – CN1127, Alcohol beverages – yank provisions re transfer of municipal licenses, out of state beer shippers, and fair dealership laws

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

substitute amendment

1

At the locations indicated, amend the bill as follows:

2

1. Page 933, line 9: delete the material beginning with that line and ending with page 934, line 4.

4

2. Page 934, line 15: delete lines 15 to 20.

5

3. Page 935, line 5: delete lines 5 to 12.

6

4. Page 937, line 23: delete the material beginning with that line and ending with page 939, line 16.

7

8

5. Page 940, line 5: delete lines 5 to 10.

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TO 2001 SENATE BILL 55

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2 **1.** Page 933, line 9: delete the material beginning with that line and ending
3 with page 934, line 4.

4 **2.** Page 934, line 15: delete lines 15 to 20.

5 **3.** Page 935, line 5: delete lines 5 to 12.

6 **4.** Page 937, line 23: delete the material beginning with that line and ending
7 with page 939, line 16.

8 **5.** Page 940, line 5: delete lines 5 to 10.

1 **6.** Page 1406, line 21: delete lines 21 to 23.

2 **7.** Page 1407, line 1: delete lines 1 to 6.

3 **8.** Page 1423, line 22: delete the material beginning with that line and ending
4 with page 1424, line 3.

5 (END)