

2005 ASSEMBLY BILL 619

August 19, 2005 – Introduced by Representatives PRIDEMORE, VAN ROY, ZIEGELBAUER, BIES, GRONEMUS, GUNDERSON, GUNDRUM, JENSEN, KRAWCZYK, LOEFFELHOLZ, LOTHIAN, MCCORMICK, MOLEPSKE, MUSSER, NERISON, OWENS, POCAN, UNDERHEIM and VOS, cosponsored by Senator A. LASEE. Referred to Committee on Small Business.

1 **AN ACT to amend** 125.68 (4) (c) 1., 125.68 (4) (c) 3. and 125.68 (4) (c) 4.; and **to**
2 **create** 125.51 (3r) of the statutes; **relating to:** retail sales of wine by the bottle
3 in restaurants for consumption on and off the premises.

Analysis by the Legislative Reference Bureau

Under current law, alcohol beverages are generally distributed to consumers under a three-tier distribution system: a manufacturer may sell only to a wholesaler or rectifier (a person who blends, refines, or purifies distilled spirits or wines); a wholesaler or rectifier may sell only to a wholesaler or retailer; and a retailer may sell only to a consumer. With specific exceptions, no person may sell outside the three-tier system and no person may sell alcohol beverages to a consumer unless the seller possesses a license or permit authorizing the sale. A “Class B” license authorizes the retail sale of intoxicating liquor, including wine, for consumption on the premises where sold “by the glass and not in the original package or container” and authorizes the sale of wine “in the original package or container in any quantity to be consumed off the premises where sold.” However, if a municipal ordinance has been adopted, a “Class B” license authorizes the sale of intoxicating liquor to be consumed “by the glass only on the premises where sold,” authorizes the sale of intoxicating liquor for consumption off the premises subject to certain limitations, and authorizes the sale of wine “for consumption off the premises in the original package or otherwise in any quantity.” (A 1953 attorney general memorandum interpreted the “by the glass” language applicable to intoxicating liquor retailers to allow *sales* of open bottles of intoxicating liquor if the intoxicating liquor is *consumed*

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by the glass.) A “Class C” license authorizes the retail sale of wine “by the glass or in an opened original container for consumption on the premises where sold.”

Under current law, with exceptions, no premises for which a “Class B” license or permit or a “Class C” license has been issued may remain open between the hours of 2 a.m. and 6 a.m. These closing hours may not be altered by a municipality. Restaurants may remain open for the conduct of their regular business but may not sell intoxicating liquor during these closing hours. Between 12 midnight and 6 a.m. no person may sell intoxicating liquor on “Class B” licensed premises in an original unopened package, container, or bottle or for consumption away from the premises, but a municipal governing body may adopt an ordinance imposing more restrictive hours. Also under current law, no premises for which a “Class A” license (authorizing the retail sale of intoxicating liquor for consumption off the premises in original packages and containers) has been issued, and no winery for which a “Class B” license has been issued, may remain open for the sale of intoxicating liquor between the hours of 9 p.m. and 8 a.m.

This bill authorizes a “Class B” or “Class C” licensee that operates a restaurant on the licensed premises to sell wine by the open bottle, for consumption both on and off the licensed premises, in a quantity not to exceed one bottle per person ordering wine and food, if all of the following apply:

1. The purchaser of the wine orders food to be consumed on the licensed premises.

2. The licensee provides a dated receipt that identifies the purchase of the food and the bottle of wine.

3. Prior to the opened, partially consumed bottle of wine being taken off the licensed premises, the licensee securely reinserts the cork into the bottle to the point where the top of the cork is even with the top of the bottle and the cork is not reinserted between the hours of 12 midnight and 6 a.m.

The provisions of the bill do not apply to a “Class B” license issued to a winery. The bill also specifically provides that it does not restrict any existing authorization under current law for a licensee to make retail sales of wine for on-premises or off-premises consumption.

The bill also specifies that the state closing hours provisions that currently apply to a “Class B” licensee for off-premises sales apply to sales authorized under the bill but that, for purposes of the bill, these state provisions cannot be modified by municipal ordinance.

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

1 **SECTION 1.** 125.51 (3r) of the statutes is created to read:

2 125.51 **(3r)** SALES OF WINE BY THE BOTTLE IN RESTAURANTS. (a) Notwithstanding

3 subs. (3) (a) and (b) and (3m) (b), a “Class B” license or “Class C” license authorizes

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1 the retail sale of wine in an opened original bottle, in a quantity not to exceed one
2 bottle, for consumption both on and off the premises where sold if all of the following
3 apply:

4 1. The licensed premises is a restaurant also operated under a “Class B” or
5 “Class C” license and the purchaser of the wine orders food to be consumed on the
6 licensed premises.

7 2. The licensee provides a dated receipt that identifies the purchase of the food
8 and the bottle of wine.

9 3. Prior to the opened, partially consumed bottle of wine being taken off the
10 licensed premises, the licensee securely reinserts the cork into the bottle to the point
11 where the top of the cork is even with the top of the bottle and the cork is reinserted
12 at a time other than during the time period specified in s. 125.68 (4) (c) 3.

13 (b) This subsection does not apply to a “Class B” license issued to a winery
14 under s. 125.51 (3) (am). Nothing in this subsection restricts a licensee’s
15 authorization for retail sales of wine under subs. (3) (a) and (b) and (3m) (b).

16 **SECTION 2.** 125.68 (4) (c) 1. of the statutes is amended to read:

17 125.68 (4) (c) 1. ~~No~~ Subject to subd. 3. and s. 125.51 (3r) (a) 3., no premises for
18 which a “Class B” license or permit or a “Class C” license has been issued may remain
19 open between the hours of 2 a.m. and 6 a.m., except as otherwise provided in this
20 subdivision and subd. 4. On January 1 premises operating under a “Class B” license
21 or permit are not required to close. On Saturday and Sunday, no premises may
22 remain open between 2:30 a.m. and 6 a.m. This subdivision does not apply to a “Class
23 B” license issued to a winery under s. 125.51 (3) (am).

24 **SECTION 3.** 125.68 (4) (c) 3. of the statutes is amended to read:

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1 125.68 (4) (c) 3. Between 12 midnight and 6 a.m. no person may sell
2 intoxicating liquor on “Class B” licensed premises in an original unopened package,
3 container or bottle or for consumption away from the premises or on “Class C”
4 licensed premises as authorized under s. 125.51 (3r) (a). A municipal governing body
5 may, by ordinance, impose more restrictive hours than are provided in this
6 subdivision except with respect to the sale of intoxicating liquor authorized under s.
7 125.51 (3r) (a). This subdivision does not apply to a “Class B” license issued to a
8 winery under s. 125.51 (3) (am).

9 **SECTION 4.** 125.68 (4) (c) 4. of the statutes is amended to read:

10 125.68 (4) (c) 4. Hotels and restaurants the principal business of which is the
11 furnishing of food, drinks or lodging to patrons, bowling centers, indoor
12 horseshoe-pitching facilities, curling clubs, golf courses and golf clubhouses may
13 remain open for the conduct of their regular business but may not sell intoxicating
14 liquor during the closing hours under subd. 1. or, with respect to the sale of
15 intoxicating liquor authorized under s. 125.51 (3r) (a), under subd. 3.

16 **(END)**