

2007 SENATE BILL 91

March 13, 2007 – Introduced by Senator HARSDORF, cosponsored by Representatives HRAYCHUCK, BALLWEG, BIES, F. LASEE and MURSAU. Referred to Committee on Transportation, Tourism and Insurance.

1 **AN ACT** *to renumber and amend* 125.51 (8); *to amend* 125.04 (3) (g) (intro.),
2 125.04 (5) (a) 5., 125.07 (1) (b) 5., 125.07 (3) (a) 6m., 125.10 (4), 125.17 (6) (a) 2.,
3 125.185 (2) and (4), 125.51 (1) (a), 125.53 (1), 125.54 (1), 125.66 (4), 125.68 (1)
4 (title), 125.68 (1) (a) (intro.), 125.68 (2), 125.68 (2m) (a), 125.68 (4) (c) (title), 1.
5 and 3., 125.68 (5), 125.68 (8) (a) 3., 125.69 (1) (b) 1., 3. and 4., 125.69 (1) (c) 2.
6 and 125.69 (6) (c); and *to create* 125.05 (1) (a) 3s., 125.51 (3p) and 125.51 (8)
7 (a) 4. of the statutes; **relating to:** creating a new license authorizing retail sales
8 of wine by certain restaurants for consumption on or off the premises where sold
9 and the penalty for certain alcohol beverage violations.

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 A” license

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authorizes the retail sale of intoxicating liquor, including wine, for consumption off the licensed premises. A “Class B” license authorizes the retail sale of intoxicating liquor for consumption on or off the licensed premises, which authorization is subject to certain limitations, some of which depend on whether the issuing municipality has adopted an ordinance related to “Class B” licenses. A “Class C” license authorizes the retail sale of wine by the glass or in an opened original container for consumption on the licensed premises. A “Class C” license may only be issued for a restaurant in which the sale of alcohol beverages accounts for less than 50 percent of gross receipts and that either does not have a barroom or has a barroom in which wine is the only intoxicating liquor sold. Each of these licenses is issued by a municipality.

This bill creates a “Class D” license authorizing the retail sale of wine by the glass or in an opened original bottle or other original container for consumption on the licensed premises or in unopened original bottles or other original containers in any quantity to be consumed off the licensed premises. A “Class D” license may only be issued to a restaurant that meets the requirements for issuance of a “Class C” license. The license is issued by municipalities and the annual fee for the license is determined by each issuing municipality, but may not exceed \$100. The restrictions and requirements applicable under current law to either “Class C” licenses or “Class B” licenses are also generally applicable to “Class D” licenses.

Under current law, no person (including a licensee or permittee) may procure for, sell, dispense, or give away alcohol beverages to any individual who has not attained the legal drinking age of 21 years (underage person) or who is not accompanied by his or her parent, guardian, or spouse who has reached the legal drinking age. Current law also prohibits an adult from intentionally encouraging or contributing to the illegal provision of alcohol beverages to an underage person and from knowingly permitting or failing to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult’s control. A person who violates any of these prohibitions is subject to various penalties, ranging from a forfeiture of \$500 to a fine of \$10,000 and imprisonment for not more than nine months, as well as possible driver’s license suspension and alcohol beverage license suspension. However, a Class “A,” Class “B,” “Class A,” or “Class B” licensee violating any of these prohibitions is subject only to alcohol beverage license suspension. The bill provides that a “Class C” or “Class D” licensee violating any of these prohibitions is also subject only to alcohol beverage license suspension.

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 (3) (g) (intro.) of the statutes is amended to read:

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1 125.04 (3) (g) *Publication of application for license.* (intro.) The municipal
2 clerk shall publish each application for a Class “A”, Class “B”, “Class A”, “Class B”
3 or, “Class C”, or “Class D” license, except licenses under ss. 125.26 (6) and 125.51 (10),
4 prior to its issuance in a newspaper according to the following conditions:

5 **SECTION 2.** 125.04 (5) (a) 5. of the statutes is amended to read:

6 125.04 (5) (a) 5. Have successfully completed within the 2 years prior to the
7 date of application a responsible beverage server training course at any location that
8 is offered by a technical college district and that conforms to curriculum guidelines
9 specified by the technical college system board or a comparable training course that
10 is approved by the department or the educational approval board. This subdivision
11 does not apply to an applicant who held, or who was an agent appointed and approved
12 under sub. (6) of a corporation or limited liability company that held, within the past
13 2 years, a Class “A”, “Class A” or, “Class C”, or “Class D” license or a Class “B” or
14 “Class B” license or permit or a manager’s or operator’s license.

15 **SECTION 3.** 125.05 (1) (a) 3s. of the statutes is created to read:

16 125.05 (1) (a) 3s. “Shall ‘Class D’ licenses (restaurants) be issued for the retail
17 sale of wine for consumption on the premises where sold and in unopened original
18 containers to be consumed away from the premises where sold?”

19 **SECTION 4.** 125.07 (1) (b) 5. of the statutes is amended to read:

20 125.07 (1) (b) 5. A person who holds a Class “A” license, a Class “B” license or
21 permit, a “Class A” license or, a “Class B” license or permit, a “Class C” license, or a
22 “Class D” license who commits a violation is subject to subd. 3. but is not subject to
23 subd. 2. or s. 125.11.

24 **SECTION 5.** 125.07 (3) (a) 6m. of the statutes is amended to read:

SENATE BILL 91**SECTION 5**

1 125.07 **(3)** (a) 6m. Premises operating under both a “Class C” or “Class D”
2 license and a restaurant permit.

3 **SECTION 6.** 125.10 (4) of the statutes is amended to read:

4 125.10 **(4)** REGULATION OF CLOSED RETAIL PREMISES. A municipality may not
5 prohibit the permittee, licensee, employees, salespersons, employees of wholesalers
6 licensed under s. 125.28 (1) or 125.54 (1) or service personnel from being present on
7 premises operated under a Class “A”, “Class A” or “Class C”, or “Class D” license or
8 under a Class “B” or “Class B” license or permit during hours when the premises are
9 not open for business if those persons are performing job-related activities.

10 **SECTION 7.** 125.17 (6) (a) 2. of the statutes is amended to read:

11 125.17 **(6)** (a) 2. Within the past 2 years, the person held a Class “A”, “Class A”
12 or “Class C”, or “Class D” license or a Class “B” or “Class B” license or permit or a
13 manager’s or operator’s license.

14 **SECTION 8.** 125.185 (2) and (4) of the statutes are amended to read:

15 125.185 **(2)** A provisional retail license may be issued only to a person who has
16 applied for a Class “A”, Class “B”, “Class A”, “Class B” or “Class C”, or “Class D”
17 license and authorizes only the activities that the type of retail license applied for
18 authorizes.

19 **(4)** A provisional retail license expires 60 days after its issuance or when the
20 Class “A”, Class “B”, “Class A”, “Class B” or “Class C”, or “Class D” license is issued
21 to the holder, whichever is sooner. The official who issued the provisional retail
22 license may revoke the license if he or she discovers that the holder of the license
23 made a false statement on the application.

24 **SECTION 9.** 125.51 (1) (a) of the statutes is amended to read:

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1 125.51 (1) (a) Every municipal governing body may grant and issue “Class A”
2 and “Class B” licenses for retail sales of intoxicating liquor, and “Class C” and “Class
3 D” licenses for retail sales of wine, from premises within the municipality to persons
4 entitled to a license under this chapter as the issuing municipal governing body
5 deems proper and may authorize an official or body of the municipality to issue
6 temporary “Class B” licenses under sub. (10). No “Class B” license may be issued to
7 a winery under sub. (3) (am) unless the winery has been issued a permit under s.
8 125.53 and the winery is capable of producing at least 5,000 gallons of wine per year
9 in no more than 2 locations.

10 **SECTION 10.** 125.51 (3p) of the statutes is created to read:

11 125.51 (3p) RETAIL “CLASS D” LICENSE. (a) A “Class D” license authorizes the
12 retail sale of wine by the glass or in opened original bottles or other original
13 containers for consumption on the premises where sold and also authorizes the retail
14 sale of wine in unopened original bottles or other original containers in any quantity
15 to be consumed off the premises where sold.

16 (b) Except as provided under s. 125.69, a “Class D” license may be issued to any
17 person qualified under s. 125.04 (5), except a foreign corporation, a foreign limited
18 liability company, or a person acting as an agent for or in the employ of another, for
19 a restaurant that meets the requirements specified in sub. (3m) (c) for issuance of a
20 “Class C” license.

21 (c) A “Class D” license shall particularly describe the premises for which it is
22 issued and is not transferable, except as provided in s. 125.04 (12).

23 (d) The annual fee for a “Class D” license shall be determined by the municipal
24 governing body issuing the license. The fee shall not exceed \$100 and shall be the
25 same for all “Class D” licenses.

SENATE BILL 91**SECTION 11**

1 **SECTION 11.** 125.51 (8) of the statutes is renumbered 125.51 (8) (a) (intro.) and
2 amended to read:

3 125.51 **(8)** (a) (intro.) Except in the case of hotels, no person may hold ~~both, for~~
4 the same premises or for connecting premises, a “Class A” license and ~~either a~~ any
5 of the following:

6 1. A “Class B” license or permit, ~~a~~.

7 2. A Class “B” license or permit ~~or a~~.

8 3. A “Class C” license ~~for the same premises or for connecting premises. Except,~~

9 (b) Except for hotels, if either type of a license or permit is issued ~~for the same~~
10 ~~or connecting premises already covered by the other type of license or permit that~~
11 ~~causes a person to be in violation of par. (a)~~, the license or permit last issued is void.
12 If both licenses or permits are issued simultaneously, both are void.

13 **SECTION 12.** 125.51 (8) (a) 4. of the statutes is created to read:

14 125.51 **(8)** (a) 4. A “Class D” license.

15 **SECTION 13.** 125.53 (1) of the statutes is amended to read:

16 125.53 **(1)** The department shall issue only to a manufacturing winery in this
17 state that holds a valid certificate issued under s. 73.03 (50) a winery permit
18 authorizing the manufacture and bottling of wine on the premises covered by the
19 permit for sale at wholesale to other licensees or permittees. A permittee under this
20 section may offer on the premises taste samples of wine manufactured on the
21 premises to persons who have attained the legal drinking age. A permittee under
22 this section may also have ~~either a “Class A” or, “Class B”, or “Class D”~~ license, but
23 ~~not both~~ more than one such license. If a “Class A” ~~or, “Class B”, or “Class D”~~ liquor
24 license has also been issued to the winery, the winery may offer the taste samples on
25 the “Class A” ~~or, “Class B”, or “Class D”~~ premises.

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1 **SECTION 14.** 125.54 (1) of the statutes is amended to read:

2 125.54 (1) AUTHORIZED ACTIVITIES. The department shall issue wholesalers'
3 permits authorizing the permittee to sell intoxicating liquor at wholesale from the
4 premises described in the permit. Except as provided under s. 125.69 (1) (b) 3., the
5 permittee may not sell intoxicating liquor for consumption on the premises. If a
6 wholesale permit is issued to a brewery that holds a “Class B” or “Class D” license,
7 the permit shall authorize the wholesale sale of wine only. Possession of a permit
8 under this section does not authorize the permittee to sell tax-free intoxicating
9 liquor and wine brought into this state under s. 139.03 (5).

10 **SECTION 15.** 125.66 (4) of the statutes is amended to read:

11 125.66 (4) Notwithstanding sub. (1) and s. 125.04 (1), a “Class A” licensee who
12 sells intoxicating liquor to a “Class B” or “Class D” licensee for resale may be fined
13 not more than \$100.

14 **SECTION 16.** 125.68 (1) (title) of the statutes is amended to read:

15 125.68 (1) (title) MANAGERS' LICENSES; “CLASS B” AND, “CLASS C”, AND “CLASS D”
16 PREMISES.

17 **SECTION 17.** 125.68 (1) (a) (intro.) of the statutes is amended to read:

18 125.68 (1) (a) (intro.) If a municipal governing body elects to issue managers'
19 licenses under s. 125.18, no person may manage premises operating under a “Class
20 B” license or permit or a “Class C” or “Class D” license unless the person is the
21 licensee or permittee, an agent of a corporation or limited liability company
22 appointed as required by s. 125.04 (6) or the holder of a manager’s license. A
23 manager’s license issued in respect to a vessel under s. 125.51 (5) (c) is valid outside
24 the municipality that issues it. A person manages premises if that person has
25 responsibility or authority for:

SENATE BILL 91**SECTION 18**

1 **SECTION 18.** 125.68 (2) of the statutes is amended to read:

2 125.68 **(2)** OPERATORS' LICENSES; "CLASS A", "CLASS B" OR, "CLASS C", OR "CLASS D"
3 PREMISES. Except as provided under s. 125.07 (3) (a) 10., no premises operated under
4 a "Class A" OR, "Class C", OR "Class D" license or under a "Class B" license or permit
5 may be open for business unless there is upon the premises either the licensee or
6 permittee, the agent named in the license or permit if the licensee or permittee is a
7 corporation or limited liability company, or some person who has an operator's
8 license and who is responsible for the acts of all persons selling or serving any
9 intoxicating liquor to customers. An operator's license issued in respect to a vessel
10 under s. 125.51 (5) (c) is valid outside the municipality that issues it. For the purpose
11 of this subsection, any person holding a manager's license issued under s. 125.18 or
12 any member of the licensee's or permittee's immediate family who has attained the
13 age of 18 shall be considered the holder of an operator's license. No person, including
14 a member of the licensee's or permittee's immediate family, other than the licensee,
15 permittee or agent may serve or sell alcohol beverages in any place operated under
16 a "Class A" OR, "Class C", OR "Class D" license or under a "Class B" license or permit
17 unless he or she has an operator's license or is at least 18 years of age and is under
18 the immediate supervision of the licensee, permittee or agent or a person holding an
19 operator's license, who is on the premises at the time of the service.

20 **SECTION 19.** 125.68 (2m) (a) of the statutes is amended to read:

21 125.68 **(2m)** (a) No person may allow another to use his or her "Class A" OR,
22 "Class C", OR "Class D" license or "Class B" license or permit to sell alcohol beverages.

23 **SECTION 20.** 125.68 (4) (c) (title), 1. and 3. of the statutes are amended to read:

24 125.68 **(4)** (c) (title) *"Class B" and, "Class C", and "Class D" retailers.* 1. Subject
25 to subd. 3. and s. 125.51 (3r) (a) 3., no premises for which a "Class B" license or permit

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1 or a “Class C” or “Class D” license has been issued may remain open between the
2 hours of 2 a.m. and 6 a.m., except as otherwise provided in this subdivision and subd.
3 4. On January 1 premises operating under a “Class B” license or permit or a “Class
4 D” license are not required to close. On Saturday and Sunday, no premises may
5 remain open between 2:30 a.m. and 6 a.m. This subdivision does not apply to a “Class
6 B” license issued to a winery under s. 125.51 (3) (am).

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

15 **SECTION 21.** 125.68 (5) of the statutes is amended to read:

16 125.68 (5) RESTAURANT SANITATION RULES. No applicant may obtain a “Class B”
17 license or permit or a “Class C” or “Class D” license unless the premises complies with
18 the rules promulgated by the department of health and family services governing
19 sanitation in restaurants. However, the department of health and family services
20 may not restrict the serving of cheese without charge in individual portions to
21 customers as permitted by s. 254.61 (5).

22 **SECTION 22.** 125.68 (8) (a) 3. of the statutes is amended to read:

23 125.68 (8) (a) 3. Possessing diluted intoxicating liquor or refilled original
24 containers on any premises covered by a “Class A” or “Class C”, or “Class D” license
25 or “Class B” license or permit.

