



2011 SENATE BILL 358

January 3, 2012 – Introduced by Senators GALLOWAY, KEDZIE and HOLPERIN, cosponsored by Representatives JACQUE, BIES, KLEEFISCH, PRIDEMORE, SPANBAUER, A. OTT and WYNN. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

- 1 **AN ACT to create** 125.07 (4) (f) of the statutes; **relating to:** alcohol beverages
2 violations by underage persons on licensed premises.

Analysis by the Legislative Reference Bureau

Under current law, with limited exceptions, a person who has not attained the legal drinking age of 21 years may not: 1) procure or attempt to procure alcohol beverages from an alcohol beverages licensee or permittee; 2) possess or consume alcohol beverages on premises for which an alcohol beverages license has been issued (licensed premises), unless accompanied by a parent, guardian, or spouse who has attained the legal drinking age; 3) enter, knowingly attempt to enter, or be on licensed premises unless authorized by statute to do so; or 4) falsely represent his or her age for the purpose of receiving alcohol beverages from an alcohol beverages licensee or permittee (underage violation). A person who commits an underage violation is subject to various penalties, including a forfeiture ranging in amount from \$250 to \$1,000 depending on the number of prior underage violations the person has committed.

This bill provides alcohol beverages licensees with a private right of action against persons who engage in conduct that constitutes an underage violation. Under the bill, a licensee may bring a civil action against such an underage person and, if judgment is entered in favor of the licensee, the court must award to the licensee damages in the amount of \$1,000, plus costs and reasonable attorney fees. However, if the underage person is less than 18 years of age and not emancipated, the licensee brings the action against the parent or legal guardian of the underage person instead. The licensee has the burden of proving that the underage person's

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conduct constituted an underage violation, but the action may be brought regardless of whether the underage person received a citation for, or was convicted of, the violation. Before a licensee may bring an action, the licensee must provide notice of its intent to bring an action and the notice must include a demand for the monetary relief that would be available if the action were brought.

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

1 **SECTION 1.** 125.07 (4) (f) of the statutes is created to read:

2 125.07 (4) (f) 1. Except as provided in subd. 2., and subject to subd. 3., if an
3 underage person engages in conduct that violates par. (a) on the premises of a
4 licensee, the licensee may bring a civil action against the underage person. If
5 judgment is entered in favor of the licensee, the court shall award to the licensee
6 damages in the amount of \$1,000 and, notwithstanding s. 814.04 (1), the costs of the
7 action, including reasonable attorney fees. A licensee may bring an action under this
8 paragraph regardless of whether the underage person has been convicted of, or
9 received a citation for, the violation of par. (a), but the licensee has the burden of
10 proving, by a preponderance of the evidence, that the underage person's conduct was
11 in violation of par. (a).

12 2. If the underage person who engages in conduct that violates par. (a) on the
13 licensee's premises is less than 18 years of age and is not an emancipated minor, the
14 licensee may bring the civil action against the underage person's parent, as defined
15 in s. 46.56 (1) (j).

16 3. A licensee may not bring a civil action under this paragraph unless the
17 licensee has first provided notice to the underage person or the underage person's
18 parent, as applicable, of the licensee's intent to bring the action. The notice shall be
19 mailed to the last-known address of the underage person or underage person's

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1 parent, as applicable, at least 15 days prior to filing the action and shall include a
2 demand for the relief described in subd. 1. The department may, by rule, prescribe
3 a form for this notice.

4 **SECTION 2. Initial applicability.**

5 (1) This act first applies to violations of section 125.07 (4) (a) of the statutes
6 committed on the effective date of this subsection.

7 (END)