



2013 SENATE BILL 46

February 28, 2013 – Introduced by Senators GUDEx, KEDZIE and MOULTON, cosponsored by Representatives JACQUE, KLEEFISCH, BIES, AUGUST, BORN, ENDSLEY, KUGLITSCH, KAUFERT, KNODL, LEMAHIEU, PETERSEN, RIPP, SCHRAA, SPIROS, SWEARINGEN and TITTL. Referred to Committee on Judiciary and Labor.

1 **AN ACT to create** 125.07 (3) (a) 15., 125.07 (4) (bg) and 125.07 (4) (f) of the
2 **statutes; relating to:** alcohol beverages violations involving underage persons
3 on licensed premises.

Analysis by the Legislative Reference Bureau

Under current law, an alcohol beverages licensee (retailer) may not procure for, sell, or otherwise provide alcohol beverages to a person who has not attained the legal drinking age of 21 and who is not accompanied by his or her parent, guardian, or spouse who is at least age 21 (unaccompanied underage person) or, with various exceptions, permit an unaccompanied underage person to enter or be on a retail licensed premises (retailer underage violation). A retailer has a defense to a retailer underage violation if the retailer shows that: 1) the underage person falsely represented his or her age to be at least 21; 2) the appearance of the underage person was such that an ordinary and prudent person would believe that the underage person was at least 21; 3) the retailer acted in good faith and in reliance on the representation and appearance of the underage person in the belief that the underage person was at least 21; and 4) the underage person supported his or her representation with identification showing his or her age to be at least 21.

Also under current law, an unaccompanied underage person may not: 1) procure or attempt to procure alcohol beverages from a retailer; 2) possess or consume alcohol beverages on licensed retail premises; 3) enter or be on licensed retail premises, subject to various exceptions; or 4) falsely represent his or her age to obtain alcohol beverages from a retailer (underage violation). A person who

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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 retailers with a private right of action against underage persons who commit underage violations. Under the bill, a retailer may bring a civil action against an underage person who commits an underage violation on the retailer's licensed premises if the retailer has not been convicted of or cited for a retailer underage violation related to the same incident giving rise to the underage violation, unless the retailer has a defense to the retailer underage violation. If a retailer brings a civil action against an underage person based on the underage violation and judgment is entered in favor of the retailer, the court must award to the retailer 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 retailer brings the action against the parent or legal guardian of the underage person instead. The retailer has the burden of proving that the underage person's 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 underage violation. Before a retailer may bring an action, the retailer 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 bill also creates an exception allowing an unaccompanied underage person to enter or be on licensed retail premises if the underage person is employed by or assisting a law enforcement agency in enforcing or investigating underage violations or retailer underage violations. The bill also specifies that laws relating to underage violations, and prohibiting an unaccompanied underage person from knowingly possessing or consuming alcohol beverages, do not apply to an underage person employed by or assisting a law enforcement agency in enforcing or investigating underage violations or retailer underage violations.

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

1 **SECTION 1.** 125.07 (3) (a) 15. of the statutes is created to read:

2 125.07 (3) (a) 15. An underage person employed by or assisting a law
3 enforcement agency in carrying out enforcement activities to determine compliance
4 with, or investigate potential violations of, the provisions of this section.

5 **SECTION 2.** 125.07 (4) (bg) of the statutes is created to read:

6 125.07 (4) (bg) Paragraphs (a) and (b) do not apply to an underage person
7 employed by or assisting a law enforcement agency in carrying out enforcement

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1 activities to determine compliance with, or investigate potential violations of, the
2 provisions of this section.

3 **SECTION 3.** 125.07 (4) (f) of the statutes is created to read:

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

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

18 3. A licensee may not bring a civil action under this paragraph unless the
19 licensee has first provided notice to the underage person or the underage person's
20 parent, as applicable, of the licensee's intent to bring the action. The notice shall be
21 mailed to the last-known address of the underage person or underage person's
22 parent, as applicable, at least 15 days prior to filing the action and shall include a
23 demand for the relief described in subd. 1. The department may, by rule, prescribe
24 a form for this notice.

