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## WISCONSIN LEGISLATIVE COUNCIL

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### MEETING MINUTES

### STUDY COMMITTEE ON ALCOHOL BEVERAGES ENFORCEMENT

Room 411 South, State Capitol  
Madison, WI

September 26, 2018  
10:00 a.m. – 3:46 p.m.

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#### Call to Order and Roll Call

Chair Swearingen called the meeting to order. A quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Rep. Rob Swearingen, Chair; Sen. Daniel Feyen, Vice Chair; Rep. JoCasta Zamarripa; Sen. LaTonya Johnson; and Public Members Joe Bartolotta, Sarah Botham, Angie Bowe, Andrew Bowman, William Glass, Evan Hughes, Roger Johnson, Paul Lucas, John Macy, Pete Madland, and Mike Wittenwyler.

COUNCIL STAFF PRESENT: Melissa Schmidt and Mike Queensland, Senior Staff Attorneys.

APPEARANCES: Richard Chandler, Secretary, Department of Revenue (DOR).

#### Approval of the Minutes of the August 22, 2018 Meeting of the Study Committee

*Mr. Macy moved, seconded by Mr. Bartolotta, that the minutes of the committee's August 22, 2018 meeting be approved. The motion was approved by unanimous consent.*

Chair Swearingen welcomed committee members and members of the public. He requested that if anyone has information to be submitted to the committee that it be submitted to Legislative Council staff for distribution. Chair Swearingen explained that there were three documents submitted to the committee from the Wisconsin Agricultural Tourism Association (WATA), which may be found on the committee's website at:

<https://docs.legis.wisconsin.gov/misc/lc/study/2018/1789>. He also explained that there were two documents submitted to the committee by the Tavern League, available on the committee's website as well. Public Member Pete Madland explained one of the documents submitted by the Tavern League was a policy statement that had previously been distributed to its members clarifying the league's position regarding the current interpretation of s. 125.09 (1), Stats., which generally prohibits an owner, lessee, or person in charge of a "public place" from permitting the consumption of alcohol beverages on the premises unless the person has an appropriate retail license or permit.

### **Presentation Follow-up on the Structure and Staffing of Alcohol Beverages Enforcement at the DOR**

Mr. Richard Chandler, Secretary, DOR, provided information to the committee regarding actions that the department has taken in response to committee concerns and feedback discussed at its July 25, 2018 meeting regarding: (1) DOR's organizational structure of alcohol beverages enforcement; and (2) DOR's communication and outreach on matters related to alcohol beverages. With respect to the DOR's organizational structure, Secretary Chandler explained that DOR is planning to create a new group within the department that is dedicated to enforcing laws related to alcohol beverages and tobacco. This group will be led by one manager and will include all of the alcohol enforcement agents, technical services staff, permit processing staff, and audit staff.

With respect to communication and outreach, Secretary Chandler explained that DOR is working to do as much as possible to be proactive in these areas and listed four changes that it has made in response to committee concerns. First, DOR developed an alcohol beverages homepage, available at: <https://www.revenue.wi.gov/Pages/AlcoholBeverage/home.aspx>. This website includes information on recent news, enforcement and regulations, and licenses and permits. It also contains a box for the public to more easily submit questions, file complaints, and request speakers on the topic of alcohol beverages. The second change was the creation of alcohol beverages fact sheets, written in plain language, which are also available on the new homepage. He explained that factsheets for retailers are currently available on the alcohol beverages homepage and that DOR is in the process of preparing factsheets for manufacturers and wholesalers, similar to documents prepared by the U.S. Department of the Treasury's Alcohol Tax and Trade Bureau (TTB). The third change was the creation of an email listserv for members of the public to receive newsletters and updates on alcohol beverages matters. Lastly, Secretary Chandler stated that DOR is interested in setting up listening sessions for members of the public to have an opportunity to provide input on various alcohol beverages matters, as well as conduct presentations when requested to do so.

In response to questions from the committee regarding staffing, Secretary Chandler explained that he is still considering whether the new alcohol beverages group needs one attorney specifically dedicated to the group. He explained that DOR currently has two attorneys who work in various issue areas, including alcohol beverages. He stated that if there was only one attorney responding to alcohol questions, there could be a loss of institutional knowledge if

that attorney left. He also explained that he thought that the current staffing level of alcohol enforcement agents was sufficient.

In response to questions regarding DOR's timeline for restructuring its staff dedicated to alcohol beverages and tobacco, Secretary Chandler stated he anticipated the new group would be reorganized by early 2019. He also stated that statutory changes may be necessary.

In response to questions as to when DOR plans to finalize its guidance in response to the Attorney General's informal opinion on wineries holding Class "B" beer retail licenses and brewers holding a "Class C" wine-only retail license, Secretary Chandler stated that he anticipated it would be completed by the end of 2018.

In response to questions regarding how DOR enforces violations of the direct wine shipper's permit, where wine is shipped either into the state or within the state by someone who does not hold that permit, Secretary Chandler explained that the department investigates complaints that are submitted to it and then works to ensure that the entity comes into compliance and obtains the permit.

### **Presentation on Collecting Tax on the Internet Sales of Alcohol by Donovan Borvan, Founder and Principal, Borvan Group LLC**

Donovan Borvan, Founder and Principal, Borvan Group LLC, and former executive director of the Illinois Liquor Control Commission (ILCC), provided an overview of the ILCC and how liquor laws are enforced in Illinois. He explained there are 30,000 licenses issued to persons in Illinois, but only 25 field agents that are not sworn officers. He said that the ILCC partners with local law enforcement when conducting inspections. The ILCC also partners with local governments through the LC-13 program so that comprehensive liquor compliance inspections are conducted at the local level, with the same force as if the inspections were conducted by the ILCC.

Mr. Borvan described three main causes by which liquor arrived in Illinois illegally while he was director of ILCC (February, 2017 through April, 2018). One way liquor arrived illegally in the state was from retailers in boarder states like Indiana. Another way was through the purchase of liquor on the internet from an entity that was not properly permitted to direct ship liquor to Illinois residents. In order to respond to the illegal importation of liquor from neighboring states, he explained that the ILCC conducted surveillance and sting operations in cooperation with federal, state, and local law enforcement. Regarding the illegal internet sales of liquor, Mr. Borvan explained that one ILCC agent was assigned to review monthly shipping manifests from common carriers like FedEx and UPS. By comparing these manifests to a list of entities authorized to direct ship liquor into Illinois, the ILCC was able to identify illegal shipments of alcohol into the state. The ILCC sent cease and desist letters to those entities that were conducting illegal internet sales and worked with the common carriers to prevent any shipment to Illinois residents if the shipment was from an entity not properly permitted.

In response to committee questions, Mr. Borvan explained that Illinois enacted legislation making it a felony to illegally ship liquor into Illinois, but that because the ILCC does not have

jurisdiction over out-of-state entities, it was more effective to work with the common carriers as a way to prevent illegal shipments of alcohol into the state.

In response to committee member questions regarding the organizational structure of the ILCC, Mr. Borvan explained that Illinois Public Act 100-1050, just recently enacted, separates the commission from the Illinois Department of Revenue. He explained that there was a move in the 1990's to locate state liquor enforcement entities within state departments of revenue, but now there is a movement to maintain entities responsible for alcohol enforcement as separate entities.

## **Description of Materials Distributed and Discussion of Committee Assignment**

### **Collecting Tax on Internet Sales of Wine and Preventing the Illegal Importation of Alcohol**

Chair Swearingen asked committee members for their thoughts on Mr. Borvan's presentation and the strategies implemented by the ILCC to prevent the illegal importation of alcohol in to Illinois. He reminded the committee of the specific examples discussed at the last meeting of wine, beer, and distilled spirits that were purchased on the internet and no tax was collected on the shipments. Committee members discussed concerns over the number of times taxes on internet alcohol sales are not collected by the shipper and then remitted to the state. The committee members discussed the fact that under current law, wine is the only type of alcohol that is eligible to be direct shipped to consumers in Wisconsin, from an entity that holds a direct wine shipper's permit. The committee reached a consensus that the state should take a more proactive approach to stop the illegal importation of alcohol into the state and ensure that the appropriate taxes from internet wine sales are collected by DOR. In response to committee discussion, Chair Swearingen directed Legislative Council staff to investigate how DOR may work collaboratively with common carriers to obtain shipping manifests and prepare options, if necessary, for the committee's review.

### **Venues That Allow Alcohol Beverages to be Consumed on Their Premises Without Holding the Applicable Alcohol Beverages License**

Chair Swearingen asked committee members for their thoughts as to whether alcohol should be consumed at event venues that do not hold the applicable alcohol beverages retail license. Committee members discussed whether a venue should be required to hold an alcohol beverages retail license if the venue only allowed the alcohol to be brought to the venue and was not being sold by the venue. A majority of committee members discussed the need for some additional regulation or oversight of event venues that allow alcohol to be consumed on their property. Public Member Roger Johnson suggested the concept of a "consumption license" for event venues that host weddings, receptions, and other similar types of events. Based upon committee discussion, Chair Swearingen directed Legislative Council staff to work with Public Members Johnson and Mike Wittenwyler to prepare an option for the committee's review that would require event venues to hold a consumption license in order for alcohol to be consumed at the venue.

## **Informal AG Opinion Regarding the Issuance of Class “B” Beer Licenses to Wineries and “Class C” Wine-Only Licenses to Breweries**

Chair Swearingen asked committee members for their thoughts as to whether wineries should be able to retail sell beer and whether brewers should be able to retail sell wine. Committee members shared a wide range of opinions on the three-tier system that regulates the manufacture, distribution, and sale of alcohol into three separate tiers (manufacturers, wholesalers, and retailers). Committee members discussed what authority manufacturers, like wineries and brewers, should have with respect to wholesale and retail activities. Chair Swearingen asked committee members to contact Legislative Council staff if they had comments or suggestions related to LRB-5867/P3, relating to the interest restrictions applicable to wineries and brewers.

### **Other Business**

There was no other business brought before the committee.

### **Plans for Future Meetings**

Chair Swearingen plans on holding subsequent meetings after the November general election.

### **Adjournment**

The committee adjourned at 3:46 p.m.

[The preceding is a summary of the September 26, 2018 meeting of the Study Committee on Alcohol Beverages Enforcement, which was recorded by WisconsinEye. The video recording is available in the WisconsinEye archives at <http://www.wiseye.org/Video-Archive>.]

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