



Joint Legislative Council's Report of  
the Study Committee on  
Alcohol Beverages Enforcement

[2019 Assembly Bills 91 and 92]

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# STUDY COMMITTEE ON ALCOHOL BEVERAGES ENFORCEMENT

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# PART I

## KEY PROVISIONS OF JOINT LEGISLATIVE COUNCIL RECOMMENDATIONS

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The Joint Legislative Council introduced the following bills in the 2019-20 session of the Legislature.

### **2019 ASSEMBLY BILL 91, RELATING TO REQUIRING REPORTS BY COMMON CARRIERS SHIPPING ALCOHOL BEVERAGES INTO THIS STATE AND PROVIDING A PENALTY**

2019 Assembly Bill 91 requires any common carrier that transports into and delivers within the state any alcohol beverages (beer and intoxicating liquor) to submit a monthly report to the Department of Revenue (DOR) in the form and manner prescribed by DOR. In doing so, the bill does all of the following:

- Requires the report to include all of the following information for each shipment of beer or liquor during the preceding month:
  - The name and address of the manufacturer of the beer or intoxicating liquor.
  - The name and address of the consignor of the shipment, if different from the manufacturer.
  - The name and address of the consignee of the shipment.
  - The date of the shipment.
  - The quantity of the beer or liquor shipped to the consignee.
  - The parcel tracking number, waybill number, or other identifying number for the shipment.
- Specifies that the bill first applies to shipments of beer or intoxicating liquor into the state that occur on the first day of the third month after the bill takes effect.
- Subjects a common carrier to a forfeiture of not more than \$2,000 for failing to submit a report required under the bill.
- Requires the name and address of the consignee of the shipment reported by a common carrier to be kept confidential by DOR and specifies that this information is not subject to public copying or inspection under the public records law. The bill also specifies that all other information in the reports submitted by common carriers are not confidential and are subject to the public records law.

- Requires common carriers to maintain for three years all records related to submitted monthly reports, as well as any other records required to be kept under current law related to the purchase, sale, production, storage, warehousing, importation, or transportation of alcohol beverages.
- Requires DOR to retain for three years all reports submitted under the bill and all records received by it relating to the reports.
- Specifies that the bill does not: (a) alter the requirement that a person shipping alcohol beverages into this state obtain all required permits under ch. 125, Stats. (the alcohol beverages chapter), prior to shipment, including any direct wine shippers' permit; (b) grant a manufacturer, rectifier, or shipper of alcohol beverages, including a winery, authority to ship alcohol beverages into this state; or (c) alter the face-to-face sales requirement found in the alcohol beverages chapter.

## **2019 ASSEMBLY BILL 92, RELATING TO ENFORCEMENT OF ALCOHOL BEVERAGE LAWS AGAINST OUT-OF-STATE ALCOHOL BEVERAGE SHIPPERS AND DIRECT WINE SHIPPERS**

2019 Assembly Bill 92, relating to out-of-state fermented malt beverages (beer) shippers' permittees, out-of-state intoxicating liquor (distilled spirits and wine, "liquor") shippers' permittees, and direct wine shippers' permittees located out of state, does all of the following:

- Requires out-of-state beer shippers' permittees, out-of-state liquor shippers' permittees, and direct wine shippers' permittees to consent to jurisdiction in this state for any proceeding in this state to enforce the alcohol beverages chapter and ch. 139, Stats. (the alcohol, cigarette, and tobacco taxation chapter).
- Requires out-of-state beer shippers' permittees, out-of-state liquor shippers' permittees, and direct wine shippers' permittees to accept service of process in this state to enforce the alcohol beverages chapter and the alcohol, cigarette, and tobacco taxation chapter. In order to accept service of process in this state, these permittees must do all of the following:
  - Appoint and continually engage the services of an agent in this state to act as agent for the service of process on whom all processes, and any action or proceeding against it concerning or arising out of the enforcement of any provision of the alcohol beverages chapter and the alcohol, cigarette, and tobacco taxation chapter, may be served in any manner authorized by law.
  - Provide to DOR, in the form and manner prescribed by DOR, the name, address, phone number, and proof of the appointment and availability of the agent.
  - Provide notice to DOR 30 calendar days before termination of the authority of an agent appointed to accept service of process described above, and proof to DOR's satisfaction of the appointment of a new agent no less than five calendar days before the termination of an existing agent appointment.

- In the event an agent terminates an agency appointment, notify DOR of that termination within five calendar days and include proof to DOR's satisfaction of the appointment of a new agent.
- Considers the out-of-state permittee to have appointed the Department of Financial Institutions (DFI) as the permittee's agent for purposes of service of process if the out-of-state alcohol beverages permittee fails to maintain an agent in this state after a permit is issued. The bill also provides that an action may proceed against the permittee in a court in this state with service of process upon DFI.
- Requires DOR to include on the permit application forms for out-of-state beer shippers' permits, out-of-state liquor shippers' permits, and direct wine shippers' permits a provision that the applicant agrees to consent to jurisdiction in this state and accept service of process in this state for any proceeding in this state to enforce the alcohol beverages laws found in the alcohol beverages chapter and the alcohol, cigarette, and tobacco taxation chapter.
- Authorizes DOR to revoke or suspend any alcohol beverages license or permit issued in the state if the licensee or permittee ships alcohol into another state in violation of that state's law.

The bill first applies to alcohol beverages permits that are issued after the bill's effective date, except with respect to suspending or revoking a permit if the permittee illegally ships alcohol into another state. The bill has a delayed effective date of approximately two months.





# PART II

## COMMITTEE ACTIVITY

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### ASSIGNMENT

The Joint Legislative Council established the Study Committee on Alcohol Beverages Enforcement and appointed the chairperson by an April 9, 2018 mail ballot. **Appendix 3** identifies the membership of the Joint Legislative Council at the time the mail ballot was approved. The committee was directed to review the structure and staffing of the DOR's efforts to enforce Wisconsin's alcohol beverage laws found in ch. 125, Stats., compare the regulatory and enforcement structure of alcohol law enforcement efforts in other states, and examine whether establishments and venues that serve alcohol are properly licensed to do so. In addition, the committee was authorized to recommend legislation that ensures the proper enforcement of alcohol beverage laws, including increased clarity and education.

Membership of the study committee was appointed by a June 4, 2018 mail ballot. The final committee membership consisted of two representatives, two senators, and 11 public members. A list of committee members is included as **Appendix 4** to this report.

### SUMMARY OF MEETINGS

The committee held four meetings on the following dates:

- July 25, 2018.
- August 22, 2018.
- September 26, 2018.
- November 28, 2018.

At the committee's July 25, 2018 meeting, Chair Swearingen welcomed committee members and briefly reviewed the following three items within the scope of the study committee's assignment: (a) the structure and staffing of the DOR's enforcement of alcohol beverages laws; (b) venues that allow alcohol beverages to be consumed on their premises without holding the applicable alcohol beverages license; and (c) an informal attorney general (AG) opinion regarding the issuance of Class "B" beer licenses to wineries and "Class C" wine-only licenses to breweries. The study committee then received testimony from several invited speakers.

**John Bodnovich, executive director, American Beverage Licensees**, presented information to the committee on alcohol beverages regulatory structures, specifically the three-tier system of regulation and how it is implemented in various states. Mr. Bodnovich provided a brief history on the three-tier system of alcohol beverages regulation and identified the following five common characteristics shared by most states' three-tier systems of regulation: (a) efficient tax collection;

(b) prevention of sale to minors; (c) regulation for responsible competition; (d) product safety; and (e) prevention of counterfeit products. He also described various states' alcohol regulatory structures and their functions. He explained that states have different ways of structuring their enforcement functions, such as placing them within a larger state agency or in a dedicated alcohol law enforcement branch, bureau, or division. Mr. Bodnovich noted that with developments in the market, regulation and enforcement are only getting more complicated.

**Mr. Richard Chandler, secretary, DOR**, presented information on DOR's administration of Wisconsin alcohol beverages regulations. Specifically, Secretary Chandler outlined: (a) Wisconsin's three-tier system of regulation; (b) how DOR regulates the three-tier system; and (c) how this system of regulation compares to other states.

Secretary Chandler described in detail the various offices or units at DOR that have specific duties and tasks related to the regulation of alcohol. Specifically, the three parts of DOR that work with alcohol beverages regulations, located within the Division of Income, Sales & Excise Tax, are the following: (a) the Office of Criminal Investigation; (b) the Office of Technical Services; and (c) the Excise Tax Unit. These entities are comprised of tax specialists, enforcement agents, and other specialists.

Chair Swearingen then led the committee through a discussion of the items within the committee's scope. Committee members discussed the structure of DOR's enforcement of Wisconsin's alcohol beverages laws. The study committee discussed how staff within the Offices of Criminal Investigation, Technical Services, and the Excise Tax Unit were all within the same Division of Income, Sales & Excise Tax, but that they do not report to the same immediate supervisor. Committee members noted that there was a high level of expertise in the area of alcohol beverages, but that members of the alcohol beverages industry do not necessarily know who to contact for answers to questions.

Committee members also discussed alcohol consumption at private events located at commercial venues, such as wedding barns and warehouses, even though the buildings were not licensed for purposes of consuming alcohol on the premises. Based upon committee discussion, Chair Swearingen instructed Legislative Council staff to prepare options for the committee to review regarding the consumption of alcohol on the premises of commercial venues, such as wedding barns, without the premises holding the applicable alcohol beverages license.

Lastly, committee members discussed the informal AG opinion written to DOR regarding whether a municipality could issue a Class "B" beer license to a winery or a "Class C" wine-only license to a brewery. Committee members discussed how the informal AG opinion could be read to imply that the alcohol beverages chapter has a six-tier system instead of a three-tier system. In response to committee discussion, Chair Swearingen instructed Legislative Council staff to prepare options for further consideration by the committee that: (1) codifies the informal AG opinion; and (2) negates the informal AG opinion. Also based upon committee discussion, he instructed that the options reaffirm that the alcohol beverages chapter was a three-tier, not a six-tier, system.

At the August 22, 2018 meeting, the study committee heard testimony from several invited speakers.

**Carol Nawrocki, assistant director for the Wisconsin Towns Association (WTA), and Claire Silverman, legal counsel for the League of Wisconsin Municipalities (LWM),** presented on issues relevant to local enforcement of alcohol beverages laws. According to Ms. Nawrocki, WTA has 1,248 town members and 21 village members. Ms. Silverman added that LWM has 189 member cities and 403 village members.

Ms. Nawrocki provided an overview of the role that local officials in towns, villages, and cities (“municipalities”) played in alcohol beverages regulation and enforcement. She described how municipal clerks handled alcohol beverages retail license applications. She also stated that DOR has been very responsive and helpful, but that after Public Member Roger Johnson retired from DOR, the department has been less proactive in sharing information about its answers to alcohol beverages questions and its responses have appeared inconsistent.

Ms. Silverman described how LWM educated local officials on alcohol beverages laws and served as a resource for its members on many issues. She echoed Ms. Nawrocki’s comments regarding interactions with DOR.

**Michael D. Madigan, attorney and managing shareholder, Madigan, Dahl, & Harlan, P.A.,** presented information on constitutional law issues related to alcohol beverages regulations. He provided background information about the reasons for regulating alcohol beverages and the two pillars for this regulation, the three-tier system and tied-house laws. In his opinion, these laws created greater consumer choice while assuring product safety and protecting public health.

Mr. Madigan also described constitutional limits on state alcohol beverages regulation and noted a conflict between two constitutional doctrines: the Twenty-first Amendment; and the Dormant Commerce Clause. He then asserted that: (a) “laws which facially discriminate against out-of-state entities in favor of in-state entities, which burden the former and benefit the latter, are per se invalid”; and (b) “laws which discriminate against out-of-state entities in purpose or effect are also per se invalid.”

**Abigail Potts, assistant AG, Department of Justice (DOJ),** presented on an informal AG opinion issued to DOR regarding retail licenses issued to wineries and breweries. The conclusion of this communication was the following:

Our informal opinion is that municipalities may issue Class “B” beer licenses to wineries and as long as the winery complies with the separate doorway requirement in [s. 125.32 (3m), Stats.] and may issue “Class C” [wine-only] licenses to eligible breweries. [Opinion of Wis. Asst. Att’y Gen. David V. Meany to Ms. Dana Erlandsen, Chief Legal Counsel, DOR, ¶1 (Feb. 22, 2017).]

Ms. Potts stated that the informal AG opinion was not a policy statement, but was rather a legal interpretation provided to a client agency, DOR. According to Ms. Potts, the question posed to DOJ was whether select statutes preclude the issuance of a Class “B” beer license to a winery and a “Class C” wine-only license to a brewery. Chair Swearingen asked Ms. Potts whether DOJ had an opinion on whether a winery may hold a license to retail sell beer or whether a brewery could retail sell wine and Ms. Potts responded that DOJ had no opinion on those questions.

A panel of members of the **Wisconsin Agricultural Tourism Association (WATA)** presented on alcohol beverages regulations as they pertain to agricultural event venues. The WATA members explained how each of them operate venues used for private events that are not licensed under the alcohol beverages chapter. Each member described how he or she formed an agricultural event venue business and the steps that each took to ensure public safety. Common themes that emerged during this presentation include: (a) the importance of these businesses to Wisconsin's farm economy; (b) the steps taken by venues to comply with various zoning, building code, and alcohol beverages laws; and (c) the desire of these owners to avoid being regulated as a tavern. Each of the owners indicated that they only rented their venues for "private events" and that they played no part in acquiring or serving alcohol at these events.

Committee members raised several concerns about alcohol being served at unlicensed event venues, including: (a) fairness to other businesses that must comply with additional regulations and restraints, such as taverns and wineries; (b) public safety; and (c) whether private events are truly private.

**Tim Otterstatter, owner, The Hay Loft Barn**, explained that he held retail alcohol beverages licenses for the agricultural event venue he operates. During his presentation, he described the process he went through to start his business. He also stated that the top question he received from potential clients relate to his alcohol policy. Mr. Otterstatter elaborated that he lost business to other event venues that did not have an alcohol beverages license.

**Ryan and Billie Marie Kratky, owners, Over the Vines**, stated that their agricultural event venue operation was at a competitive disadvantage compared to other competitors because they held a retail alcohol beverages license, but that the decision to be a licensed venue to provide a safe environment was more important.

**Carrie Tryba, owner, Simply Country Barn**, who held retail alcohol beverages licenses for the agricultural event venue she operates, stated that she did not think other event venue operators understood the risks of having alcohol served at their venues without having an alcohol beverages license. She described her concern for guest safety and fairness to other business operators.

After the committee received testimony from the invited speakers, Public Member Mike Wittenwyler displayed examples of numerous online purchases of wine, as well as beer and distilled spirits, where the seller did not collect any tax. He also described his frustration with DOR's response to his requests that it address this illegal activity.

At the September 26, 2018 meeting, the study committee received testimony from invited speakers. **Mr. Richard Chandler, secretary, DOR**, provided information regarding actions that the department has taken in response to committee concerns and feedback discussed at its July 25, 2018 meeting regarding: (a) DOR's organizational structure of alcohol beverages enforcement; and (b) DOR's communication and outreach on matters related to alcohol beverages. With respect to DOR's organizational structure, Secretary Chandler explained that DOR was planning to create a new group within the department dedicated to the enforcement of alcohol beverages and tobacco laws. Secretary Chandler stated that his plan was to have this group be led by one manager and also 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 was working to do as much as possible to be proactive in these areas and listed four changes that it made in response to committee concerns. First, DOR developed an alcohol beverages website that includes information on recent news, enforcement and regulations, and licenses and permits. It also contained 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 were also available on the new homepage. He explained that factsheets for retailers were available on the alcohol beverages homepage and that DOR was 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. 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 was 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.

**Donovan Borvan, founder and principal, Borvan Group LLC**, and former executive director of the Illinois Liquor Control Commission (ILCC), provided an overview of ILCC and how liquor laws were enforced in Illinois and described the primary causes by which liquor arrived in Illinois illegally while he was the executive director of ILCC (February 2017 through April 2018). 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, ILCC was able to identify illegal shipments of alcohol into the state. 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 ILCC did 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.

Following testimony from invited speakers, Chair Swearingen led a discussion on illegal internet alcohol sales. Committee members discussed the fact that under current law, wine is the only type of alcohol eligible for direct shipping to consumers in Wisconsin, from an entity that holds a direct wine shippers' permit. The study 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 could work collaboratively with common carriers to obtain shipping manifests and prepare options, if necessary, for the committee's review.

Chair Swearingen asked the study committee whether the consumption of alcohol should be allowed at event venues that did 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 into the venue and was not being sold by the

venue. A majority of committee members expressed the need for some additional regulation or oversight of event venues that allow alcohol to be consumed on their property.

Chair Swearingen then 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 what authority manufacturers, such as wineries and brewers, should have with respect to wholesale and retail activities.

At the final committee meeting on November 28, 2018, Chair Swearingen reviewed the four issues that the committee had discussed in previous meetings. First, he noted that due to a lack of consensus, the study committee would not be pursuing legislation relating to the informal AG opinion regarding the issuance of Class “B” beer licenses to wineries and “Class C” wine-only licenses to breweries. Second, he indicated that the study committee would not be pursuing legislation regarding wedding barns, due to a recent informal opinion from the AG, dated November 16, 2018, that was distributed to committee members. Third, he updated committee members that he wanted to allow the new administration and representatives from the alcohol beverages industry the opportunity to develop principles regarding the state’s alcohol beverages enforcement efforts. If this were to occur within a few weeks, Chair Swearingen indicated that he would be interested in reconvening the study committee to further develop a proposal with the intent of recommending legislation that reflects these principles. Lastly, Chair Swearingen announced that his goal for this meeting was to have the committee focus on bill drafts relating to the enforcement of laws in the context of internet alcohol sales.

**Michael Queensland**, Legislative Council staff, described LRB-0716/2, relating to requiring reports by common carriers shipping alcohol beverages into this state. He also stated UPS, a common carrier, contacted Chair Swearingen and expressed various concerns over LRB-0716/2, included the following:

- The bill draft requires common carriers to report to DOR certain information regarding shipments of alcohol beverages that UPS does not currently collect. Included in the information that UPS does not collect was: (a) the name and address of the person that manufactured or rectified the alcohol beverages being shipped; and (b) the type and quantity of the alcohol beverages being shipped.
- The bill draft places a criminal penalty on a common carrier who fails to comply with the reporting requirement created by the bill draft. Furthermore, LRB-0716/2 allowed DOR to “suspend all shipments by the common carrier into this state” if the common carrier failed to comply with the newly created reporting requirement.

In addition to raising concerns with LRB-0716/2, UPS offered that it would be able to comply with other reporting requirements, including: (a) the weight of each parcel containing alcohol beverages shipped by a common carrier; and (b) the tracking number, waybill number, or a different number to identify each individual parcel containing alcohol beverages shipped by the common carrier.

Chair Swearingen led a discussion of LRB-0716/2 and the comments offered by UPS. Public Member Wittenwyler requested that the study committee maintain the requirements that common

carriers report information regarding the manufacturer, type, and quantity of the alcohol beverages being shipped. Chair Swearingen requested that the penalty provision be changed to impose a \$2,000 forfeiture for violations of the bill draft's reporting requirement. He also requested that the bill draft require DOR to maintain the reports submitted by common carriers for at least three years, consistent with the bill draft's requirement that common carriers maintain the reports and all records related to the reports for at least three years.

The study committee voted to recommend LRB-0716/2 with the following changes: (a) adding a requirement that common carriers must report the tracking number, waybill number, or a similar identification number of each shipment of alcohol beverages; (b) replacing the penalty provision with a new penalty of a forfeiture not to exceed \$2,000 applicable to a common carrier who fails to submit a report required by the bill draft; and (c) requiring DOR to maintain common carrier reports it receives, and all records related to the reports, for at least three years.

**Melissa Schmidt**, Legislative Council staff, described, and the study committee discussed, LRB-0718/1, relating to enforcement of alcohol beverage laws against out-of-state alcohol beverage shippers and direct wine shippers. The study committee discussed the bill draft and voted to recommend LRB-0718/1 for introduction.





# PART III

## RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

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This Part of the report provides background information on, and a description of, the bills as recommended by the Study Committee on Alcohol Beverages Enforcement and introduced by the Joint Legislative Council.

### **2019 ASSEMBLY BILL 91**

#### **Background**

Current law generally prohibits the direct shipment of alcohol beverages to an individual in this state, with an exception for wine. The direct shipment of wine to a person in this state is authorized if the wine is shipped from a person holding a direct wine shippers' permit and the individual is at least 21 years old, acknowledges receipt of the wine shipped, and is not intoxicated at the time of delivery. A direct wine shippers' permit may be issued to any person that manufactures and bottles wine on premises that is covered by any of the following: (a) a manufacturer's or rectifier's permit; (b) a winery permit; (c) a winery license, permit, or other authorization issued to the winery by any state from which the winery will ship wine into this state; or (d) a federal basic permit for a winery. Direct wine shippers must collect the occupational (excise) tax imposed on wine directly shipped into this state, and then pay this tax to DOR.

Committee members raised concerns over the illegal shipment of alcohol beverages into this state, including the illegal direct shipment of beer and distilled spirits. The study committee discussed the need to strengthen DOR's ability to investigate violations of the direct wine shipping law and to ensure that direct wine shippers collect occupational taxes on direct wine shipments into this state and remit these taxes to DOR.

#### **Description**

The bill requires any common carrier that transports into and delivers any alcohol beverages (beer and intoxicating liquor) within the state to submit a monthly report to DOR in the form and manner prescribed by DOR. Under the bill, a "common carrier" is any of the following: (a) any person (other than a local messenger service or the U.S. Postal Service) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise (regardless of whether the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided) between a port or place and a port or place in the U.S.; or (b) every railroad company, express company, common or contract carrier, and every firm or corporation, that brings, carries, or transports into this state alcohol beverages from outside this state.

The report must be submitted no later than the 15th day of the month and must include all of the following information for each shipment of beer or liquor during the preceding month:

- The name and address of the manufacturer of the beer or liquor.
- The name and address of the consignor of the shipment, if different from the manufacturer.
- The name and address of the consignee of the shipment.
- The date of the shipment.
- The quantity of the beer or intoxicating liquor shipped to the consignee.
- The parcel tracking number, waybill number, or other identifying number for the shipment.

The reporting requirement created by the bill first applies to shipments of alcohol beverages into the state occurring on the first day of the third month after the bill takes effect. If a common carrier fails to submit a report required under the bill, then the common carrier will be subject to a forfeiture of not more than \$2,000. The name and address of the consignee of the shipment reported by a common carrier must be kept confidential by DOR and is not subject to public copying or inspection under the public records law. The bill also specifies all other information in the reports submitted by common carriers are not confidential and are subject to the public records law.

Any common carrier required to submit reports under the bill must maintain for three years all records related to the reports, as well as any other record required to be kept under current law related to the purchase, sale, production, storage, warehousing, importation, or transportation of alcohol beverages. The bill also requires DOR to retain for three years all reports submitted under the bill and all records it receives relating to the reports.

The bill specifies that the bill does not alter the requirement that a person shipping alcohol beverages into this state obtain all required permits under the alcohol beverages chapter prior to shipment, including a direct wine shippers' permit. The provisions created under the bill also do not grant a manufacturer, rectifier, or shipper of alcohol beverages, including a winery, authority to ship alcohol beverages into this state. Lastly, the bill specifies that the bill does not alter the face-to-face sales requirement found in the alcohol beverages chapter.

## **2019 ASSEMBLY BILL 92, RELATING TO ENFORCEMENT OF ALCOHOL BEVERAGE LAWS AGAINST OUT-OF-STATE ALCOHOL BEVERAGE SHIPPERS AND DIRECT WINE SHIPPERS**

### **Background**

Current law regulating alcohol beverages is generally found in the alcohol beverages chapter and the alcohol, cigarette, and tobacco taxation chapter. The former chapter sets forth the law regarding the authority and restrictions applicable to the manufacture, wholesale (distribution), and retail sales of alcohol beverages. The latter chapter sets forth the law regarding the excise taxation of alcohol beverages.

There are three types of alcohol beverages permits that DOR may issue to a person, corporation, or limited liability company located outside of the state. These permits are: (a) the out-of-state beer shippers' permit; (b) the out-of-state liquor shippers' permit; and (c) the direct wine shippers' permit. Subject to various restrictions, the out-of-state beer shippers' permit authorizes a person located outside of the state to ship beer to a person holding a beer wholesalers' permit. The out-of-state liquor shippers' permit, subject to various restrictions, authorizes a person located outside of the state to ship liquor to a person holding a liquor wholesaler permit, manufacturer's or rectifier's permit, or winery permit. The direct wine shippers' permit, also subject to various restrictions, authorizes the manufacturer of wine located either inside or outside of the state to ship wine directly to individuals in the state who are of the legal drinking age, acknowledge receipt of the wine shipped, and are not intoxicated at the time of delivery.

Committee members raised concerns over enforcement action against persons illegally shipping alcohol beverages into the state. They discussed the need to increase DOR's ability to bring enforcement actions in state court against an alcohol beverages permittee located out-of-state for an alcohol beverages violation.

## **Description**

The bill requires out-of-state beer shippers' permittees, out-of-state liquor shippers' permittees, and direct wine shippers' permittees located outside of the state to consent to jurisdiction in this state for any proceeding in this state to enforce alcohol beverages laws found in the alcohol beverages chapter or the alcohol, cigarette, and tobacco taxation chapter.

Out-of-state beer shippers' permittees, out-of-state liquor shippers' permittees, and direct wine shippers' permittees located outside of the state must also accept service of process in this state for any proceeding in this state to enforce alcohol beverages laws found in the alcohol beverages chapter. In order to accept service of process in this state, these permittees must do all of the following:

- Appoint and continually engage the services of an agent in this state to act as agent for the service of process on whom all processes, and any action or proceeding against it concerning or arising out of the enforcement of any provision of the alcohol, cigarette, and tobacco taxation chapter may be served in any manner authorized by law. That service constitutes legal and valid service of process on the permittee.
- Provide to DOR, in the form and manner prescribed by DOR, the name, address, phone number, and proof of the appointment and availability of the agent.
- Provide notice to DOR 30 calendar days before termination of the authority of an agent appointed to accept service of process described above, and proof to DOR's satisfaction of the appointment of a new agent no less than five calendar days before the termination of an existing agent appointment.
- In the event an agent terminates an agency appointment, notify DOR of that termination within five calendar days and include proof to DOR's satisfaction of the appointment of a new agent.

Under the bill, if an out-of-state beer shippers' permittee, out-of-state liquor shippers' permittee, or direct wine shippers' permittee located out-of-state fails to maintain an agent in this state after a permit is issued, the permittee is considered to have appointed DFI as the permittee's agent and the permittee may be proceeded against in courts of this state by service of process upon DFI. The bill also codifies in the alcohol beverages chapter requirements regarding the payment of occupational taxes, filing reports and tax returns, keeping records, submitting to DOR inspections and examinations, and paying expenses reasonably attributable to these inspections and examinations made by DOR at any premises of the permittee located outside of the state, which are already required under the alcohol, cigarette, and tobacco taxation chapter.

The bill also authorizes DOR to revoke or suspend any alcohol beverages license or permit issued in the state if the licensee or permittee ships alcohol into another state in violation of that state's law.

Lastly, the bill first applies to permits that are issued after the effective date of the bill, except with respect to suspending or revoking a permit if the permittee illegally ships alcohol into another state. The bill has a delayed effective date of approximately two months.

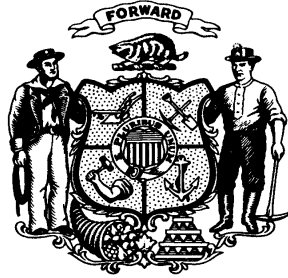
**LETTER FROM REPRESENTATIVE ROB SWEARINGEN, CHAIR, STUDY  
COMMITTEE ON ALCOHOL BEVERAGES ENFORCEMENT REGARDING THE  
STATUS OF THE COMMITTEE**

*State of Wisconsin*  
**JOINT LEGISLATIVE COUNCIL**

*Co-Chairs*

**ROGER ROTH**  
Senate President

**ROBERT BROOKS**  
Representative



**LEGISLATIVE COUNCIL STAFF**  
**Jessica Karls-Ruplinger**  
*Acting Director*

January 10, 2019

Members of the Study Committee on Alcohol Beverages Enforcement:

At the study committee's November 28, 2018 meeting, I provided an update on the prospect of future meetings. It had come to my attention that Governor-elect Tony Evers' administration may be open to making some structural changes to how alcohol beverages enforcement is managed by the state. At the request of several representatives from the alcohol beverages industry, I postponed making a decision on whether to end the committee or convene it again in January. I did so in order to give the industry time to develop principles regarding the future of alcohol beverage enforcement in Wisconsin and in hope of finding a compromise acceptable to the Evers' administration and the state legislature. Unfortunately, those discussions have yet to produce a satisfactory and timely result.

Accordingly, I am sending you this letter to inform you that I do not plan on convening the committee for additional meetings. Since our last meeting, industry representatives have worked hard to address concerns shared by many committee members to reimagine alcohol enforcement. Despite these efforts, a compromise could not be found in time for the study committee process to be used in a meaningful way to carefully examine and recommend legislation for the upcoming legislative session. We simply do not have enough time at this point to get the work done as part of the study committee process.

Clearly alcohol enforcement is an imperative issue facing our state. We must work to reverse the Department of Revenue's complete lack of interest and attention to it. In the last

few weeks alone I have seen a number of stories in the media in which businesses were illegally providing alcohol to customers. From free shots of whiskey at an unlicensed Christmas tree farm to a bourbon tasting at an unlicensed jewelry store, the examples of unlicensed unregulated dispensing of alcohol have become routine and must be addressed to ensure public safety.

From our very first meeting this past summer, a theme emerged from committee members and invited speakers that our state must start enforcing the law as written and proactively providing guidance to the public. It also became clear that the current structure to support alcohol enforcement at the Department of Revenue is dysfunctional. Throughout the process, committee members were reassured by the department that structural changes were underway to better serve consumers and the regulated community. However, after many meetings, nothing ever materialized or was presented to the committee. We were all willing to allow the department to fix the problem themselves but it simply has not happened. I encourage the new administration to take this effort seriously. Whether addressed through an internal restructuring or future legislation, the work of this committee makes clear that it is dire for Wisconsin to address the problem in the very near future.

While the window for our study committee to further facilitate structural changes that improve alcohol enforcement has passed, I stand ready to support a continuing effort to find a solution to this problem. I also encourage you to remain engaged.

Finally, I would like to thank you for your efforts to support the study committee process. I greatly appreciate your diligence and thoughtful contributions; the recommendations we produced are the result of your leadership and service to the state.

Sincerely,

A handwritten signature in cursive script that reads "Rob Swearingen".

Representative Rob Swearingen  
Chair, Study Committee on Alcohol  
Beverages Enforcement

RS:ksm

### STUDY COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES

The following drafts was recommended by the Study Committee on Alcohol Beverages Enforcement to the Joint Legislative Council for introduction in the 2019-20 session of the Legislature.

#### STUDY COMMITTEE VOTE

On November 28, 2018, the study committee voted to recommend the following two bill drafts to the Joint Legislative Council for introduction in the 2019-20 session of the Legislature. The votes on the bill drafts were as follows:

- LRB-0716/2, as amended, relating to requiring reports by common carriers shipping alcohol beverages into this state, passed on a vote of Ayes, 12 (Reps. Swearingen and Zamarripa; Sens. Feyen and Johnson; and Public Members Botham, Bowe, Hughes, Johnson, Lucas, Macy, Madland, and Wittenwyler); Noes, 1 (Public Member Glass); and Absent, 2 (Public Members Bartolotta and Bowman). [LRB-0716/2, as amended, subsequently became LRB-0716/3.]
- LRB-0718/1, relating to enforcement of alcohol beverage laws against out-of-state alcohol beverage shippers and direct wine shippers, passed on a vote of Ayes, 13 (Reps. Swearingen and Zamarripa; Sens. Feyen and Johnson; and Public Members Botham, Bowe, Glass, Hughes, Johnson, Lucas, Macy, Madland, and Wittenwyler); Noes, 0; and Absent, 2 (Public Members Bartolotta and Bowman).

#### JOINT LEGISLATIVE COUNCIL VOTE

At its March 6, 2019 meeting, the Joint Legislative Council voted as follows on the recommendations of the study committee:

*Sen. Roth moved, seconded by Sen. Fitzgerald, that **LRB-0716/3** be approved for introduction by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 20 (Reps. Brooks, August, Ballweg, Billings, Hesselbein, Hintz, Nygren, Steineke, Taylor, and Vos; and Sens. Roth, Darling, Fitzgerald, Jacque, Marklein, Miller, Olsen, Petrowski, Risser, and Shilling); Noes, 1 (Rep. Spiros); and Absent, 1 (Sen. Erpenbach). [LRB-0716/3 was introduced as 2019 Assembly Bill 91.]*

*Sen. Roth moved, seconded by Rep. Brooks, that **LRB-0718/1** be approved for introduction by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 21 (Reps. Brooks, August, Ballweg, Billings, Hesselbein, Hintz, Nygren, Spiros, Steineke, Taylor, and Vos; and Sens. Roth, Darling, Fitzgerald, Jacque, Marklein, Miller, Olsen, Petrowski,*

*Risser, and Shilling); Noes, 0; and Absent, 1 (Sen. Erpenbach). [LRB-0718/1 was introduced as 2019 Assembly Bill 92.]*



JOINT LEGISLATIVE COUNCIL

<b><u>SENATE MEMBERS</u></b>	<b><u>ASSEMBLY MEMBERS</u></b>
<b>Roger Roth, Co-Chair</b> Senate President Appleton	<b>Robert Brooks, Co-Chair</b> Assistant Majority Leader Saukville
<b>Alberta Darling</b> JFC Co-Chair River Hills	<b>Tyler August</b> Speaker Pro Tempore Lake Geneva
<b>Scott Fitzgerald</b> Majority Leader Juneau	<b>Joan Ballweg</b> Markesan
<b>Howard Marklein</b> President Pro Tempore Spring Green	<b>Peter Barca</b> Kenosha
<b>Mark Miller</b> Monona	<b>Dianne Hesselbein</b> Assistant Minority Leader Middleton
<b>Terry Moulton</b> Chippewa Falls	<b>Gordon Hintz</b> Minority Leader Oshkosh
<b>Jerry Petrowski</b> Marathon	<b>John Nygren</b> JFC Co-Chair Marinette
<b>Fred A. Risser</b> Madison	<b>John Spiros</b> Marshfield
<b>Jennifer Shilling</b> Minority Leader La Crosse	<b>Jim Steineke</b> Majority Leader Kaukauna
<b>Lena Taylor</b> JFC Ranking Minority Member Milwaukee	<b>Chris Taylor</b> JFC Ranking Minority Member Madison
<b>Van Wanggaard</b> Racine	<b>Robin Vos</b> Speaker Rochester

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 senators and 5 representatives appointed as are members of standing committees.



**Committee List**

**Joint Legislative Council Study Committee on Alcohol Beverages Enforcement**

<p><b>Chair Rob Swearingen</b>, Representative 4485 Oakview Ln. Rhineland, WI 54501</p>	<p><b>Vice Chair Daniel Feyen</b>, Senator Fond du Lac, WI 54936</p>
<p><b>Joe Bartolotta</b>, President/Co-Owner The Bartolotta Restaurants 520 West McKinley Ave. Milwaukee, WI 53212</p>	<p><b>Sarah Botham</b>, President/Founder Botham, INK 305 East Main St. Mount Horeb, WI 53572</p>
<p><b>Angie Bowe</b>, President Park Ridge Distributing 1245 Continental Dr. Eau Claire, WI 54701</p>	<p><b>Andrew Bowman</b>, President Stop-N-Go of Madison, Inc. 2934 Fish Hatchery Rd. Madison, WI 53713-3175</p>
<p><b>William Glass</b>, President The Brewing Projekt 1807 N. Oxford Ave. Eau Claire, WI 54703</p>	<p><b>Evan Hughes</b>, President Central Standard Craft Distillery 613 South 2<sup>nd</sup> St., #609 Milwaukee, WI 53204</p>
<p><b>LaTonya Johnson</b>, Senator 2363 N. 54<sup>th</sup> St. Milwaukee, WI 53707</p>	<p><b>Roger Johnson</b> 1229 Sunset Circle Prairie du Sac, WI 53578</p>
<p><b>Paul Lucas</b> N51 W28485 Mae’s Walke Pewaukee, WI 53072</p>	<p><b>John Macy</b>, Attorney Municipal Law &amp; Litigation Group 730 N. Grand Ave. Waukesha, WI 53186</p>
<p><b>Pete Madland</b>, Executive Director Tavern League of Wisconsin 2817 Fish Hatchery Road Fitchburg, WI 53713</p>	<p><b>Mike Wittenwyler</b>, Attorney Godfrey &amp; Kahn S.C. One East Main Street, Suite 500 P.O. Box 2719 Madison, WI 53701-2719</p>
<p><b>JoCasta Zamarripa</b>, Representative 1645 South 12<sup>th</sup> St. Milwaukee, WI 53204</p>	

**STUDY ASSIGNMENT:** The Study Committee is directed to review the structure and staffing of the Department of Revenue’s efforts to enforce Wisconsin’s alcohol beverage laws found in ch. 125, Stats., and compare the regulatory and enforcement structure of alcohol law enforcement efforts in other states. The committee shall further examine whether establishments and venues that serve alcohol are properly licensed to do so. The committee may recommend legislation that ensures the proper enforcement of alcohol beverage laws, including increased clarity and education.

**15 MEMBERS:** 2 Representatives; 2 Senators; and 11 Public Members.

**LEGISLATIVE COUNCIL STAFF:** Melissa Schmidt and Mike Queensland, Senior Staff Attorneys; and Kelly Mautz, Support Staff.



## COMMITTEE MATERIALS LIST

*[Copies of documents are available at [www.legis.wisconsin.gov/lc](http://www.legis.wisconsin.gov/lc)]*

### **July 25, 2018 Meeting**

- LC Study Committee Memorandum, Department of Revenue's Statutory Authority and Requirements Related to Wisconsin's Alcohol Beverages Chapter (July 16, 2018)
- LC Study Committee Memorandum, History of Modern State Alcohol Beverages Regulatory Structures and Examples From Neighboring States (July 17, 2018)
- Handout, Reminder of Restrictions for Wholesalers, Class "A" and "Class A" Retailers, submitted by Mike Wittenwyler, Attorney, Godfrey Kahn (June 2016)
- Presentation, Regulation of the Alcohol Marketplace, by John Bodnovich, Executive Director, American Beverages Licensees (July 25, 2018)
- Handout, Alcohol Regulatory Resources, prepared by American Beverage Licensees (July 25, 2018)
- Handout, State Control Agencies Local Option Control States, by American Beverage Licensees.
- Handout, Alcohol Beverage Control: The Basics for New State Alcohol Regulators, submitted by Roger Johnson
- Memorandum, Wisconsin Attorney General's Opinion on Cross-Tier Restrictions, submitted by Mike Wittenwyler, Attorney, Godfrey Kahn (March 27, 2017)
- Handout, Informal AG Opinion Regarding the Issuance of Class "B" Beer Licenses to Wineries and "Class C" Wine-Only Licenses to Breweries, submitted by the Department of Revenue (February 22, 2017).
- Presentation, Alcohol Beverages Enforcement at Wisconsin Department of Revenue, by Secretary Richard Chandler (July 25, 2018)
- Handout, Department of Revenue Organizational Chart (July 25, 2018)

### **August 22, 2018 Meeting**

- LC Study Committee Memorandum, Items for Consideration Related to Alcohol Consumption at Certain Private Events (August 15, 2018)

- PowerPoint Presentation, by Michael Madigan, Esq., Madigan, Dahl & Harlan, P.A. (August 22, 2018)
- Article, " Control Versus Competition: The Courts' Enigmatic Journey in the Obscure Borderland Between the Twenty-First Amendment and Commerce Clause," submitted by Michael Madigan.
- Handout, submitted by Jim and Carrie Tryba, Simply Country Barn.
- Presentation by Wisconsin Agricultural Tourism Association (August 22, 2018)
- Handout, Informal AG Opinion Regarding the Issuance of Class "B" Beer Licenses to Wineries and "Class C" Wine-Only Licenses to Breweries, submitted by the Department of Revenue (February 22, 2017).
- Memorandum, Wisconsin Attorney General's Opinion on Cross-Tier Restrictions, submitted by Mike Wittenwyler, Attorney, Godfrey Kahn (March 27, 2017)
- Handout, Reminder of Restrictions for Wholesalers, Class "A" and "Class A" Retailers, submitted by Mike Wittenwyler, Attorney, Godfrey Kahn (June 2016)
- LRB-5865/P3, relating to interest restrictions applicable to alcohol beverage licenses and permittees
- LRB-5866/P3, relating to retail sales of intoxicating liquor by brewers and retail beer licenses held by wineries
- LRB-5867/P3, relating to retail interest restrictions applicable to wineries and brewers
- LRB-5868/P3, relating to retail licenses issued to wineries that also operate breweries
- Handout, Wisconsin Alcohol Beverage and Tobacco Laws for Retailers, Publication 302 (December 2016)

### **September 26, 2018 Meeting**

- LRB-0348/P2, relating to consumption of alcohol beverages on certain nonpublic property.
- LRB-5865/P3, relating to interest restrictions applicable to alcohol beverage licenses and permittees
- LRB-5866/P3, relating to retail sales of intoxicating liquor by brewers and retail beer licenses held by wineries
- LRB-5867/P3, relating to retail interest restrictions applicable to wineries and brewers
- LRB-5868/P3, relating to retail licenses issued to wineries that also operate breweries

- Handout, Alcohol Regulation and the 21st Amendment of the U.S. Constitution, submitted by Public Member Roger Johnson (September 26, 2018)
- Handout, Legislative Changes to Benefit Alcohol Industry, submitted by Public Member Roger Johnson (September 26, 2018)
- Letter to Senator Roger Roth, from Stephen M. Nagy, Homestead Meadows Farm, regarding the work of the Study Committee on Alcohol Beverages Enforcement (September 12, 2018)
- Presentation by Donovan Borvan, Founder and Principal, Borvan Group LLC, "Modern-day Bootlegging: Stopping the Flow of Untaxed Liquor" (September 26, 2018)
- Letter to Members of the Study Committee on Alcohol Beverages Enforcement, from Chris Marsicano, President, Tavern League of Wisconsin (September 25, 2018)
- WATA Position on Government Meddling With Business Competition
- Rebuttal of Tavern League Position Document on Wedding Barns
- Document from the Tavern League of Wisconsin regarding wedding barns

#### **November 28, 2018 Meeting**

- Letter from Representative Swearingen to Secretary Richard Chandler, Secretary, Department of Revenue (December 11, 2018)
- Letter from Richard Chandler, Secretary, Department of Revenue, to Representative Rob Swearingen, Chair, Study Committee on Alcohol Beverages Enforcement (December 28, 2018)
- Letter from A.J. Sain, Vice President, Government Affairs, FedEx Corporation (January 10, 2019)
- Letter from Representative Rob Swearingen, Chair, Study Committee on Alcohol Beverages Enforcement (January 10, 2019)
- LRB-0716/1, relating to requiring reports by common carriers shipping alcohol beverages into this state
- LRB-0716/2, relating to requiring reports by common carriers shipping alcohol beverages into this state
- LRB-0716/3, relating to requiring reports by common carriers shipping alcohol beverages into this state and providing a penalty
- LRB-0717/1, relating to shipment of wine to individuals in this state
- LRB-0718/1, relating to enforcement of alcohol beverage laws against out-of-state alcohol beverage shippers and direct wine shippers

- Memorandum, DOR Presentation Follow-Up, from Michael Wagner, Assistant Deputy Secretary, Department of Revenue (November 12, 2018)
- Letter from Attorney General Brad D. Schimel to Representative Rob Swearingen, State Assembly (November 16, 2018)
- Letter to Attorney General Brad D. Schimel from Representative Rob Swearingen, State Representative, 34th Assembly District (November 8, 2018)

### **Recommendations to the Joint Legislative Council**

- LCR-2019-08, Study Committee on Alcohol Beverages Enforcement (February 21, 2019)
- LRB-0716/3, relating to requiring reports by common carriers shipping alcohol beverages into this state and providing a penalty
- LRB-0718/1, relating to enforcement of alcohol beverage laws against out-of-state alcohol beverage shippers and direct wine shippers

### **Joint Legislative Council Recommendations to the 2019-20 Legislature**

- 2019 Assembly Bill 91
- 2019 Assembly Bill 92
- Joint Legislative Council's Report of the Study Committee on Alcohol Beverages Enforcement JLCR 2019-08