



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #120

Regulation of Alcoholic Beverages (General Fund Taxes -- Excise Taxes and Regulation of Alcohol and Tobacco)

[LFB 2001-03 Budget Summary: Page 45, #2]

CURRENT LAW

Sales of Alcohol by Secured Third Parties

Under current law, no license or permit is required for the sale of alcohol by a secured third party in good faith under the terms of a security agreement if the sale is not for purpose of avoiding state alcoholic beverage regulations or the state excise taxes on alcoholic beverages. Such sales must be in the ordinary course of the business of lending money secured by a security interest in alcoholic beverages, warehouse receipts or other evidence of ownership.

Beer Shipped from Out-of-State

Under current law, the Department of Revenue (DOR) must issue out-of-state shippers' permits, which authorize the permittee to ship beer only to licensed wholesalers. No person may receive beer in this state that has been directly shipped from outside this state by any person other than the holder of an out-of-state shipper's permit. All shipments of beer to a wholesaler in this state, whether shipped from inside or from outside this state, must be unloaded in and distributed from the wholesaler's warehouse in this state.

Upon request by the Secretary of DOR, the Attorney General may represent the state or assist a local district attorney in prosecuting any case arising from the statutes regulating the sale of alcoholic beverages.

Operator's License Training Course

Currently, in order to obtain an alcoholic beverages operator's license (bartender's license), an individual may be required to complete a responsible beverage-server training course that is offered by a technical college district and that conforms to guidelines specified by the Wisconsin Technical College System Board, or a comparable course that is approved by DOR or the Educational Approval Board.

Gifts Provided by Brewers or Wholesalers to Retailers

Current law, with a number of exceptions, prohibits brewers or wholesalers from furnishing, giving, lending, leasing or selling furniture, fixtures, fittings, equipment, money or other things of value to any campus or person holding a Class "B" license or permit (for the retail sale of beer for on-premises consumption), or to any person for the use, benefit or relief of any campus or Class "B" retailer. Some of the exceptions to this general provision are as follows:

Signs, Clocks and Menu Boards. Brewers or wholesalers may provide, for placement inside the premises, signs, clocks or menu boards with an aggregate value of not more than \$150. Each recipient must keep an invoice or credit memo containing the name of the donor and the number and value of items received and must make these records available to DOR for inspection upon request. Signs provided by a brewer or wholesaler must be made from paper or cardboard.

Advertising. Brewers and wholesalers may purchase advertising for fair compensation from a bona fide national or statewide trade association which derives its principal income from membership dues of Class "B" retailers.

Business Entertainment. Brewers and wholesalers may provide, in this state, reasonable business entertainment that is deductible under federal tax law to a Class "B" retailer by: (a) providing tickets or free admissions to athletic events, concerts or similar activities; or (b) providing food and beverages and paying for local ground transportation in connection with such activities and business meetings. However, the value of business entertainment provided may not exceed \$75 per day.

Contributions to Retail Trade Associations. Brewers that produce 350,000 or more barrels of beer annually may contribute money or other things of value to a bona fide national or statewide trade association that derives its principal income from membership dues of Class "B" licensees.

Fair Dealership Provisions for Beer Wholesalers

Under current provisions of the Fair Dealership Law (Chapter 135 of the statutes), the grantor of a dealership may not (directly or through any officer, agent or employee) terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor of the

dealership. In general, a "dealership" is a contract or agreement by which a person is granted the right to sell or distribute goods or services or use a trade name, advertising or other commercial symbol, in which there is a community of interest in the business of offering, selling or distributing goods or services.

GOVERNOR

Sales of Alcohol by Secured Third Parties

The bill would specify that a sale of beer under the provisions relating to secured third parties would have to be made within 30 days after the third party takes possession of the beer unless the third party demonstrates good cause why a sale in compliance with the statutes on secured transactions or the security agreement cannot be made within this time period. This restriction would first apply to security interests entered into on the day after publication.

Beer Shipped from Out-of-State

The bill would require DOR to issue a written warning to any person located outside Wisconsin that sells or ships beer into this state in violation of the provisions relating to out-of-state beer shipments if the person has not previously received a warning. Any person located outside of this state that sells or ships beer in violation of these provisions and that has received a warning from DOR would be subject to a fine of up to \$10,000, imprisonment for up to two years or both. This provision would first apply to violations on the first day of the sixth month beginning after publication.

The bill would also authorize the Attorney General, upon request by the Secretary of DOR, to commence an action to enforce the provisions regarding shipments of beer to Wisconsin wholesalers in the Dane County circuit court.

Operator's License Training Course

The bill would specify that beverage server training courses required for licensure could include computer-based training and testing.

Gifts Provided by Brewers or Wholesalers to Retailers

Signs, Clocks and Menu Boards. The bill would modify the provision relating to signs, clocks and menu boards by increasing the dollar limit from \$150 to \$2,500. In addition, both the donor and the recipient (rather than only the donor) would be required to keep written documentation containing the name of the recipient and donor and the number and value of items provided, and make these records available to DOR. The bill would also allow temporary signs made from plastic or vinyl or from other materials with a useful life of less than one year (rather than just signs made from paper or cardboard). In addition, the bill would specify that temporary

signs could be provided without regard to the \$2,500 limit (\$150 under current law) on the aggregate value of items provided by brewers and wholesalers.

Advertising, Sweepstakes and Promotions. The bill would allow brewers and wholesalers to purchase advertising from any person who does not hold an alcoholic beverages license or permit and who conducts a bona fide advertising, promotional or media business, to promote brewer- or wholesaler-sponsored sweepstakes, contests or promotions on the premises of Class "B" retailers if: (a) the advertising or promotion includes at least five unaffiliated retailers; and (b) the retailer on whose premises the event will occur does not receive compensation, directly or indirectly, for hosting the event. In addition, the bill would allow brewers and wholesalers to conduct their own sweepstakes, contests or promotions on the premises of Class "B" retailers if the above conditions are satisfied.

Business Entertainment. The bill would increase the limit on business entertainment provided by brewers or wholesalers from \$75 per day to \$500 per day and specify that such business entertainment could be provided on no more than 12 days per year.

Contributions to Retail Trade Associations. The bill would: (a) allow any brewer (not just large brewers) to make contributions to retailer trade associations; (b) allow wholesalers to make such contributions; and (c) allow contributions to local trade associations (instead of just state or national associations).

Fair Dealership Provisions for Beer Wholesalers

The bill would specify that a contract or agreement by which an alcoholic beverages wholesaler is granted the right to sell or distribute beer would be a dealership, even if no community of interest exists. Such agreements would be subject to the provision described above regarding the termination of a dealership. [The grantor of the dealership could not terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause.] A similar provision exists under current law for wholesalers of intoxicating liquor, but not for beer wholesalers.

The bill would also create a separate provision in Chapter 135 for dealerships that involve beer wholesalers. Under the bill, any person who assumes, in whole or in part, such a dealership following the grantor's termination, cancellation, or nonrenewal in whole or in part of a prior dealership agreement would be required to compensate the prior dealer for the fair market value of that portion of the dealership unless the grantor terminated the dealership for any of the following reasons: (a) the prior dealer engaged in material fraudulent conduct or made material and substantial misrepresentations in its dealings with the grantor or with others related to the dealership; (b) the prior dealer was convicted of, or pleaded no contest to, a felony crime substantially related to the dealer's ability to operate the dealership; or (c) the prior dealer knowingly distributed dealership products outside the territory authorized by the grantor.

The grantor would be required to advise the person assuming the dealership of these obligations prior to the person's assumption of the dealership. If the person assuming the dealership and the prior dealer agree in writing to the fair market value of that portion of the dealership, the person assuming the dealership would have to pay the agreed upon sum within 30 days of the agreement. If no written agreement for compensation of the prior dealer is reached within 30 days after the grantor's termination of the prior dealership agreement, the prior dealer could submit the dispute for binding arbitration through a nationally recognized arbitration association. Unless the parties agree otherwise, the arbitration would be conducted on an expedited basis to the extent an expedited proceeding is reasonably available through the arbitration association, and each party would have to pay an equal share of the cost of the arbitration.

These provisions would first apply to dealerships entered into on the day after publication.

Retail Beer and Liquor Licenses

The bill would prohibit municipalities and DOR from issuing a retail license or permit for the sale of beer, wine or liquor for a premises that is already covered by the same kind of current license or permit unless all of the following apply:

a. The applicant provides proof that, not less than 15 days nor more than 30 days before submitting the application, the current licensee has provided the applicant the name and address of each beer wholesaler to whom the current licensee is indebted.

b. The applicant provides proof that, not less than 15 days nor more than 30 days before submitting the application, the applicant has notified each such wholesaler of the name and address of the current licensee and that the applicant is applying for the license or permit.

c. The current licensee is not in violation of statutory restrictions regarding purchases of beer, wine or liquor on credit unless the violation consists of an indebtedness discharged in bankruptcy.

d. The current licensee is not the subject of any proceeding related to revocation, suspension or nonrenewal of an alcohol license or permit.

This provision would first apply to an application for a license or permit submitted on the first day of the 12th month beginning after publication.

DISCUSSION POINTS

Sales of Alcohol by Secured Third Parties

1. Under current law, no license or permit is required for the sale of alcohol by a

secured third party in good faith under the terms of a security agreement if the sale is not for purpose of avoiding state alcoholic beverage regulations or excise taxes. The bill would require that such sales be made within 30 days after the third party takes possession of the beer unless the third party demonstrates good cause why a sale in compliance with the statutes on secured transactions or the security agreement cannot be made within this time period.

2. Proponents of this provision argue that beer is a perishable product and the current provision allows third parties to seize beer and hold it as long they desire before resale. The 30-day time period proposed in the bill would help protect product quality in such transactions.

3. On the other hand, it is in the interest of third parties to sell the beer before its shelf life has expired. Therefore, the proposed 30-day limit may be viewed as an unnecessary restriction.

Beer Shipped from Out-of-State

4. The bill would require DOR to issue a written warning to any person located outside Wisconsin that illegally sells or ships beer into this state. A second offense would result in a fine of up to \$10,000, imprisonment for up to two years or both. The bill would also authorize the Attorney General, upon request by the Secretary of DOR, to commence an action to enforce the provisions regarding shipments of beer to Wisconsin wholesalers in the Dane County circuit court.

5. The current penalty is a fine of up to \$1,000, imprisonment for up to 90 days, or both. The more severe penalties under the bill are intended to help prevent illegal mail order sales of beer into Wisconsin. Such sales can result in a loss of state excise taxes and purchases of beer by underage individuals.

6. The Wisconsin Brewers Guild, which represents 32 small breweries in Wisconsin, maintains that the current prohibition on mail order sales is not enforceable, and would continue to be unenforceable, even with the higher penalties recommended by the Governor. The Guild suggests that an alternative approach would be to permit limited mail order shipments of beer into Wisconsin from brewers in states that have entered into a reciprocity agreement with Wisconsin for such shipments. A similar provision exists under current state law for shipments of wine. The mail order wine provision allows individuals who are over the legal drinking age to purchase up to nine liters annually and prohibits the purchaser from reselling the wine or using it for commercial purposes. A limit for beer that would be roughly equivalent to the nine-liter limit for wine would be six gallons annually.

Operator's License Training Course

7. The bill would specify that beverage server training courses required for licensure could include computer-based training and testing. This provision would provide easier access to such training courses. However, it could be argued that traditional classroom courses are a more effective means of assuring that appropriate training is being provided.

Gifts Provided by Brewers or Wholesalers to Retailers

8. Current law includes a number of prohibitions and limitations on the amounts and types of gifts that may be provided from brewers and wholesalers to beer retailers ("tied-house" provisions). These restrictions are intended to prevent individual brewers and beer wholesalers from having undue influence over the types of products carried by retailers. The tied-house provisions are part of Wisconsin's "three-tier" regulatory system for alcoholic beverages, which is based on independently operating brewers, wholesalers and retailers.

9. The bill would relax the limits on certain gifts that may be provided from brewers and wholesalers to retailers. In general, proponents of these provisions maintain that the proposed modifications would provide greater flexibility to brewers, wholesalers and retailers and would more closely reflect current industry practices. However, others have argued that relaxing these provisions would place small brewers at a competitive disadvantage compared to larger brewers who have greater access to resources that can be used to influence retailers.

Signs, Clocks and Menu Boards

10. The aggregate value limit for permanent signs, clocks and menu boards would be increased from \$150 to \$2,500. In addition, the bill would allow temporary signs made from plastic or vinyl or from other materials with a useful life of less than one year (rather than just signs made from paper or cardboard) to be provided, and would exempt such signs from any dollar limit. Under current law, temporary signs are subject to the \$150 limit.

11. The current \$150 limit was established in 1983. If this amount were adjusted for inflation, it would be set at approximately \$270 in 2001. Therefore, it could be argued that the \$2,500 limit proposed by the Governor is unwarranted. An alternative would be to raise the limit to \$270 on the bill's effective date and index it for inflation each year thereafter.

Advertising, Sweepstakes and Promotion

12. The bill would allow brewers and wholesalers to purchase advertising to promote brewer- or wholesaler-sponsored sweepstakes, contests or promotions on the premises of Class "B" retailers if: (a) the advertising or promotion includes at least five unaffiliated retailers; (b) the retailer on whose premises the event will occur does not receive compensation for hosting the event; and (c) the firm from whom the advertising is purchased does not hold an alcoholic beverages license or permit. In addition, the bill would allow brewers and wholesalers to conduct their own sweepstakes, contests or promotions on the premises of Class "B" retailers if the above conditions [(a) and (b)] are satisfied.

13. Proponents of this modification argue that these types of events could help promote the tavern industry, which has experienced stagnant sales in recent years.

14. Others maintain that this provision would permit large brewers to provide a significant amount of financial assistance to retailers with little effective oversight, which could

have an adverse impact on smaller brewers. It is also argued that this provision could create unfair competitive advantages for certain retailers.

Business Entertainment

15. The bill would increase the limit on business entertainment provided by brewers or wholesalers from \$75 per day to \$500 per day and specify that such business entertainment could be provided on no more than 12 days per year.

16. The \$75 limit was established in 1981. If adjusted for inflation, this limit would be increased to approximately \$150 in 2001.

17. As with the provision relating to advertising and promotional events, smaller brewers maintain that the proposed increase to \$500 would allow excessive influence by larger breweries. The Brewers Guild has endorsed the inflation-adjusted \$150 limit.

Contributions to Retail Trade Associations

18. The bill would: (a) allow any brewer (not just large brewers) to make contributions to retailer trade associations; (b) allow wholesalers to make such contributions; and (c) allow contributions to local trade associations (instead of just state or national associations). Proponents of these changes believe that the current provisions discriminate against small brewers and should be changed.

Fair Dealership Provisions for Beer Wholesalers

19. As described above, the bill would make the fair dealership provisions for beer wholesalers similar to provisions for liquor wholesalers that were included in the 1999-01 biennial budget act. The bill would also create a separate provision (which does not apply to liquor wholesalers under current law) requiring beer wholesalers to be compensated if a dealership, or portion of a dealership, is terminated and granted to another wholesaler. If the person assuming the dealership and the prior dealer agree in writing to the fair market value of the portion of the dealership, the person assuming the dealership would have to pay the agreed upon sum within 30 days of the agreement. Otherwise, the prior wholesaler could submit the dispute for binding arbitration through a nationally recognized arbitration association.

20. This provision would typically apply in cases where a supplier transfers a brand of beer from one wholesaler to another within a geographical territory. The rationale is that the prior wholesaler should be compensated for its efforts in building demand for the brand.

21. Opponents argue that the current fair dealership provisions afford adequate protection to wholesalers from unfair terminations of dealership agreements and that the Governor's proposal would violate the spirit of free trade.

Retail Beer and Liquor Licenses

22. The bill would prohibit municipalities and DOR from issuing a retail license or permit for the sale of beer, wine or liquor for a premises that is already covered by the same kind of current license or permit unless all of the following apply: (a) the current licensee has provided the applicant with the name and address of each beer wholesaler to whom the current licensee is indebted; (b) the applicant has notified each such wholesaler of the name and address of the current licensee and that the applicant is applying for the license or permit; (c) the current licensee is not in violation of statutory restrictions regarding purchases of alcohol on credit unless the violation consists of an indebtedness discharged in bankruptcy and (d) the current licensee is not the subject of any proceeding related to revocation, suspension or nonrenewal of an alcohol license or permit.

23. This provision is intended to provide protection to beer wholesalers in cases where the wholesaler is owed money by a retailer that is going out of business.

24. It can be argued that this provision would effectively require municipalities to assist in debt collection on behalf of beer wholesalers. This could be viewed as an undesirable local mandate.

ALTERNATIVES TO BILL

1. Adopt the Governor's recommendations relating to: (a) sales of alcohol by secured third parties; (b) beer shipped from out-of-state; (c) operator's license training courses; (d) gifts provided by brewers or wholesalers to retailers; (e) fair dealership provisions for beer wholesalers; and (f) retail beer and liquor licenses.

2. Delete one or more of the following provisions from the bill:

- a. Sales of alcohol by secured third parties
- b. Beer shipped from out-of-state
- c. Operator's license training courses
- d. Signs, clocks and menu boards provided by brewers or wholesalers to retailers
- e. Advertising, sweepstakes and promotions by brewers and wholesalers
- f. Business entertainment provided by brewers or wholesalers to retailers
- g. Contributions to retail trade associations by brewers and retailers
- h. Fair dealership provisions for beer wholesalers
- i. Retail beer and liquor licenses.

3. Permit mail order sales of beer to Wisconsin residents from brewers located in states that have entered into reciprocity agreements with this state for mail order sales of beer. Limit the amount of beer that may be purchased by an individual under this provision to six gallons per year. Specify that beer could not be shipped to a person who has not attained the legal drinking age and prohibit purchasers from reselling the beer or using it for a commercial purpose.

4. Raise the limit on the aggregate value of signs, clocks and menu boards that may be provided by a brewer or wholesaler to a beer retailer from \$150 to \$270, and adjust the \$270 limit each year to reflect changes in the consumer price index.

a. Specify that the \$270 limit would not apply to temporary signs.

b. Specify that the \$270 limit would apply to temporary signs.

5. Raise the limit on business entertainment that may be provided by a brewer or wholesaler to a beer retailer from \$75 per day to \$150 per day, and adjust the \$150 limit each year to reflect changes in the consumer price index.

a. Specify that such business entertainment could be provided on no more than 12 days per year.

b. Do not limit the number of days on which business entertainment may be provided.

6. Maintain current law.

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