

State of Wisconsin



2007 Senate Bill 485

Date of enactment: **March 13, 2008**

Date of publication*: **March 27, 2008**

2007 WISCONSIN ACT 85

AN ACT *to repeal* 125.52 (6), 125.52 (8), 125.53 (3), 125.55 (1) (b), 125.58 (4) (a) 1. to 4., 125.58 (4) (b), 125.68 (10) (bm), 125.68 (10) (bs), 125.68 (10) (c), 125.69 (1) (b) 2. and 3., 125.69 (1) (c) 1. to 3. and 125.69 (4) (c); *to renumber* 125.03 (1); *to renumber and amend* 125.58 (4) (a) (intro.), 125.69 (1) (c) (intro.), 139.11 (4) and 185.043; *to consolidate, renumber and amend* 125.55 (1) (intro.) and (a); *to amend* 20.566 (1) (ha), 36.11 (40), 125.01, 125.02 (22), 125.03 (3), 125.12 (5), 125.52 (1), 125.53 (1), 125.54 (1), 125.55 (2), 125.58 (1), 125.65 (8), 125.68 (10) (a), 125.68 (10) (b), 125.69 (1) (a), 125.69 (1) (b) 1., 125.69 (6) (a) and 139.11 (4) (title); *to repeal and recreate* 139.035; and *to create* 125.02 (23), 125.03 (1) (b), 125.04 (3) (a) 4m., 125.06 (11m), 125.272, 125.51 (6), 125.535, 125.54 (7) (e), 125.54 (8), 125.545, 139.11 (4) (b) and 185.043 (2) of the statutes; **relating to:** the production, sale, and distribution of intoxicating liquor, providing an exemption from emergency rule procedures, granting rule-making authority, making an appropriation, and providing a penalty.

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

SECTION 1. 20.566 (1) (ha) of the statutes is amended to read:

20.566 (1) (ha) *Administration of liquor tax and alcohol beverages enforcement.* The amounts in the schedule for computer, audit, and enforcement costs incurred in administering the tax under s. 139.03 (2m) and for costs incurred in enforcing the 3-tier system for alcohol beverages production, distribution, and sale under ch. 125. All moneys received from the administration fee under s. 139.06 (1) (a) and any permit fee under s. 125.535 (2) shall be credited to this appropriation. Notwithstanding s. 20.001 (3) (a), at the end of each fiscal year, the unencumbered balance of this appropriation account, minus an amount equal to 10% of the sum of the amounts expended and the amounts encumbered from the account during the fiscal year, shall lapse to the general fund.

SECTION 2. 36.11 (40) of the statutes is amended to read:

36.11 (40) **CENTER FOR COOPERATIVES.** The board shall maintain a center for cooperatives at the University of Wisconsin-Madison. The center shall comply with the requirements specified in s. 125.545 (5) (a).

SECTION 3. 125.01 of the statutes is amended to read:

125.01 Legislative intent. This chapter shall be construed as an enactment of the legislature's support for the 3-tier system for alcohol beverages production, distribution, and sale that, through uniform statewide regulation, provides this state regulatory authority over the production, storage, distribution, transportation, sale, and consumption of alcohol beverages by and to its citizens, for the benefit of the public health and welfare and this state's economic stability. Without the 3-tier system, the effective statewide regulation and collection of state taxes on alcohol beverages sales would be seriously jeopardized. It is further the intent of the legislature that with-

* Section 991.11, WISCONSIN STATUTES 2005-06 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

out a specific statutory exception, all sales of alcohol beverages shall occur through the 3-tier system, from manufacturers to licensed wholesalers to retailers to consumers. Face-to-face retail sales at licensed premises directly advance the state's interest in preventing alcohol sales to underage or intoxicated persons and the state's interest in efficient and effective collection of tax.

SECTION 4. 125.02 (22) of the statutes is amended to read:

125.02 (22) "Wine" means products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits or other agricultural products, imitation wine, compounds sold as wine, vermouth, cider, perry, mead and sake, if such products contain 0.5% or more not less than 0.5 percent nor more than 21 percent of alcohol by volume.

SECTION 5. 125.02 (23) of the statutes is created to read:

125.02 (23) "Wine collector" means an individual who meets the standards established by the department by rule and who is registered with the department as a collector of wine.

SECTION 6. 125.03 (1) of the statutes is renumbered 125.03 (1) (a).

SECTION 7. 125.03 (1) (b) of the statutes is created to read:

125.03 (1) (b) The department shall promulgate rules providing for registration of wine collectors and establishing standards of eligibility for registration as a wine collector. The rules shall also specify the form and manner of notice required under s. 125.06 (11m).

SECTION 8. 125.03 (3) of the statutes is amended to read:

125.03 (3) VIOLATIONS. No person may violate a rule promulgated under sub. (1) (a) or (2).

SECTION 9. 125.04 (3) (a) 4m. of the statutes is created to read:

125.04 (3) (a) 4m. If the applicant is a cooperative organized under ch. 185, the identity of the cooperative members, board of directors, and agent.

SECTION 10. 125.06 (11m) of the statutes is created to read:

125.06 (11m) WINE COLLECTORS. The sale by a wine collector to any other wine collector of manufacturer-sealed bottles or containers of wine that the selling wine collector has held for at least 8 years if the selling wine collector has provided prior notice of the sale to the department. No more than one sale in any 12-month period may be conducted by a wine collector under this paragraph.

SECTION 11. 125.12 (5) of the statutes is amended to read:

125.12 (5) REVOCATIONS OR SUSPENSIONS OF, OR REFUSALS TO RENEW, PERMITS BY THE DEPARTMENT. The department may, after notice and an opportunity for hearing, revoke, suspend or refuse to renew any retail permit

issued by it for the causes provided in sub. (4) and any other permit issued by it under this chapter for any violation of this chapter or ch. 139, except that, for a violation of sub. (4) (ag) 6. with respect to a license issued under s. 125.51 (4) (v) or a violation of s. 125.535 or 139.035, the department shall revoke the license or permit. A revocation, suspension or refusal to renew is a contested case under ch. 227.

SECTION 12. 125.272 of the statutes is created to read:

125.272 Face-to-face retail sales. Except as provided in s. 125.26 (2m) and (2s) and except with respect to caterers, a retail license issued under s. 125.25 or 125.26, and a retail permit issued under s. 125.27, authorizes only face-to-face sales to consumers at the premises described in the retail license or permit.

SECTION 13. 125.51 (6) of the statutes is created to read:

125.51 (6) FACE-TO-FACE RETAIL SALES. Except as provided in sub. (3) (bm) and (bs) and except with respect to caterers, a retail license or permit issued under this section authorizes only face-to-face sales to consumers at the premises described in the retail license or permit.

SECTION 14. 125.52 (1) of the statutes is amended to read:

125.52 (1) AUTHORIZED ACTIVITIES. The department shall issue manufacturers' and rectifiers' permits which authorize the manufacture or rectification, respectively, of intoxicating liquor on the premises covered by the permit. A person holding a manufacturer's or rectifier's permit may manufacture, and bottle or wholesale wine, pursuant to the terms of the permit, without procuring a winery permit. A manufacturer's or rectifier's permit entitles the permittee to sell intoxicating liquor to wholesalers holding a permit under s. 125.54, to wineries holding a permit under s. 125.53, and to other manufacturers and rectifiers holding a permit under this section, from the premises described in the permit. ~~Holders of rectifiers' permits may sell intoxicating liquor rectified by the permittee to retailers without any other permit.~~ No sales may be made for consumption on the premises of the permittee. Possession of a permit under this section does not authorize the permittee to sell tax-free intoxicating liquor and wines brought into this state under s. 139.03 (5).

SECTION 15. 125.52 (6) of the statutes is repealed.

SECTION 16. 125.52 (8) of the statutes is repealed.

SECTION 17. 125.53 (1) of the statutes is amended to read:

125.53 (1) The department shall issue only to a manufacturing winery in this state that holds a valid certificate issued under s. 73.03 (50) a winery permit authorizing the manufacture and bottling of wine on the premises covered by the permit for sale at wholesale to other licensees or permittees to wholesalers holding a permit under s. 125.54. A winery permit also authorizes the permittee to, on the winery premises and without obtaining a rectifier's permit, possess intoxicating liquor and mix

or blend intoxicating liquor to produce wine sold to wholesalers holding a permit under s. 125.54. A permittee winery holding a permit under this section may offer on the premises taste samples of wine manufactured on the premises to persons who have attained the legal drinking age. A permittee under this section may also have either ~~a~~ one "Class A" license or one "Class B" license, but not both. The "Class A" license or "Class B" license may either be issued for the winery premises or for real estate owned or leased by the winery. If a "Class A" or "Class B" liquor license has also been issued to the winery, the winery may provide wine manufactured, mixed, or blended on the winery premises directly to the "Class A" or "Class B" premises and may offer the taste samples on the "Class A" or "Class B" premises.

SECTION 18. 125.53 (3) of the statutes is repealed.

SECTION 19. 125.535 of the statutes is created to read:

125.535 Direct wine shippers' permits. (1)

AUTHORIZED ACTIVITIES. The department shall issue direct wine shippers' permits authorizing the permittee to ship wine directly to an individual in this state who is of the legal drinking age, who acknowledges receipt of the wine shipped, and who is not intoxicated at the time of delivery.

(2) **ANNUAL PERMIT FEE.** The department may, by rule, establish an annual fee, not to exceed \$100, for each permit issued under this section. All fees collected under this subsection shall be credited to the appropriation account under s. 20.566 (1) (ha).

(3) **PERSONS ELIGIBLE.** (a) A direct wine shipper's permit may be issued under this section to any person that manufactures and bottles wine on premises covered by any of the following:

1. A manufacturer's or rectifier's permit under s. 125.52.
2. A winery permit under s. 125.53.
3. A winery license, permit, or other authorization issued to the winery by any state from which the winery will ship wine into this state.
4. A federal basic permit for a winery under [27 USC 203](#) and [204](#).

(b) A winery located outside of this state is eligible for a direct wine shipper's permit under par. (a) 3. or 4. if all of the following apply:

1. The winery holds a valid business tax registration certificate issued under s. 73.03 (50).
2. The winery submits to the department, with any initial application or renewal for a certificate under s. 73.03 (50) or a permit under par. (a) 3. or 4., a copy of any current license, permit, or authorization issued to the winery by the state from which the winery will ship wine into this state or the winery's federal basic permit.

(c) Notwithstanding s. 125.04 (5) (a), natural persons obtaining direct wine shippers' permits are not required to be residents of this state. Notwithstanding s. 125.04 (5) (a) 5., a person is not required to complete a responsi-

ble beverage server training course to be eligible for a permit under this section. Corporations and limited liability companies obtaining direct wine shippers' permits are subject to s. 125.04 (6) and any other person, including any natural person or cooperative, obtaining a direct wine shipper's permit shall appoint an agent, and be subject to all provisions of s. 125.04 (6), in the same manner applicable to corporations and limited liability companies.

(4) **LABELS.** Containers of wine shipped to an individual in this state under this section shall be clearly labeled to indicate that the package may not be delivered to an underage person or to an intoxicated person.

(5) **RESTRICTIONS.** No individual may resell, or use for a commercial purpose, wine received by the individual that is shipped under authority of this section.

(6) **ANNUAL LIMIT.** No individual in this state may receive more than 108 liters of wine annually shipped under authority of this section. Each individual shall be responsible for compliance with this annual limit. An individual who violates this annual limit is subject to s. 125.11 (1). This subsection does not apply to purchases made under a permit issued under s. 125.61.

SECTION 20. 125.54 (1) of the statutes is amended to read:

125.54 (1) **AUTHORIZED ACTIVITIES.** The department shall issue wholesalers' permits authorizing the permittee to sell, from the premises described in the permit, intoxicating liquor at wholesale from the premises described in the permit. ~~Except as provided under s. 125.69 (1) (b) 3., the~~ to retailers and wholesalers, as well as to manufacturers, rectifiers, and wineries for production purposes. The permittee may not sell intoxicating liquor for consumption on the premises. ~~If a wholesale permit is issued to a brewery that holds a "Class B" license, the permit shall authorize the wholesale sale of wine only.~~ Possession of a permit under this section does not authorize the permittee to sell tax-free intoxicating liquor and wine brought into this state under s. 139.03 (5).

SECTION 21. 125.54 (7) (e) of the statutes is created to read:

125.54 (7) (e) This subsection does not apply to a cooperative wholesaler under s. 125.545.

SECTION 22. 125.54 (8) of the statutes is created to read:

125.54 (8) **DUTY TO WORK IN GOOD FAITH.** Each wholesaler has an obligation to negotiate in good faith with any manufacturer, rectifier, or winery that seeks to sell its products in this state through the wholesaler. To this end, all wholesalers shall work diligently to ensure that distribution channels are available for the sale of intoxicating liquor products through wholesalers to retailers in this state.

SECTION 23. 125.545 of the statutes is created to read:

125.545 Small winery cooperative wholesalers.

(1) **DEFINITIONS.** In this section:

(a) "Member" means a small winery that meets the requirements established under this section for membership in a cooperative wholesaler and that has been qualified and accepted for membership in a cooperative wholesaler.

(b) "Out-of-state winery" means a winery that is located in a state other than this state and that holds a valid direct shipper's permit issued under s. 125.535.

(c) "Retailer" means any person holding a "Class A", "Class B", or "Class C" license or "Class B" permit issued under s. 125.51.

(d) "Small winery" means any winery that produces and bottles less than 25,000 gallons of wine in a calendar year.

(e) "Small winery cooperative wholesaler" or "cooperative wholesaler" means an entity established under this section.

(f) "Wisconsin winery" means a winery operating under a permit issued under s. 125.53.

(2) CREATION AND ORGANIZATION. (a) 1. A cooperative wholesaler may only be created as provided under s. 185.043 (2) and this section. Each cooperative wholesaler operating under authority of this section shall be organized under ch. 185 but shall be subject to the limitations on such cooperatives imposed by this section. Subject to subd. 3., only small wineries may be members of a cooperative wholesaler. The principal purpose of a cooperative wholesaler shall be to sell and distribute wine manufactured, blended, or mixed, and also bottled, by its members.

2. Notwithstanding s. 185.08 (1), a cooperative wholesaler shall include in its articles of incorporation under ch. 185 a single location for its agent and principal office, which location shall be in this state.

3. A small winery may become a member of a cooperative wholesaler only if all of the following apply:

a. The small winery holds a direct shipper's permit under s. 125.535.

b. The small winery is certified by the department under sub. (6) (a) as a small winery.

(b) In addition to the requirements specified in s. 185.31 for the board of directors of a cooperative wholesaler, a director representing a member that is a Wisconsin winery shall be either an owner or an employee of that Wisconsin winery. If any out-of-state winery is a member of the cooperative wholesaler, at least one director shall be either an owner or an employee of an out-of-state winery that is a member of the cooperative wholesaler.

(c) Notwithstanding any provision of ch. 185, a cooperative wholesaler may not employ any owner or employee of a member. However, an individual that is an owner or an employee of a member may act as a volunteer to assist that cooperative wholesaler in the sale and distribution of wine to retailers and other wholesalers in the manner authorized under this section.

(3) AUTHORIZATION AND ACTIVITIES. (a) 1. Within 7 days after filing its articles of incorporation under ch. 185, a cooperative wholesaler shall apply to the department for a wholesaler's permit under s. 125.54. The provisions of s. 125.04 (5) (c) and (6) shall apply to a cooperative wholesaler as if the cooperative wholesaler were a corporation or a limited liability company and, for each of these provisions, the department shall determine whether the cooperative wholesaler is most similar to a corporation or a limited liability company in the context of that provision and apply that provision to the cooperative wholesaler accordingly.

2. Notwithstanding s. 125.54 (6), the department may issue not more than one wholesaler's permit to any cooperative wholesaler. The department may not issue more than a total of 6 wholesalers' permits to cooperative wholesalers in this state. The department may not issue any new wholesaler's permit to a cooperative wholesaler after December 31, 2008, but may renew wholesalers' permits that were initially issued to cooperative wholesalers prior to that date.

3. No cooperative wholesaler may operate in this state without a wholesaler's permit.

(b) 1. Notwithstanding s. 125.54 (1), and except as provided in subd. 3., a cooperative wholesaler issued a wholesaler's permit under par. (a) is authorized to sell and distribute only wine. Except as provided in subd. 3., a cooperative wholesaler may not sell or distribute any alcohol beverages, or any other product, except wine.

2. A cooperative wholesaler shall purchase on consignment wine from its members to be resold to retailers and other wholesalers. Notwithstanding s. 125.69 (5), a cooperative wholesaler may not purchase wine from any person other than a member. A cooperative wholesaler may not resell or distribute wine unless it has been purchased on consignment from a member. Notwithstanding s. 125.54 (1), a cooperative wholesaler may not sell or distribute wine except to a retailer or to a wholesaler holding a permit under s. 125.54.

3. A cooperative wholesaler may purchase ancillary wine industry trade goods such as bottles, corks, and other supplies used by wineries in the bottling and sale of wine if such trade goods do not include any alcohol beverages. Any wine industry trade goods purchased by a cooperative wholesaler under this subdivision may be offered for resale to the cooperative wholesaler's members or to any winery that was formerly a member of the cooperative wholesaler.

4. A cooperative wholesaler shall work with all of its members on evenhanded terms. Any preferential treatment by a cooperative wholesaler for the benefit of a member that is a Wisconsin winery, and any discrimination against a member that is an out-of-state winery, is prohibited.

(c) Neither a cooperative wholesaler nor its members are subject to any restriction on dealings under s. 125.69

(1) between wholesalers and wineries. Except as provided in s. 125.54 (7) (e) and as otherwise provided in this section, all provisions of this chapter and ch. 139 that apply to a wholesaler issued a permit under s. 125.54 also apply to a cooperative wholesaler issued a permit under s. 125.54.

(4) **EXCLUSIVE DISTRIBUTION.** A member of a cooperative wholesaler may make its wine available for purchase by a retailer or another wholesaler only through the cooperative wholesaler of which it is a member. A member of a cooperative wholesaler may not sell its wine directly to any other wholesaler or directly to a retailer.

(5) **SEMIANNUAL MEETINGS AND BIENNIAL REPORTS.**
 (a) At least once every 6 months, the board of directors of a cooperative wholesaler shall meet in person with an employee of the department. At each of these meetings, the cooperative wholesaler shall provide a detailed report of its operations and sales activities, bring whatever documentation the department considers reasonably necessary for the department to conduct its review of the cooperative wholesaler, and answer any questions the department may have about the cooperative wholesaler's activities. A representative of the University of Wisconsin Center for Cooperatives shall also attend each of these meetings. Within 7 days after each of these meetings, the department shall submit in writing to the cooperative wholesaler all additional questions for which the department requests an answer of the cooperative wholesaler. The cooperative wholesaler shall provide answers to the department's questions within 7 days. Within 6 weeks after each of these meetings, the department shall issue a report stating whether the cooperative wholesaler is operating properly under this state's law and shall detail any problem areas that the cooperative wholesaler must correct. The University of Wisconsin Center for Cooperatives shall also issue a report within 6 weeks of each of these meetings and detail in that report all recommendations on how the cooperative wholesaler can improve its operations and better comply with this state's law. All reports issued by the department and by the University of Wisconsin Center for Cooperatives shall be publicly available.

(b) With each application for renewal of a wholesaler's permit issued to a cooperative wholesaler, each cooperative wholesaler shall file with the department, in the form and manner prescribed by the department by rule, a biennial report that includes detailed information on its members, board of directors, and sale and distribution activities.

(6) **DEPARTMENT CERTIFICATION AND RULE MAKING.**
 (a) 1. The department shall, upon application, certify eligible applicants as small wineries and renew prior certifications of eligible applicants as small wineries.

2. Any winery seeking to become a member of, or to maintain its membership in, a cooperative wholesaler may apply to the department for certification as a small

winery. If the winery meets the definition of a small winery under this section, satisfies the requirement under sub. (2) (a) 3. a., and submits any other information that the department determines is necessary to certify that the winery is operating as a small winery and is eligible for membership in a cooperative wholesaler, the department shall certify the winery as a small winery. This certification shall remain valid for one year.

3. In certifying any winery under subd. 2., the department shall classify the winery as either a Wisconsin winery or an out-of-state winery.

4. The department shall refuse to certify under this paragraph any winery that cannot demonstrate it holds all necessary permits for its operations or that the department finds is otherwise not in full compliance with the laws of this state.

(b) The department shall promulgate rules to administer and enforce the requirements under this section.

(7) **PENALTIES.** (a) Any winery that sells or distributes its wine directly to a retailer, rather than through a wholesaler or cooperative wholesaler, is subject to a fine of not more than \$10,000 and revocation of all of its permits by the department under s. 125.12 (5).

(b) Any cooperative wholesaler that provides preferential treatment to a Wisconsin winery or discriminates against an out-of-state winery is subject to a fine of not more than \$10,000 and revocation of its wholesaler's permit by the department under s. 125.12 (5).

SECTION 24. 125.55 (1) (intro.) and (a) of the statutes are consolidated, renumbered 125.55 (1) and amended to read:

125.55 (1) The department may issue the following combination permits: ~~(a) A~~ a combination manufacturer's and rectifier's permit.

SECTION 25. 125.55 (1) (b) of the statutes is repealed.

SECTION 26. 125.55 (2) of the statutes is amended to read:

125.55 (2) A combination manufacturer's and wholesaler's permit may not be issued. A combination rectifier's and wholesaler's permit may not be issued.

SECTION 27. 125.58 (1) of the statutes is amended to read:

125.58 (1) The department shall issue out-of-state shippers' permits which authorize persons located outside this state to sell or ship intoxicating liquor into this state. Except as provided under sub. (4), intoxicating liquor may be shipped into this state only to a person holding a ~~manufacturer's, rectifier's, wholesaler's, industrial alcohol or medicinal alcohol permit under s. 125.54 or, if shipped from a manufacturer or rectifier in another state holding a permit under this section, to a person holding a manufacturer's or rectifier's permit under s. 125.52 or a winery permit under s. 125.53.~~ Except as provided under sub. (4), a separate out-of-state shipper's permit is required for each location from which any intoxicating liquor is sold or shipped into this state, including the loca-

tion from which the invoices are issued for the sales or shipments. Any person holding an out-of-state shipper's permit issued under this section may solicit orders for sales or shipments by the permittee without obtaining the sales solicitation permit required by s. 125.65, but every agent, salesperson or other representative who solicits orders for sales or shipments by an out-of-state shipper shall first obtain a permit for soliciting orders under s. 125.65. No holder of an out-of-state shipper's permit issued under this section may sell intoxicating liquor in this state or ship intoxicating liquor into this state unless the out-of-state shipper is the primary source of supply for that intoxicating liquor.

SECTION 28. 125.58 (4) (a) (intro.) of the statutes is renumbered 125.58 (4) and amended to read:

125.58 (4) A winery located outside of this state may ship wine into this state as provided under s. ~~125.68 (4) (bm)~~ if all of the following apply: 125.535 and is not required to hold an out-of-state shipper's permit under this section.

SECTION 29. 125.58 (4) (a) 1. to 4. of the statutes are repealed.

SECTION 30. 125.58 (4) (b) of the statutes is repealed.

SECTION 31. 125.65 (8) of the statutes is amended to read:

125.65 (8) Nonresident persons holding permits under this section may solicit sales from retailers in this state only if the orders are solicited for, and will be filled by, persons holding permits under s. ~~125.52 or~~ 125.54.

SECTION 32. 125.68 (10) (a) of the statutes is amended to read:

125.68 (10) (a) Except as provided in ~~par. (bm) s. 125.535~~, no intoxicating liquor may be shipped into this state unless consigned to a person holding a wholesaler's permit for the sale of intoxicating liquor, other than a retail "Class B" permit under s. 125.54 or, if shipped from a manufacturer or rectifier in another state holding a permit under s. 125.58, consigned to a person holding a manufacturer's or rectifier's permit under s. 125.52 or a winery permit under s. 125.53.

SECTION 33. 125.68 (10) (b) of the statutes is amended to read:

125.68 (10) (b) Except as provided in ~~par. (bm) s. 125.535~~, no common carrier or other person may transport into and deliver within this state any intoxicating liquor unless it is consigned to a person holding a wholesaler's permit for the sale of intoxicating liquor, other than a retail "Class B" permit under s. 125.54 or, if shipped from a manufacturer or rectifier in another state holding a permit under s. 125.58, consigned to a person holding a manufacturer's or rectifier's permit under s. 125.52 or a winery permit under s. 125.53. Any common carrier violating this paragraph shall forfeit \$100 for each violation.

SECTION 34. 125.68 (10) (bm) of the statutes is repealed.

SECTION 35. 125.68 (10) (bs) of the statutes is repealed.

SECTION 36. 125.68 (10) (c) of the statutes is repealed.

SECTION 37. 125.69 (1) (a) of the statutes is amended to read:

125.69 (1) (a) No intoxicating liquor manufacturer, rectifier, winery, out-of-state shipper permittee, or wholesaler may hold any direct or indirect interest in any "Class A" license or establishment and no "Class A" licensee may hold any direct or indirect interest in a wholesale permit or establishment, except that a winery that has a permit under s. 125.53 may have an ownership interest in a "Class A" license.

SECTION 38. 125.69 (1) (b) 1. of the statutes is amended to read:

125.69 (1) (b) 1. Except as provided under ~~subds. 2. to subd. 4.~~, no intoxicating liquor manufacturer, rectifier, winery, out-of-state shipper permittee, or wholesaler may hold any direct or indirect interest in any "Class B" license or permit or establishment or "Class C" license or establishment and no "Class B" licensee or permittee or "Class C" licensee may hold any direct or indirect interest in a manufacturer, rectifier, winery, out-of-state shipper, or wholesale permit or establishment.

SECTION 39. 125.69 (1) (b) 2. and 3. of the statutes are repealed.

SECTION 40. 125.69 (1) (c) (intro.) of the statutes is renumbered 125.69 (1) (c) and amended to read:

125.69 (1) (c) No manufacturer, rectifier, winery, or out-of-state shipper permittee, whether located within or without this state, may hold any direct or indirect interest in any wholesale permit or establishment, ~~except as provided in s. 125.53, and except that a manufacturer that is also a brewer may hold a permit issued under s. 125.54 for the wholesale sale of wine only.~~ This paragraph does not prohibit any of the following persons from obtaining a permit under s. ~~125.65.~~ Except as provided in s. 125.53, no retail licensee may hold any direct or indirect interest in any manufacturer, rectifier, winery, or out-of-state shipper permittee.

SECTION 41. 125.69 (1) (c) 1. to 3. of the statutes are repealed.

SECTION 42. 125.69 (4) (c) of the statutes is repealed.

SECTION 43. 125.69 (6) (a) of the statutes is amended to read:

125.69 (6) (a) No campus or retail licensee or permittee may purchase intoxicating liquor from, or possess intoxicating liquor purchased from, any person other than a ~~manufacturer, rectifier or~~ wholesaler holding a permit under this chapter for the sale of intoxicating liquor.

SECTION 44. 139.035 of the statutes is repealed and recreated to read:

139.035 Wine shipped directly to individuals in this state. (1) All wine shipped directly to an individual

located in Wisconsin by a person holding a direct wine shipper's permit under s. 125.535 shall be sold with the occupational tax imposed under s. 139.03 included in the selling price. As directed by the department, the taxes imposed under s. 139.03 shall be paid to, and a quarterly return filed with, the department once every quarter on or before the 15th day of the next month following the close of the calendar quarter. In addition to filing a quarterly liquor tax return, each person holding a direct wine shipper's permit under s. 125.535 shall be required to file an addendum, on forms furnished by the department, that provides, at minimum, the identity, quantity, and price of all wine shipped to individuals in this state during the previous quarter, along with the name, address, and birthdate of each person who purchased the wine as well as the name of the person of legal drinking age who acknowledged delivery of the wine. Working with permittees under s. 125.535, the department shall develop forms, in both paper and electronic format, for use by such permittees in obtaining this information and complying with any other requirement under this state's law in connection with the direct shipment of wine. The department shall keep confidential, in the same manner required for tax returns under s. 71.78 (1) and (5) to (8), reports submitted under this subsection, but the department may use aggregated or summary information from such reports for purposes of s. 139.11 (4) (b).

(2) Any failure of a person holding a direct wine shipper's permit under s. 125.535 to pay the occupational tax or file the addendum required under sub. (1) within 30 days of its due date constitutes grounds for revocation or suspension of the permit. The provisions on timely filing under s. 71.80 (18) apply to the tax and addendum required under this section.

(3) No wine may be shipped directly to an individual in this state by a person holding a direct wine shipper's permit under s. 125.535 unless the tax imposed under s. 77.52 or 77.53 is paid on the sale of such wine.

SECTION 45. 139.11 (4) (title) of the statutes is amended to read:

139.11 (4) (title) CONFIDENTIALITY AND PUBLICATIONS.

SECTION 46. 139.11 (4) of the statutes is renumbered 139.11 (4) (a) and amended to read:

139.11 (4) (a) Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3., relating to confidentiality of income, franchise and gift tax returns, apply to any information obtained from any person on a fermented malt beverage or intoxicating liquor tax return, report, schedule, exhibit or other document or from an audit report relating to any of those documents, except that the department of revenue shall publish brewery production and sales statistics and shall publish or permit the publication of statistics on the total number of gallons of the types and brands of intoxicating liquor sold in this state.

SECTION 47. 139.11 (4) (b) of the statutes is created to read:

139.11 (4) (b) Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3., relating to confidentiality of income, franchise and gift tax returns, do not apply to any information obtained from any person on an intoxicating liquor tax return, report, schedule, exhibit or other document or from an audit report relating to any of those documents. With the information provided to the department by any person, the department of revenue shall publish at least once each month:

1. Statistics on the total number of liters of the types and brands of intoxicating liquor sold in this state.

2. A current and regularly updated list, made available on paper and on the department's Internet Web site, of permit holders that minimally includes detailed information on the name, address, contact person, and date of permit issuance for every manufacturer's and rectifier's permit issued under s. 125.52, winery permit issued under s. 125.53, direct wine shipper's permit issued under s. 125.535, wholesaler's permit issued under s. 125.54, and out-of-state shipper's permit issued under s. 125.58.

3. A report summarizing the identity, quantity, and price of all products sold under each winery permit issued under s. 125.53 and each direct wine shipper's permit issued under s. 125.535.

4. A report summarizing the sales quantity and product data available for all products sold under each wholesaler's permit issued under s. 125.54.

SECTION 48. 185.043 of the statutes is renumbered 185.043 (1) and amended to read:

185.043 (1) ~~Five~~ Except as provided in sub. (2), 5 or more adults, one of whom must be a resident, may form a cooperative by signing, acknowledging and filing articles.

SECTION 49. 185.043 (2) of the statutes is created to read:

185.043 (2) If the cooperative is formed for purposes of operating as a small winery cooperative wholesaler under s. 125.545, 3 or more individuals, at least one of whom must be a resident and all of which must be owners of small wineries certified by the department of revenue under s. 125.545 (6) (a), may form a cooperative by signing, acknowledging, and filing articles. Membership in a cooperative formed under this subsection is limited to small wineries certified by the department of revenue under s. 125.545 (6) (a).

SECTION 50. Nonstatutory provisions.

(1) **POSITION AUTHORIZATION.** The authorized FTE positions for the department of revenue are increased by 1.0 PR position, to be funded from the appropriation under section 20.566 (1) (ha) of the statutes, as affected by this act, for the purpose of performing computer, audit, and enforcement services incurred in administer-

ing the tax under section 139.03 (2m) of the statutes and for enforcing the 3-tier system for alcohol beverages production, distribution, and sale under chapter 125 of the statutes.

(2) **SMALL WINERY INTERIM CERTIFICATION.** (a) The department of revenue shall, upon application, certify under this subsection eligible applicants as small wineries.

(b) Any winery that may seek to become a member of a cooperative wholesaler after October 1, 2008, may apply to the department of revenue for certification as a small winery. If the winery meets the definition of a small winery under section 125.545 (1) (d) of the statutes, as created by this act, and satisfies the requirement under section 125.545 (2) (a) 3. a. of the statutes, as created by this act, and submits any other information that the department determines is necessary to certify that the winery is operating as a small winery and will be eligible for membership in a cooperative wholesaler after October 1, 2008, the department shall certify the winery as a small winery. This certification shall remain valid for one year.

(c) In certifying any winery under paragraph (b), the department of revenue shall classify the winery as either a Wisconsin winery or an out-of-state winery, as those terms are defined under section 125.545 (1) of the statutes, as created by this act.

(d) The department of revenue shall refuse to certify under this subsection any winery that cannot demonstrate it holds all necessary permits for its operations or that the department finds is otherwise not in full compliance with the laws of this state.

(e) This subsection does not apply after September 30, 2008.

(3) **SMALL WINERY DISTRIBUTION PHASE-IN.** Notwithstanding section 125.53 (1) of the statutes, as affected by this act, a winery that was issued a permit under section

125.53 (1), 2005 stats., prior to the effective date of this subsection is authorized to sell at wholesale to other licensees or permittees under chapter 125 wine manufactured and bottled on the premises covered by the winery permit. This subsection does not apply after June 30, 2009.

(4) **RULE MAKING.** (a) The department of revenue shall submit in proposed form the rules required under sections 125.03 (1) (b) and 125.545 (6) (b) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than July 1, 2008.

(b) Using the emergency rules procedure under section 227.24 of the statutes, the department of revenue shall promulgate the rules required under sections 125.03 (1) (b) and 125.545 (6) (b) of the statutes, as created by this act, for purposes of implementing this act, for the period before the effective date of the rules submitted under paragraph (a). The department of revenue shall promulgate these emergency rules no later than July 1, 2008. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, these emergency rules may remain in effect until July 1, 2010, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of revenue is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

SECTION 51. Effective dates. This act takes effect on October 1, 2008, except as follows:

(1) SECTION 50 (2) of this act takes effect on July 1, 2008.

(2) SECTION 50 (4) of this act takes effect on the day after publication.
