

1985 Senate Bill 118

Date of enactment: April 29, 1986  
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## 1985 Wisconsin Act 302

AN ACT *to repeal* 125.11 (1) (c), 139.03 (2m) (a) (figure) and (b) (figure), 139.03 (2t) (figure) and 139.03 (2w); *to renumber and amend* 139.03 (2m) (intro.) and 139.03 (2t) (intro.); *to amend* 78.40 (1), 78.44, 78.45, 78.47, 78.49 (3), 78.67, 125.02 (8), 125.04 (3) (a) 3 and (f) 1, 125.04 (3) (g) (intro.), 125.04 (4) (a), (5) (a) 2, (9) and (12) (a), 125.11 (1) (a) (title), 125.26 (6), 125.27 (2) (a), 125.51 (4) (a) 1, 125.51 (5) (a) 1, 125.51 (5) (c) 1, 125.52 (4), 125.65 (1), 139.03 (2n), 139.03 (2x) (b) and (5) (a) and (b), 139.30 (12), 139.44 (2), 139.75 (9), 139.77 (6) and 139.83; and *to create* 125.04 (3) (f) 3, 125.145, 125.27 (2) (am), 125.27 (2) (e), 125.51 (4m), 125.51 (5) (c) 1m, 125.51 (5) (c) 4, 125.69 (2) (f), (g) and (h), 139.11 (2m) and (4), 139.26, 139.323 (5), 139.38 (2m), 139.45, 139.835, 139.84 and 139.86 of the statutes, *relating to* penalties for persons who violate the alcohol beverage laws, authorizing a temporary liquor license, to dealings between brewers, manufacturers, rectifiers, wholesalers and retailers, to technical and minor policy changes in regard to alcohol beverages, and alcohol beverage, tobacco, cigarette and fuel taxes, and providing a penalty.

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

SECTION 1. 78.40 (1) of the statutes is amended to read:

78.40 (1) IMPOSITION OF TAX AND BY WHOM PAID. An excise tax of 15 cents per gallon to June 30, 1984; 16 cents per gallon from July 1, 1984, to March 31, 1985; and thereafter at the rate determined under s. 78.405 is imposed on the use, as defined in s. 78.44, of special fuel. The tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, attaches at the time of delivery and shall be collected by the dealer from the special fuel user and shall be paid to the department. The tax, with respect to special fuel acquired by any special fuel user other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, attaches at the time of the use of the fuel and shall be paid to the department by the user. The department may permit any supplier of special fuel to report and pay to the department the tax on special fuel delivered into the storage facility of a special fuel user or retailer which will be consumed for special fuel tax purposes or sold at retail.

SECTION 2. 78.44 of the statutes is amended to read:

78.44 Use defined. "Use," as related to special fuel, means the receipt, delivery or placing of special fuel by a special fuel user into the fuel supply tank or tanks of any motor vehicle while such vehicle is within this state and the delivery to a retailer or user if the supplier reports and pays the tax under s. 78.40 (1).

SECTION 3. 78.45 of the statutes is amended to read:

78.45 Special fuel dealer defined. "Special fuel dealer" means any person (including the state of Wisconsin and any political subdivision thereof, but not including the United States or its agencies except to the extent now or hereafter permitted by the constitution and laws thereof) in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him or to a retailer or user if the supplier reports and pays the tax under s. 78.40 (1).

SECTION 4. 78.47 of the statutes is amended to read:

78.47 Special fuel license. No person may act as a special fuel dealer in this state unless the person holds a valid special fuel license issued by the department. Except for special fuel which is delivered by a special fuel dealer into a fuel supply tank of any motor vehicle in this state, no person may use special fuel in this state unless the person holds a valid special fuel license issued by the department or unless the special fuel has been delivered by a supplier who is authorized under s. 78.40 (1) to report and pay the tax on behalf of the user or retailer.

SECTION 5. 78.49 (3) of the statutes is amended to read:

78.49 (3) COMPUTATION OF TAX. Each special fuel licensee at the time of making the monthly or quarterly report shall compute and pay to the public depository if one has been designated under s. 78.84, but otherwise directly to the department, the full amount of the special fuel tax for the next preceding month or quarter. The amount of the special fuel tax shall be computed as follows: the number of gallons of special fuel delivered or placed by the special fuel licensee into the fuel supply tanks of motor vehicles or sold to a retailer if the supplier reports and pays the tax under s. 78.40 (1) shall be multiplied by the amount provided in s. 78.40 (1) and the resulting figure shall be the amount of the special fuel tax for the next preceding month or quarter.

SECTION 6. 78.67 of the statutes is amended to read:

78.67 (title) Timely filing. When the final date provided in this chapter for the filing of any report or claim or for the remittance of any tax or penalty falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final date. ~~Any such report, claim or remittance which is delivered to the department by mail shall be considered timely filed or remitted if it is properly addressed to the department and postmarked before midnight of the final date~~ The provisions on timely filing under s. 71.10 (13) apply to the tax under this chapter.

SECTION 7. 125.02 (8) of the statutes is amended to read:

125.02 (8) "Intoxicating liquor" means all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include "fermented malt beverages" ~~which contain less than 5% of alcohol by weight.~~

SECTION 8. 125.04 (3) (a) 3 and (f) 1 of the statutes are amended to read:

125.04 (3) (a) 3. The premises where alcohol beverages will be sold or stored or both.

(f) 1. Except as provided in ~~subd. 2~~ subds. 2 and 3, all applications for licenses to sell alcohol beverages shall be filed with the clerk of the municipality in which the premises are located at least 15 days prior to the granting of the license.

SECTION 9. 125.04 (3) (f) 3 of the statutes is created to read:

125.04 (3) (f) 3. For licenses issued under s. 125.26 (6) for a picnic or other gathering lasting less than 4 days, the governing body of the municipality shall establish the time, prior to the granting of a license, by which an application shall be filed with the clerk.

SECTION 9m. 125.04 (3) (g) (intro.) of the statutes is amended to read:

125.04 (3) (g) *Publication of intoxicating liquor application.* (intro.) The municipal clerk shall publish each application for a license to sell intoxicating liquor, except temporary "Class B" licenses under s. 125.51 (4m), prior to its issuance in a newspaper according to the following conditions:

SECTION 10. 125.04 (4) (a), (5) (a) 2, (9) and (12) (a) of the statutes are amended to read:

125.04 (4) (a) *Copy of application.* Any municipal official who issues a license to sell alcohol beverages, except a license issued under s. 125.26 (6), shall mail a copy of the application for the license to the department. The application shall be accompanied by all information relevant to the application and to the license which is required by law to be furnished by the municipality to the department.

(5) (a) 2. ~~Have been residents of this state continuously for at least one year prior to the date of filing the application, except that a Class "B" or "Class B" license or permit may be issued to a person who has been a resident of this state continuously for 90 days prior to the date of application; and~~

(9) SEPARATE LICENSE OR PERMIT REQUIRED. Wholesale ~~Except as provided under ss. 125.27 (2) (a) and 125.51 (5) (c) 1,~~ wholesalers, manufacturers, rectifiers, brewers and retailers shall have a separate permit or license covering each location or premises, except a licensed public warehouse, from which deliveries and sales of alcohol beverages are made or at which alcohol beverages are stored.

(12) (a) *From place to place.* Every alcohol beverage license or permit may be transferred to another place or premises within the same municipality. An alcohol beverage warehouse permit under s. 125.19, a winery permit under s. 125.53 or an intoxicating liquor wholesaler's permit under s. 125.54 may be transferred to another premises within this state. Transfers shall be made by the issuing authority upon payment of a fee of \$10. No retail licensee or retail permittee, intoxicating liquor wholesaler or holder of a warehouse or winery permit is entitled to more than one transfer during the license or permit year. The issuing authority shall promptly notify the department of all transfers.

SECTION 11. 125.11 (1) (a) (title) of the statutes is amended to read:

125.11 (1) (a) (title) *General penalty.*

SECTION 12. 125.11 (1) (c) of the statutes is repealed.

SECTION 13. 125.145 of the statutes is created to read:

**125.145 Prosecutions by attorney general.** Upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any case arising under this chapter.

SECTION 13m. 125.26 (6) of the statutes is amended to read:

125.26 (6) Class "B" licenses may also be issued to bona fide clubs, to state, county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least 6 months before the date of application and to posts of veterans' organizations authorizing the sale of fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. The amount of the fee for the license shall be determined by the municipal governing body issuing the license but may not exceed \$10. A license issued to the state fair or to a county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of fermented malt beverages from leased stands on the fairgrounds. The state fair or county or district fair to which the license is issued may lease stands on the fairgrounds to persons who may engage in retail sales of fermented malt beverages from the stands while the fair is being held. No such person is required to obtain an operator's license in order to engage in retail sales of fermented malt beverages on the grounds of the state fair or other fairs receiving state aid.

SECTION 14. 125.27 (2) (a) of the statutes is amended to read:

125.27 (2) (a) The department may issue a Class "B" permit to any person qualified under s. 125.04 (5) authorizing the sale of fermented malt beverages for consumption on any vessel having a regular place of mooring located in any waters of this state as defined under s. 29.01 (9) and (11) if the vessel is either certified by the U.S. coast guard or classed by the American bureau of shipping and has an approved passenger capacity of not less than 100 individuals, and if the sale of intoxicating liquor and fermented malt beverages on the vessel accounts for less than 50% of the gross receipts of the vessel. The department may issue the permit only if the vessel customarily leaves its place of mooring while the sale of fermented malt beverages is taking place. A permit issued under this subsection also authorizes the permittee to store fermented malt beverages purchased for sale on the vessel on premises owned or leased by the permittee and located near the vessel's regular place of mooring. The permittee shall describe on the permit application under s. 125.04 (3) (a) 3 the premises where the fermented malt beverages will be stored. The premises shall be open to inspection by the department upon request.

SECTION 14m. 125.27 (2) (am) of the statutes is created to read:

125.27 (2) (am) If the U.S. coast guard withdraws from providing certification on a body of water, the department may renew the Class "B" permit issued under this subsection for a vessel on that body of water if the vessel was formerly certified by the coast guard and the applicant provides proof of liability insurance coverage for the vessel.

SECTION 15. 125.27 (2) (e) of the statutes is created to read:

125.27 (2) (e) A person holding a permit under this subsection shall keep all invoices relating to the purchase of fermented malt beverages for sale on a vessel at the location where the fermented malt beverages are customarily stored.

SECTION 15g. 125.51 (4) (a) 1 of the statutes is amended to read:

125.51 (4) (a) 1. "License" means a retail "Class B" license issued under sub. (3).

SECTION 15i. 125.51 (4m) of the statutes is created to read:

125.51 (4m) TEMPORARY "CLASS B" LICENSES. (a) A municipality may issue a temporary "Class B" license to a church or an organization associated with a church, if the church or organization has been in existence for not less than 6 months prior to the date of application.

(b) A temporary "Class B" license authorizes the holder to serve or sell wine containing not more than 6% alcohol by volume at the picnic, meeting or other gathering specified on the license.

(c) A municipality may charge a fee not to exceed \$10 for a temporary license.

(d) Subsection (3) (f) and ss. 125.68 (3) and (5) and 125.69 do not apply to licenses issued under this subsection.

SECTION 15m. 125.51 (5) (a) 1 of the statutes is amended to read:

125.51 (5) (a) 1. The department shall issue "Class B" permits to clubs which are operated solely for the playing of golf or tennis and are commonly known as country clubs, to clubs which are operated solely for curling and to yachting clubs. A "Class B" permit may be issued only to a club that is not open to the general public and that is located in a municipality that does not issue "Class B" licenses or to a club located in a municipality that issues "Class B" licenses, if the club is not open to the general public, was not issued a license under s. 176.05 (4a), 1979 stats., and does not currently hold a "Class B" license. The permits may be issued by the department without regard to any local option exercised under s. 125.05 and without regard to any quota under sub. (4). The holder of a "Class B" permit may sell intoxicating liquor for consumption by the glass and not in the original package or container on the premises covered by the permit.

SECTION 16. 125.51 (5) (c) 1 of the statutes is amended to read:

125.51 (5) (c) 1. The department may issue a "Class B" permit to any person qualified under s. 125.04 (5) authorizing the sale of intoxicating liquor for consumption on any vessel having a regular place of mooring located in any waters of this state as defined under s. 29.01 (9) and (11) if the vessel is either certified by the U.S. coast guard or classed by the Ameri-

can bureau of shipping and has an approved passenger capacity of not less than 100 individuals, and if the sale of intoxicating liquor and fermented malt beverages on the vessel accounts for less than 50% of the gross receipts of the vessel. The department may issue the permit only if the vessel customarily leaves its place of mooring while the sale of intoxicating liquor is taking place. A permit issued under this subsection also authorizes the permittee to store intoxicating liquor purchased for sale on the vessel on premises owned or leased by the permittee and located near the vessel's regular place of mooring. The permittee shall describe on the permit application under s. 125.04 (3) (a) 3 the premises where the intoxicating liquor will be stored. The premises shall be open to inspection by the department upon request.

SECTION 16m. 125.51 (5) (c) 1m of the statutes is created to read:

125.51 (5) (c) 1m. If the U.S. coast guard withdraws from providing certification on a body of water, the department may renew the "Class B" permit issued under this paragraph for a vessel on that body of water if the vessel was formerly certified by the coast guard and the applicant provides proof of liability insurance coverage for the vessel.

SECTION 17. 125.51 (5) (c) 4 of the statutes is created to read:

125.51 (5) (c) 4. A person holding a permit under this paragraph shall keep all invoices relating to the purchase of intoxicating liquor for sale on a vessel at the location where the intoxicating liquor is customarily stored.

SECTION 18. 125.52 (4) of the statutes is amended to read:

125.52 (4) TERM OF PERMIT. All Manufacturers' and rectifiers' permits issued under this section sub. (1) shall expire on July 1 of each year. Limited manufacturers' permits issued under sub. (2) shall expire on August 1 of each year.

SECTION 18g. 125.65 (1) of the statutes is amended to read:

125.65 (1) The department may issue a permit for sales for future delivery which authorizes the permittee to solicit orders, and to engage in the sale, of intoxicating liquor for delivery at a future date. A person holding a permit under this section may give a sample of a brand of intoxicating liquor to a "Class A" licensee who has not previously purchased that brand from the permittee.

SECTION 19. 125.69 (2) (f), (g) and (h) of the statutes are created to read:

125.69 (2) (f) Notwithstanding par. (a), a manufacturer, rectifier or wholesaler may sell at fair market value consumable merchandise, including the sale or loan of containers thereof, and tavern supply items used in the consumption of food and alcohol beverages to a campus or "Class B" licensee and permittee in the regular course of business.

(g) Notwithstanding par. (a), a manufacturer, rectifier or wholesaler may give a sample of a brand of intoxicating liquor to a campus or "Class B" licensee or permittee who has not previously purchased that brand from that manufacturer, rectifier or wholesaler.

(h) Notwithstanding par. (a), a manufacturer, rectifier or wholesaler may sell at fair market value to a campus or "Class B" licensee or permittee equipment for dispensing draft wine and any services necessary to maintain the equipment. A manufacturer, rectifier or wholesaler shall charge the same price per unit of equipment to each campus or "Class B" licensee or permittee making the same or a similar purchase, and shall charge the same rate to each campus or "Class B" licensee or permittee purchasing maintenance services under this paragraph. Each manufacturer, rectifier or wholesaler shall keep records of each transaction under this paragraph and shall make the records available to the department upon request.

SECTION 21. 139.03 (2m) (intro.) of the statutes is renumbered 139.03 (2m) and amended to read:

139.03 (2m) The rate of ~~such that~~ tax is ~~\$3.25~~ 85.86 cents per wine gallon liter on intoxicating liquor, except wine containing not in excess of 21% of alcohol by volume and intoxicating liquor taxed under sub. (2t) ~~or (2w)~~, containing 0.5% or more of alcohol by volume, ~~and is computed in accordance with the following tables, using whichever table produces the least amount of tax. [See Figures 139.03 (2m) (a) and (b) following].~~ The department of revenue may, by rule, set the amount of the taxes imposed under this section for various sizes of containers if the amounts set are in the same proportion to the size of the containers as the rate per liter under this subsection.

SECTION 22. 139.03 (2m) (a) (figure) and (b) (figure) of the statutes are repealed.

SECTION 23. 139.03 (2n) of the statutes is amended to read:

139.03 (2n) The rate of ~~such that~~ tax is ~~25~~ 6.605 cents per wine gallon liter on wine containing 14% or less of alcohol by volume, and ~~45~~ 11.89 cents per wine gallon liter on wine containing more than 14% of alcohol by volume, but not in excess of 21% of alcohol by volume.

SECTION 24. 139.03 (2t) (intro.) of the statutes is renumbered 139.03 (2t) and amended to read:

139.03 (2t) The rate of tax, ~~effective on September 1, 1983, and thereafter, is \$1.65 per wine gallon is~~ 43.59 cents per liter on intoxicating liquor, containing 0.5% or more of alcohol by volume, manufactured or distilled in this state from whey which is produced in this state. ~~The tax shall be computed in accordance with the following table, and the department of revenue shall calculate the equivalent rates for metric containers. [See Figure 139.03 (2t) following]~~

SECTION 25. 139.03 (2t) (figure) of the statutes is repealed.

SECTION 26. 139.03 (2w) of the statutes is repealed.

SECTION 27. 139.03 (2x) (b) and (5) (a) and (b) of the statutes are amended to read:

139.03 (2x) (b) *Floor tax computation.* The amount of any intoxicating liquor floor tax shall be computed by multiplying the number of ~~gallons~~ liters of intoxicating liquor held in inventory as determined under par. (a) by the difference between the tax rate already paid and the new tax rate, and expressing the resulting figure in dollars.

(5) (a) No person who enters this state from another state may have in his or her possession and bring into the state any intoxicating liquor or wine. ~~This paragraph shall~~ The prohibition in this paragraph does not apply to a person who changes his or her domicile from another state or a foreign country to this state and who brings into this state intoxicating liquor and wine constituting household goods. The prohibition in this paragraph does not apply to intoxicating liquor or wine consigned to any person having a permit from the secretary to engage in the sale of such intoxicating liquor or wine.

(b) Any person, except ~~a minor~~ an underage person as defined under s. 125.02 (20m), who leaves a foreign country, after spending at least 48 hours in ~~such that~~ foreign country, with the purpose of entering this state, may have in ~~his that person's~~ possession and bring into the state intoxicating liquor or wine in sealed original containers in amounts not to exceed, in the aggregate, ~~one gallon (128 ounces)~~ 4 liters without payment of the tax ~~herein~~ imposed under this subchapter. The ~~one gallon~~ 4 liters of tax-free intoxicating liquor and wines may not be sent, shipped or carried into the state other than in the immediate possession of the person as qualified by this subsection.

SECTION 28. 139.11 (2m) and (4) of the statutes are created to read:

139.11 (2m) **TIMELY FILING.** The provisions on timely filing under s. 71.10 (13) apply to the tax under this subchapter.

(4) **CONFIDENTIALITY.** Section 71.11 (44) (a) and (c) to (h), relating to confidentiality of income and gift tax returns, applies 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 29. 139.26 of the statutes is created to read:

**139.26 Prosecutions by attorney general.** Upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any case arising under this subchapter.

SECTION 30. 139.30 (12) of the statutes is amended to read:

139.30 (12) "Sell" or "sale" includes the transfer, gift, barter, trade or exchange or any shift, device, scheme or transaction whereby cigarettes may be obtained, ~~but does not include~~ and the solicitation of orders for, or the sale for, future delivery of cigarettes.

SECTION 31. 139.323 (5) of the statutes is created read:

139.323 (5) The retailer has not sold the cigarettes to another retailer or to a jobber.

SECTION 32. 139.38 (2m) of the statutes is created to read:

139.38 (2m) The provisions on timely filing under s. 71.10 (13) apply to the tax under this subchapter.

SECTION 33. 139.44 (2) of the statutes is amended to read:

139.44 (2) Any ~~permitted person~~ who makes or verifies any false or fraudulent report or who attempts to evade the tax imposed by s. 139.31 or 139.76, or who aids in or abets the evasion or attempted evasion of that tax shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned not less than 90 days nor more than one year or both.

SECTION 34. 139.45 of the statutes is created to read:

**139.45 Prosecutions by attorney general.** Upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any case arising under this subchapter.

SECTION 35. 139.75 (9) of the statutes is amended to read:

139.75 (9) "Sale" means any transfer, exchange or barter for a consideration. It includes a gift by a person engaged in the business of selling tobacco products for advertising or as a means of evading this subchapter or for any other purpose, and it includes solicitation of orders for, and the sale for, future delivery.

**SECTION 42. Program responsibility changes.** In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

(1) JUSTICE.

(a) *Cigarette and tobacco products tax.*

A	B	C
Statute Sections	References Deleted	References Inserted
15.251 (intro.)	none	139.26, 139.45, 139.86

SECTION 43. **Initial applicability.** The treatment of sections 78.67, 139.11 (2m), 139.38 (2m) and 139.835 of the statutes by this act first applies to

SECTION 36. 139.77 (6) of the statutes is amended to read:

139.77 (6) In issuing its final assessment, the department shall add to the amount of tax found due and unpaid a penalty of 10%, but if it finds that the taxpayer has made a false return with intent to evade the tax, the penalty shall be 50% of the entire tax as shown by the corrected return. If it appears to the department that any unpaid tax was due to an unintentional miscalculation on the report, the 10% penalty shall be waived. In assessing a tax on the basis of a return made under sub. (4), the department shall add to the amount of tax found due and unpaid a penalty of 25%.

SECTION 38. 139.83 of the statutes is amended to read:

**139.83 Administration and enforcement.** ~~Section 139.39 applies~~ Sections 139.39 and 139.40, as they apply to the tax under subch. II, apply to the administration and enforcement of this subchapter.

SECTION 39. 139.835 of the statutes is created to read:

**139.835 Timely filing.** The provisions on timely filing under s. 71.10 (13) apply to the tax under this subchapter.

SECTION 40. 139.84 of the statutes is created to read:

**139.84 Bonds.** Section 78.11, as it applies to wholesalers of motor fuel, applies to persons liable for the tax under this subchapter.

SECTION 41. 139.86 of the statutes is created to read:

**139.86 Prosecutions by attorney general.** Upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any case arising under this subchapter.

returns and other documents required to be filed on the effective date of this SECTION.