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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on ... Veterans, Homeland Security,
Military Affairs, Small Business and Government
Reform (SC-VHSMASBGR)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

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Trouble brewing: Distribution law may make it hard to find craft beers

By TOM DAYKIN
tdaykin@journalsentinel.com

Posted: Oct. 30, 2004

A year after buying Stevens Point Brewery in 2002, Joe Martino fired a third of his Wisconsin distributors.

The six companies weren't pushing his products to bars and stores with the same level of enthusiasm for Bud, Miller Lite and other big brands, he said. The move resulted in double-digit sales increases for Stevens Point in some areas.

But under a state law that took effect in May, Stevens Point Brewery and other small brewers will find it more difficult to make such a change.

"If you have a great product, but a poor distribution system, it can just break you," said Martino, who owns Stevens Point with Milwaukee investor Jim Wiechmann.

Beer wholesalers, largely invisible to the general public, are middlemen who buy from breweries and sell to taverns, liquor stores and supermarkets. With wholesalers consolidating, and increasing lobbying clout, specialty brewers fret that their pipeline is shrinking.

The upshot is beer lovers may find it more difficult to find craft brews on store shelves or in the taps of their favorite watering holes, said Deborah Carey, president of New Glarus Brewing Co.

"In the end, it limits consumers' choices," Carey said.

New Glarus, founded in 1993, has had double-digit sales increases for the last three years, but Carey says distribution plays a big part in creating demand. New Glarus doesn't provide sales or profit figures. It will sell around 25,000 barrels of beer this year, a fraction of the 38 million barrels Miller Brewing Co. sold in 2003.

Carey and others are worried that their brands will be dropped by large, consolidated distributors looking to mainly sell beer produced by Anheuser-Busch Inc., Milwaukee-based Miller and Adolph Coors Co.

The nation's three largest brewers have an 80% market share, up from 76% in 1993. Along with producing popular brands, such as Budweiser and Miller Lite, the big brewers have helped fill the specialty niche with their own offerings. Miller owns Chippewa Falls-based Jacob Leinenkugel Brewing Co., while Anheuser-Busch has distribution and equity agreements with Seattle-based Redhook Ale Brewery Inc. and Portland, Ore.-based Widmer Brothers Brewing Co.

Wholesalers, faced with a dizzying array of specialty brews, say they must concentrate on brands that generate the most sales. Of the nation's top 10 bestselling beers, eight brands owned by Anheuser-Busch, Miller and Coors accounted for around 62% of U.S. beer sales in 2003, said trade publication Beer Marketer's Insights.

The big three U.S. brewers thrive on sales volume, and volume declines were blamed last week when Anheuser-Busch reported a meager 3% third-quarter net income increase, while Coors reported flat profit.

"This business, like any other business, comes down to focus," said Steve Johnson, president of Miller Brands-Milwaukee LLC, a Wauwatosa-based wholesaler that draws 95% of its sales from Miller-owned brands, including Leinenkugel.

However, what was once a business with three major networks - Anheuser-Busch wholesalers, Miller distributors and a system that serves all other brands - is narrowing into two mega-networks: Anheuser-Busch and Miller/Coors, industry observers say.

That's happening in part because national brewers, such as Stroh Brewery Co. and La Crosse-based G. Heileman Brewing Co., went out of business, said Randy Smith, former general counsel at Heileman. Another national player, Pabst Brewing Co., has seen its market share erode to single-digit territory.

Meanwhile, many Coors and Miller wholesalers have merged, said Smith, president of La Crosse-based City Brewing Co., a specialty brewer. Together, Miller and Coors account for around 30% of the nation's beer sales, with Anheuser-Busch covering about half of the market.

Big brewers have said distributors should put a proper amount of work behind their brands. If you derive 90% of your sales from a major brewer, you'd better put 90% of your selling efforts behind those brands, they reason.

In 1996, Anheuser-Busch began using financial incentives to force its distributors to concentrate on pushing the company's products. Some specialty brewers claimed the incentives unfairly prompted wholesalers to drop their brands. But the U.S. Justice Department in 1998 closed its antitrust investigation of the program without taking action.

In Wisconsin, small brewers have been affected by two recent changes in state laws.

In 2001, the maximum dollar value of neon beer signs and other advertising materials that can be given away by wholesalers and brewers to taverns was raised, from \$150 to \$2,500. Also, the annual value of business entertainment - such as concert tickets - that brewers and wholesalers can provide tavern operators was raised, from \$600 to \$4,000.

Wholesalers said the old limits were outdated and unrealistic. Small brewers said the new rules give an unfair advantage to Miller and other major brewers that can afford the freebies.

A wholesaler whose contract is terminated must be paid for the future value of the beer's distribution rights under the state law passed this year.

The Wisconsin Wholesale Beer Distributors Association lobbied for the legislation. It was needed to ensure that distributors are fairly compensated when their brand distribution rights are terminated, said Eric Jensen, association executive director.

State law already provided for compensation in most terminations. The new law ensures that compensation is provided even when small brands are terminated, Jensen said.

Martino and Carey said the law virtually eliminates any leverage a small brewer has in dealing with distributors. Jensen said distributors now are more likely to accept small brands because of the additional protection.

In March, Mosinee-based Central Beer Distributors Inc. sued Stevens Point Brewery, saying its November 2003 termination violated the company's distribution contract, which covered Mosinee and parts of Lincoln and Shawano counties. That dispute has since been submitted to arbitration.

Martino said Central Beer was dropped because it performed poorly. With a new distributor, Stevens Point Brewery sales in Central Beer's former turf have increased around 30%, Martino said.

Central Beer President Dean Schmalz said Martino has never told him why his company was fired. Schmalz said Central Beer, a Stevens Point Brewery wholesaler for more than 40 years, wasn't given a chance to correct any problems. He said Martino's moves to change distributors led to the lobbying effort for the new law.

Smith said the state beer distributors association has become a powerful lobbying force in recent years. State Ethics Board records show the group spent \$93,571 on lobbying during the 2001-2002 legislative session, which lifted the limits on advertising and entertainment freebies.

The distributors, however, are caught in a squeeze. They're under increasing pressure from the large brewers to sell their products, while dealing with retailers, such as Wal-Mart Stores Inc., that demand price discounts, said Carl Nolen, president

of Middleton-based Capital Brewery Co. The large brands, driven by massive ad campaigns, are easier to sell, he said.

"I understand how hard it is to sell small beers," said Nolen, a former distribution executive.

Attorney and industry consultant Mark Rodman said many small brewers don't appreciate that difficulty, and don't invest enough money to market their brands. Instead, they often blame wholesalers when their brands falter, said Rodman, owner of Beverage Distribution Consultants, based in Swampscott, Mass.

However, there continues to be strong demand for craft beers, Nolen and Rodman said. And specialty beers sell for higher prices - and provide fatter profit margins - for both brewers and wholesalers, said Martino.

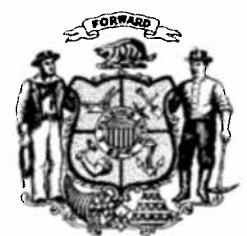
Randy Sprecher, whose Glendale-based Sprecher Brewing Co. will celebrate its 20th anniversary next year, said he long ago accepted that distributors pay the most attention to beers with strong sales - and not necessarily strong margins. Specialty brewers have to deal with that reality, he said. Sprecher has grown his company in part by expanding his line of gourmet sodas, which are now sold in such far-flung areas as San Diego and Boston.

"We simply know what we have to do to stay alive," Sprecher said.

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WISCONSIN STATE LEGISLATURE




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Microbrewers bitter over bill

Legislature poised to pass measure to protect wholesalers

By TOM DAYKIN
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Posted: Nov. 1, 2005

Higher specialty beer prices and fewer choices for consumers might be the long-term results of a bill moving quickly through the state Legislature, according to Wisconsin's small brewers.

The Assembly approved the proposal Tuesday night on a 78-16 vote, just one week after it was introduced. The bill is scheduled for a 10 a.m. hearing Wednesday before the Senate Small Business Committee and could go before the full Senate by the end of next week.

It is supported by the Wisconsin Wholesale Beer Distributors Association, which donated \$6,000 to state legislative campaign committees during the first six months of 2005. The donations from the association's political action committee were split evenly between Democratic and Republican coffers.

The association also provided \$24,838 in state campaign donations in 2003 and 2004, including \$3,000 to Gov. Jim Doyle's re-election committee, and \$4,188 to legislators who are sponsoring the bill, according to the Wisconsin Democracy Campaign.

The distributors, who buy beer from brewers and sell it to taverns, supermarkets and other retailers, say legislation is needed to fend off possible lawsuits challenging Wisconsin's alcohol industry regulations.

Small brewers, however, say the proposal is just the latest example of the wholesalers' tightening their middleman grip in a system that critics say is costly and outmoded.

"Yeah, it's a war," said Deb Carey, president of New Glarus Brewing Co., based in the south central Wisconsin community. "And they don't want to give up any ground."

The legislation is not intended to hurt small brewers, said Eric Jensen, executive director of the wholesalers association. "We want them to grow. We sell their products."

The bill would require brewers to grant exclusive distribution territories to wholesalers. The legislation also would make it more expensive for small brewers to avoid wholesale distributors and sell their beer directly to retailers if the brewers surpass production and sales benchmarks.

The legislation is the result of a U.S. Supreme Court decision in May.

The court ruled that state laws in New York and Michigan that banned direct interstate wine shipments to consumers were unconstitutional and anti-competitive. While that decision applied just to wineries, it had strong similarities to a lawsuit challenging a Washington state law that bars retailers from buying beer, wine and spirits directly from breweries, wineries and distillers.

That Washington lawsuit was filed by Costco Wholesale Corp., which operates warehouse-style

Beer Legislation



Photo/Karen Sherlock

Brad Spring fills a barrel of Eastside Dark at Lakefront Brewery, 1872 N. Commerce St., on Tuesday. Small brewers such as Lakefront are opposing a bill in Madison aimed at protecting liquor wholesalers.




Photo/Karen Sherlock

Russ Klisch, the brewery's president, objects to a provision that would grant exclusive territories to wholesalers.

stores. Costco, which plans to expand into the Milwaukee area, says it could sell beer, wine and other alcohol at much lower prices if it could buy the drinks directly from beverage producers and bypass wholesalers.

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After the Supreme Court ruling, beer distributors in Wisconsin and other states moved to shore up laws protecting their middleman roles. The bill now being debated in Madison is a result.

Wisconsin's existing law allows in-state brewers to ship beer directly to retailers, Jensen said. But the law requires brewers based outside Wisconsin to maintain a separate warehouse if they do direct shipping. That costly provision amounts to different treatment for out-of-state brewers, Jensen said, and leaves the law vulnerable to a legal challenge.

Under the bill, both in-state and out-of-state brewers must maintain separate warehouses if they ship beer directly to retailers. However, brewers would be exempt from that provision if they produce less than 100,000 barrels of beer annually, or sell less than 30,000 barrels directly to retailers.

Most of Wisconsin's small brewers produce far below 100,000 barrels, Jensen said.

"The reality is that none of them are brewing more than 50,000 barrels a year," Jensen said. He said the bill accommodates the small brewers, and provides ample room for their growth before hitting the proposed benchmarks.

'Anti-small business'

But New Glarus has been growing rapidly, and this year will likely surpass 40,000 barrels, Carey said. Not far behind is Stevens Point Brewery, while La Crosse-based City Brewing Co. and Middleton-based Capital Brewery Inc. are closing in on the 30,000- and 20,000-barrel marks, respectively.

The nation's specialty beer segment boasted 7% sales volume growth during the first half of 2005. Overall industry sales, dominated by Miller Brewing Co., Anheuser-Busch Inc. and Coors Brewing Co., posted a 1% decline during the same period. Milwaukee-based Miller supports the bill, saying it helps strengthen the current distribution system.

New Glarus generally uses distributors, Carey said. But it has occasionally done direct shipping, she said.

Under the bill, New Glarus could eventually be forced to spend money on unneeded warehouse space, Carey said. That would siphon capital away from buying new equipment and expanding the brewery, she said. Also, higher operating costs from adding warehouse space would be passed on to consumers, she said.

Much smaller brewers that do direct shipping also worry the bill could eventually hurt them.

"That certainly is anti-small business," said Tom Porter, owner of Lake Louie Brewing Co., in the Iowa County community of Arena. "That's putting a ceiling over my potential."

Lake Louie, founded in 2000, will sell around 1,500 barrels in 2005, Porter said. But the company has been doubling production in recent years, and has a waiting list of retailers wanting to stock its Coon Rock Cream Ale and other brands, he said.

Also, the bill's provision requiring exclusive territories for wholesalers could cause problems for small brewers, said Russ Klisch, president of Milwaukee's Lakefront Brewery.

If a wholesaler with exclusive rights went bankrupt, the brewer might face delays getting those rights assigned to a different wholesaler, Klisch said. That could choke off the brewer's access to the market, which would restrict the number of brands available to consumers.

Small brewers also say the exclusive rights provision would limit competition among wholesalers, which would again result in higher distribution costs - some of which will be passed on to consumers.

Some small brewers and industry observers say the entire system, created after Prohibition was repealed in 1933, is obsolete.

Beer wholesalers say the system helps ensure that alcohol is marketed responsibly.

However, the Supreme Court in May found little evidence that restrictions on direct wine sales had prevented underage drinking. Meanwhile, a proposed California law that would strengthen the franchise rights of beer wholesalers in that state was recently criticized as anti-competitive by a Federal Trade Commission report.

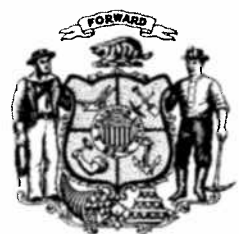
Stacy Forster of the Journal Sentinel staff contributed to this report from Madison.

From the Nov. 2, 2005, editions of the Milwaukee Journal Sentinel
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WISCONSIN STATE LEGISLATURE



Original URL: <http://www.jsonline.com/bym/news/nov05/367686.asp>

Beer bill hits a hiccup in committee

Vote delayed on proposal over wholesalers' role in state

By TOM DAYKIN
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Posted: Nov. 2, 2005

A bill that would strengthen the role of Wisconsin's beer wholesalers - which small brewers claim could lead to higher specialty beer prices - ran into a delay Wednesday in Madison.

The Senate Small Business Committee listened to testimony about the proposed legislation but did not have a vote as had been expected. That gave some hope to opponents of the bill, which appears to be on a fast track. The Assembly passed an identical version of the bill by a 78-16 vote Tuesday, just one week after it was introduced.

"We did get it delayed," said Deb Carey, president of New Glarus Brewing Co. "I think that's exciting. Maybe we will have an opportunity for more discussion."

The committee plans to vote today on the bill through distribution of paper ballots to committee members, said Daniel Lindstedt, a staff aide to committee chairman Sen. Ron Brown (R-Eau Claire). Those ballots are to be returned by the close of Senate business on Friday, he said.

The bill would require brewers to grant exclusive distribution territories to wholesalers. The legislation also would make it more expensive for small brewers to avoid wholesale distributors and sell their beer directly to retailers if the brewers surpass production and sales benchmarks.

The Wisconsin Wholesale Beer Distributors Association says the bill is needed to fend off possible lawsuits challenging the state's alcohol industry regulations. Those regulations, as in other states, oversee a system in which brewers sell beer to wholesale distributors, which then sell beer to taverns, supermarkets and other retailers.

That system promotes responsible marketing of beer, the wholesalers say. But some industry observers say there's no evidence to support those claims. And some large retailers have said they could sell beer at lower prices if they could buy directly from breweries.

Breweries fear higher costs

Carey was among a group of small brewery owners who testified Wednesday before the committee. Carey says she generally uses wholesalers to sell beer but says there are times when she needs to sell directly to retailers. Limiting that ability, she says, could raise her operating costs.

Carey also says the bill would strengthen the leverage that wholesalers have in their negotiations with brewers. She and other small brewery owners say the bill could limit competition among wholesalers and drive up distribution costs - which could lead to higher beer prices.

The beer distributors say the bill would not harm small brewers and is needed to correct the current law.

Beer Bill

Under the Bill

Brewers who produce fewer than 100,000 barrels annually or sell fewer than 30,000 barrels directly to retailers are exempt.

100,000 barrels

☑ Most small brewers produce far less than this amount annually.

39 million barrels

☑ Amount sold annually by Miller Brewing Co.

Recent Coverage

📄 [Microbrewers bitter over bill \(11/1/05\)](#)

State law now allows in-state brewers to ship beer directly to retailers. But the law requires brewers based outside Wisconsin to maintain a separate warehouse if they do direct shipping. That costly provision amounts to different treatment for out-of-state brewers, and leaves the law vulnerable to a legal challenge, the distributors say.

Under the bill, both in-state and out-of-state brewers must maintain separate warehouses if they ship beer directly to retailers. However, brewers would be exempt from that provision if they produce fewer than 100,000 barrels of beer annually, or sell fewer than 30,000 barrels directly to retailers.

Most of Wisconsin's small brewers produce far below 100,000 barrels, and far less than industry giants such as Miller Brewing Co., which sells around 39 million barrels annually. But New Glarus and others are growing rapidly, and some small brewers think the law would eventually apply to their businesses.

The beer distributors association donated \$6,000 to state legislative campaign committees during the first six months of 2005. The donations from the association's political action committee were split evenly between Democratic and Republican coffers.

The association also provided \$24,838 in state campaign donations in 2003 and 2004, including \$3,000 to Gov. Jim Doyle's re-election committee and \$4,188 to legislators who are sponsoring the bill, according to the Wisconsin Democracy Campaign, a government watchdog group.

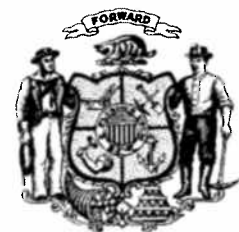
A Doyle spokeswoman said the governor has not decided whether he would support the bill if it passes the Legislature.

From the Nov. 3, 2005, editions of the Milwaukee Journal Sentinel
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WISCONSIN STATE LEGISLATURE



Original URL: <http://www.jsonline.com/news/editorials/nov05/367884.asp>

Editorial: Let the free market work

From the Journal Sentinel

Posted: Nov. 3, 2005

Folks who have a fondness for the workings of free-market economics can be forgiven if they're scratching their heads over pending legislation that would virtually enshrine beer wholesalers as the middlemen in the beverage's path from brewers to retailers and consumers in Wisconsin.

The bill, approved Tuesday in the state Assembly, 78-16, would require brewers to grant exclusive distributorship territories to wholesalers. It would also add to the costs for brewers who surpass certain production and sales benchmarks and want to ship directly to retailers.

Wisconsin's microbreweries producing far less than that are now on notice. Grow, produce or sell more than the benchmark amounts, think about shipping directly to retailers, and they will have to add prohibitively to their costs by building separate warehouses. And this, of course, will make wholesale distributors, who already have warehouses, irresistibly attractive.

Out-of-state brewers, already well-versed in the dictates of three-tier distribution systems nationwide, are also on notice. Don't even think about upsetting the status quo by shipping directly to so-called big-box stores in Wisconsin.

The notice comes in the shorthand description of the bill, courtesy of the Legislative Reference Bureau, which analyzes bills for legislators: "The bill requires deliveries of beer to retailers to be made only by wholesalers and requires deliveries to retailers to be made only at their retail premises."

In other words, beer is so unlike other products that state law must prevent distribution directly from the manufacturer to the retailer. Simple economics may dictate the use of a middleman with many commodities. But why are beer's middlemen deserving of a law that preserves their places, profitably sandwiched in the state's three-tier beer-distribution system?

Middlemen as a matter of simple economics is one thing. Crafting a law to ensure this is quite another. Small brewers predict higher costs for their products if this bill passes.

The Wisconsin Beer Distributors Association, of course, is pleased with the bill. According to an article Wednesday by Journal Sentinel reporter Tom Daykin, the association, through its political action committee, donated \$6,000 to state legislative campaign committees during the first six months of 2005, split evenly between Republicans and Democrats.


Coincidence between those contributions and the bill? Not likely.

More likely is that the contributions and the legislation were spurred by 1) a U.S. Supreme Court ruling in May that New York and Michigan bans on interstate wine shipments to consumers were unconstitutional and anti-competitive and 2) a legal challenge by Costco Wholesale Corp. of a Washington state law that prevents the company from buying directly from beverage producers.

The Supreme Court ruling calls into question whether this new bill will stand if challenged. A ruling favorable for Costco would further cloud the issue.

The Senate Small Business Committee on Wednesday heard testimony on the bill. On Thursday, committee members were to vote through a distribution of paper ballots to the committee, ballots that are to be returned by the close of Senate business today.

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Microbrewers bitter over bill

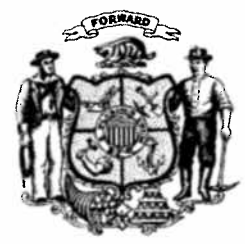
The bill should not move forward. If it does, the Senate should not approve it.

From the Nov. 4, 2005, editions of the Milwaukee Journal Sentinel
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WISCONSIN STATE LEGISLATURE



Original URL: <http://www.jsonline.com/bym/news/nov05/368366.asp>

Committee ships beer wholesaler bill to Senate

Craft brewers say measure could raise prices

By TOM DAYKIN
tdaykin@journalsentinel.com

Posted: Nov. 5, 2005

A fast-tracked bill that would grant exclusive distribution territories to Wisconsin's beer wholesalers - and is opposed by small brewers who say it will result in higher beer prices - was approved Friday by a legislative committee, setting the stage for it to be passed.

The Senate Small Business Committee voted 5-0 to approve the legislation ([AB 787](#) / [SB 415](#)). It was approved this week by the Assembly and will likely go before the Senate next week - just two weeks after being introduced.

Voting "yes" on the bill were Ronald Brown (R-Eau Claire); David Zien (R-Eau Claire); Ted Kanavas (R-Brookfield); Roger Breske (D-Eland); and Robert Wirch (D-Pleasant Prairie).

The bill would require brewers to grant exclusive distribution territories to wholesalers. The legislation also would make it more expensive for small brewers to avoid wholesale distributors and sell their beer directly to retailers if the brewers surpass production and sales benchmarks.

The Wisconsin Wholesale Beer Distributors Association says the bill is needed to fend off possible lawsuits challenging the state's alcohol industry regulations. Those regulations, as in other states, oversee a system in which brewers sell beer to wholesale distributors, which then sell beer to taverns, supermarkets and other retailers.

That system promotes responsible marketing of beer, the wholesalers say. But some industry observers say there is no evidence to support those claims. Some large retailers have said they could sell beer at lower prices if they could buy directly from breweries.

The Wisconsin Brewers Guild, an organization of small brewers and brew pubs, opposes the bill.

Some guild members say the bill could limit their ability to distribute beer without using wholesalers. The brewers say that could raise their operating costs.

Guild members also say the bill would strengthen the leverage that wholesalers have in negotiations with brewers. Small brewery owners say the bill could limit competition among wholesalers and drive up distribution costs - which could lead to higher prices.


"It's really disheartening that the legislature has abandoned small business in Wisconsin," said Deb Carey, president of New Glarus Brewing Co., who opposes the legislation.


The beer distributors say the bill would not harm small brewers and fixes the current law.

State law now allows in-state brewers to ship beer directly to retailers. But the law requires brewers based outside Wisconsin to maintain a separate warehouse if they do direct shipping. That costly provision amounts to different treatment for out-of-


Beer Legislation


Legislation


 [Text: AB 787](#)


 [Text: SB 415](#)

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state brewers and leaves the law vulnerable to a legal challenge, the distributors say.

Under the bill, both in-state and out-of-state brewers must maintain separate warehouses if they ship beer directly to retailers. However, brewers would be exempt if they produce fewer than 100,000 barrels of beer annually or sell fewer than 30,000 barrels directly to retailers.

Most of Wisconsin's small brewers produce far less than 100,000 barrels and much less than companies such as Miller Brewing Co.

But some small brewers are growing rapidly, and they think the law would eventually apply to them. As a play on that argument, the small brewers are asking their customers to send their craft beer bottle caps to state senators. The message: Don't "cap" the state's small brewers.

The beer distributors association donated \$6,000 to state legislative campaign committees during the first six months of 2005. The donations from the association's political action committee were split evenly between Democratic and Republican coffers.

The association also provided \$24,838 in state campaign donations in 2003 and 2004, including \$3,000 to Gov. Jim Doyle's re-election committee and \$4,188 to legislators who are sponsoring the bill, according to the Wisconsin Democracy Campaign, a government watchdog group.

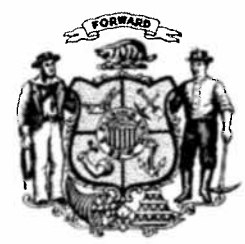
The governor has not yet said whether he would support the bill if it passes the Legislature.

From the Nov. 5, 2005, editions of the Milwaukee Journal Sentinel
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WISCONSIN STATE LEGISLATURE



Channel3000.com

Beer Bill Pits Brewer Vs. Distributor

POSTED: 10:13 pm CST November 6, 2005
UPDATED: 11:01 pm CST November 6, 2005

MADISON, Wis. -- A proposed beer bill could pit beer distributors against brewers.

Small Wisconsin beer brewers say they could take a hit from a bill currently moving through the legislature.

Currently small brewers can deliver or ship their product directly to retailers.

The proposed beer bill would create exclusive distribution territories.

That would make it more expensive for small brewers to avoid wholesale distributors and sell directly to retailers.

But Capitol Brewery owner Carl Nolen said the proposed law would hurt small breweries like his and eventually consumers.

"That unknown would make our beer more expensive and perhaps not as reachable to consumers as it is today," said Nolen.

Nolen is also part of the Wisconsin Brewers Guild.

The New Glarus brewing company said this would force their company and other breweries to keep the middleman.

But beer distributors said that's not the case.

"We are accessible to small brewers to provide the cost sharing that they need," said Wisconsin Beer Distributors executive director Eric Jensen. "We can deliver the product to all of the thousands of smaller retailers who would not be available for the same type of direct shipment that may be for the big box store."

Another part of the bill in question would limit access breweries have to participate in brew fests, something both parties hope to change.

One thing both sides agree on is that a change must be made by the State Legislature before a court steps in to decide the fate of beer business in Wisconsin.

Both associations say they are hopeful changes will be made to the proposed bill so no single group is hurt.

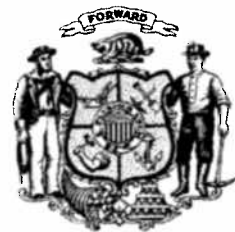
The addition of an amendment is also a possibility to protect Wisconsin's small breweries.

A vote on the beer bill is expected by the end of the week.

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WISCONSIN STATE LEGISLATURE



**MONDAY, Nov. 7, 2005, 6:14 p.m.
Beer wholesalers, brewers compromise on bill**

A group of Wisconsin beer wholesalers and an association of the states small brewers struck a compromise today on controversial legislation that the brewers had initially opposed, saying it could bring higher prices for specialty beers.

The bill ([AB 787](#) and [SB 415](#)) still would require brewers to grant exclusive distribution territories to wholesalers, something the wholesalers want. The wholesalers buy beer from brewers and then sell it to taverns, liquor stores and other retailers.

Most wholesalers already have exclusive contracts with brewers. But the small brewers said a state mandate could limit their ability to sell beer without using wholesalers, which they say could reduce competition, raise their operating costs and force price increases.

Under the new compromise, a small brewer could bypass wholesalers to make direct deliveries to retailers in certain situations. That provision would apply when a wholesaler goes into bankruptcy, or faces some other event, that breaks the distribution link between breweries and retailers.

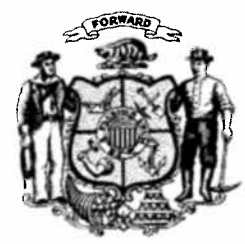
Also, brewers could make direct deliveries to festivals that wholesalers are unwilling or unable to make.

Finally, the compromise would soften restrictions on other direct deliveries by brewers to retailers.

The compromise, supported by both the Wisconsin Wholesale Beer Distributors Association and the Wisconsin Brewers Guild, was reached with Sen. Ron Brown (R-Eau Claire). Brown is chairman of the Senate Small Business Committee, which approved the bill Friday. The compromise bill could go before the full Senate on Wednesday.



WISCONSIN STATE LEGISLATURE



Original URL: <http://www.jsonline.com/news/editorials/nov05/368742.asp>

Legislature makes the right move on beer

By MIKE L. GALLAGHER

Posted: Nov. 7, 2005

This week, the state Legislature is acting on legislation that is great news for beer consumers, Wisconsin brewers - large and small - retailers and the entire beer distribution system that delivers your favorite brands to market.

Assembly Bill 787 allows Wisconsin to bring existing beer laws into compliance with a U.S. Supreme Court ruling issued in May (Granholm vs. Heald) that tells us we must regulate in-state and out-of-state breweries equally.

Last week, a federal judge blew up part of Michigan's alcohol regulatory system by allowing all wineries to sell and ship wine directly to Michigan residents. The judge said he made his ruling in part because the Michigan Legislature had not acted to resolve very similar inconsistencies in its law.

AB 787 is necessary to ensure what happened in Michigan doesn't happen here. It ensures our regulatory system for alcohol remains intact. It ensures decisions about that system remain in the Legislature. And it ensures that the 70-odd, family-owned beer distributors in Wisconsin that provide jobs to more than 2,500 Wisconsin workers survive - along with the services they provide to taverns, restaurants, convenience stores and other retailers that allow those thousands of small businesses to compete fairly with the ever-growing number of big-box mega-retailers.

Current Wisconsin law does not require brewers to sell their beer through beer distributors - they can sell directly to retailers today, if they wish, and AB 787 makes no change to that. But the distribution of beer is expensive, and few, if any brewers (large or small) distribute their own beer for a simple reason - they cannot afford to do it.

Without independent beer distributors, Wisconsin's unique craft brewing industry would not be growing as it is, there would be fewer brands available and beer would be more expensive for consumers.

In addressing Wisconsin's law,

AB 787 would create exemptions for small/craft brewers from rules that large brewers must follow - something Wisconsin law does not do today. Only a handful of states have similar regulatory exemptions for craft brewers (distinct from "brew pubs," whose governing statute is untouched by AB 787). The small brewers seek exemptions without reasonable limitation, but the Equal Protection Clause of the U.S. Constitution prevents Wisconsin from doing that.

AB 787 does not "stifle job creation" or "restrict economic development" or "reduce competition," as some critics have claimed. What it does is ensure fair competition among brewers, among beer distributors and among retailers of all sizes.

Much is at stake with this legislation, beginning with the survival of our industry upon whom small retailers and craft brewers rely to compete and endure in today's mega-retailer-dominated marketplace.

We applaud legislators for recognizing this need.

Beer Legislation

The Deal

Small brewers could deliver directly to retailers when wholesalers face a business interruption, such as **bankruptcy**.

Small brewers could deliver directly to **festivals** and make **emergency shipments** to retailers running short on beer.


Other restrictions would be eased.


Quotable

“ It gives us a little more flexibility. ”


- Russ Klisch,
Lakefront Brewery,
on compromise bill


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
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
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
Mike L. Gallagher is executive vice president of Miller Brands-Milwaukee LLC, Wauwatosa.

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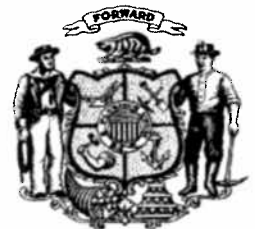
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Accord on tap for beer sales

Small brewers could skip wholesalers in some cases

By TOM DAYKIN
tdaykin@journalsentinel.com

Posted: Nov. 7, 2005

Wisconsin's beer wholesalers and small brewers on Monday struck a compromise on legislation the brewers had initially opposed for fear that it could bring higher prices and fewer choices for specialty beer drinkers.

The bill still would require brewers to grant exclusive distribution territories to wholesalers, something the wholesalers want. Wholesalers buy beer from brewers and then sell it to taverns, liquor stores and other retailers.

Most wholesalers already have exclusive contracts with brewers. But the small brewers said a state mandate could hamper their ability to sell beer without using wholesalers, which they said could reduce competition, restrict their access to retailers, raise their costs and force price increases.

The brewers bitterly fought the fast-moving bill (AB 787/SB 415), which gained Assembly approval one week after being introduced, and which was pushed by the politically powerful Wisconsin Wholesale Beer Distributors Association, a heavy source of campaign contributions for both Democrats and Republicans.

Under the compromise, a small brewer could bypass wholesalers to make direct deliveries to retailers in certain situations. That provision would apply when a wholesaler faces a business interruption, such as bankruptcy, that breaks the distribution link between breweries and retailers.

Also, brewers could make direct deliveries to festivals, as well as emergency shipments to retailers running short on beer.

Finally, the compromise would ease proposed restrictions on other direct deliveries by brewers to retailers.

"It's a good thing for us," said Russ Klisch, president of Lakefront Brewery in Milwaukee. "It gives us a little more flexibility."

Deb Carey, president of New Glarus Brewing Co., agreed.

The original proposal, she said, "was just killing us."

Senate could vote Wednesday

The compromise, which the wholesalers association and the Wisconsin Brewers Guild supported, was reached with Sen. Ron Brown (R-Eau Claire) and Rep. Jeff Fitzgerald (R-Horicon), the bill's authors. Brown is chairman of the Senate Small Business Committee, which

Beer Legislation

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Related Coverage

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The Bills

Text: AB 787

Text: SB 415

approved the bill Friday.

The compromise bill could go before the full Senate on Wednesday, and then it would need approval in its new form from the Assembly.

Under the original proposal, brewers would have been forced to maintain separate warehouses if they ship beer directly to retailers. Brewers would have been exempt from that provision if they produce fewer than 100,000 barrels of beer yearly or sell fewer than 30,000 barrels directly to retailers.

State law now allows in-state brewers to ship beer directly to retailers. But the law requires brewers outside Wisconsin to maintain a separate warehouse if they ship directly.

That costly provision amounts to different treatment for out-of-state brewers and leaves the law vulnerable to a legal challenge, the distributors said.

Most of Wisconsin's small brewers produce far less than 100,000 barrels, according to the distributors, which said the original proposal would not harm small brewers.

But some small brewers are growing rapidly, and they feared that the original legislation would eventually apply to them.

Under the compromise, any brewer with yearly production below 50,000 barrels may sell any amount of beer directly to retailers.

Also, any brewer with yearly production above 50,000 barrels may sell up to 1,000 barrels directly to retailers yearly before the separate warehouse provision takes effect.

\$6,000 in donations

The beer distributors said the bill is needed to preserve the state's regulations that govern beer sales.

Wisconsin's system, similar to those in other states, promotes responsible marketing of beer, the wholesalers said.

But some industry observers said there is no evidence to support those claims. Some large retailers have said they could sell beer at lower prices if they could buy directly from breweries.

Overhanging the debate is the political clout of the wholesalers association.

The association donated \$6,000 to state legislative campaign committees during the first six months of 2005. The donations from the association's political action committee were split evenly between Democratic and Republican coffers.


The association also provided \$24,838 in state campaign donations in 2003 and 2004, including \$3,000 to Gov. Jim Doyle's re-election committee and \$4,188 to legislators who are sponsoring the bill, according to Wisconsin Democracy Campaign, a government watchdog group.


The legislation is the result of a U.S. Supreme Court decision in May.


The court ruled that state laws in New York and Michigan that banned direct interstate wine shipments to consumers were unconstitutional and anti-competitive. Although that decision applied just to wineries, it had strong similarities to a lawsuit challenging a Washington state law that bars retailers from buying beer, wine and spirits directly from breweries, wineries and distillers.


Costco Wholesale Corp., which operates warehouse-style stores and plans to expand into the Milwaukee area, filed the Washington lawsuit.


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Costco said it could sell alcohol at much lower prices if it could buy the drinks directly from beverage producers and bypass wholesalers.

After the ruling, beer distributors in Wisconsin and other states moved to shore up laws protecting their middleman roles.

The bill being considered in Madison is a result.

From the Nov. 8, 2005, editions of the Milwaukee Journal Sentinel
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Beer Industry Agreement Keeps Taps Flowing

By Patty Murray
Wednesday, November 9, 2005

(UNDATED) There's a truce between Wisconsin's small beer makers and the distributors who take the product to market. Earlier this week, the two sides came to an agreement they say will protect small breweries and insulate the wholesalers from potential lawsuits.

The Wisconsin Beer Distributors Association wanted legislation that would have required small beer makers to maintain warehouse space and use wholesalers to take beer to market. Eric Jensen is the Association's Executive Director. He says the law was necessary because of a U.S. Supreme Court decision released in May. That had to do with wine sales, but Jensen says it could have been applied to Wisconsin's beer industry. He says the ruling means all beer makers must be treated equally regardless of their size or location, but Wisconsin statutes don't quite do that. He says this legislation is a pro-active attempt to remedy it before a suit gets filed.

Under the compromise, small brewers must still use distributors in most circumstances, but there are emergency exceptions that would let the brewers use their own trucks to move beer if, for some reason, the wholesaler is unable or unwilling to do so.

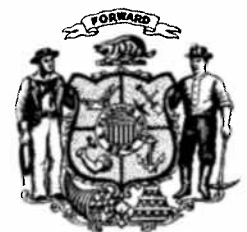
That pleases the President of the New Glarus Brewing Company, Deb Carey. She says her company will be allowed to do emergency distribution, and had an experience where it would have been useful. She had a wholesaler call on a Thursday to say they'd been sold and would not be able to distribute beer as of the next Monday.

The compromise legislation also removes the warehousing requirement for small breweries.

The measure was approved by the Assembly before the compromise was reached earlier this week. When and if the Senate approves it, the measure will have to go back before the lower house.



WISCONSIN STATE LEGISLATURE



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Doyle to ink beer bill

MADISON - Gov. Jim Doyle will ice a deal reached between the state's small brewers and beer distributors over who can ship which beer where and in what quantities.

Doyle will sign Assembly Bill 787, an amended version of which passed both the Assembly and Senate on Wednesday, said Dan Leistikow, a spokesman for the governor.

The bill, which had some small brewers and distributors at odds, in effect defines what constitutes a small brewery. Under the bill, brewers of fewer than 50,000 barrels a year will be allowed to deliver beer directly to retailers without having to have a separate warehouse. Brewers that produce more must have a warehouse or rely on a distributor for all but 1,000 barrels a year.

"He's pleased the two sides have come together to develop a compromise that assures up-and-coming breweries can continue to grow," Leistikow said of Doyle.

The bill was needed after the U.S. Supreme Court ruled Michigan and New York couldn't give preferential treatment to in-state wineries, said Jim Bender, an aide to state Rep. Jeff Fitzgerald, R-Horicon, who introduced the bill. Wisconsin was vulnerable to lawsuits because in-state breweries were allowed to ship directly to retailers, while out-of-state brewers weren't, Bender said.

Distributors say the bill also could help prevent big-box retailers from undercutting the current three-tier distribution system by purchasing large quantities directly from a brewer.

The final version of the bill was the result of a compromise urged by lawmakers after small brewers objected to a previous version passed by the Assembly last week, said state Sen. Ron Brown, R-Eau Claire, the chief Senate sponsor of the bill.

Before being amended, the bill would have required brewers who ship more than 30,000 barrels a year directly to retailers to have a separate warehouse or use a distributor - a number objected to by some members of the Wisconsin Brewer's Guild.

"We're relieved with the compromise, and it's good to know the Legislature hasn't totally given up on the small brewer," said Deb Carey, owner of New Glarus Brewing Co., who serves on the board of directors of the Wisconsin Brewers

Guild.

The bill also requires brewers who use distributors to enter exclusive contracts for brands and territories, but another amendment added Wednesday will allow brewers to ship directly to retailers for a year if they lose a distributor. Another change will allow all brewers to ship up to 1,000 barrels a year directly to special events, such as community festivals.

Consumers, brewers and distributors are unlikely to notice immediate changes because just 1,500 barrels of beer a year are now shipped directly to retailers, Bender said. The majority of brewers, large and small, rely on distributors to get their product to market, and many of the state's smaller brewers would have to grow significantly before they'd be affected.

New Glarus Brewing Co. is among the state's largest small brewers and is expected to produce about 44,000 barrels this year. By comparison, Milwaukee-based Miller Brewing Company is expected to produce about 6.4 million barrels of beer this year, according to figures collected by the state Department of Revenue. The second largest brewer in Wisconsin is Pabst Brewing Co., which is expected to produce about 1.3 million barrels a year. Third is Leinenkugel Brewing, which is expected to produce 287,838 barrels.

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