

Wisconsin Budget Amendment Could Negatively Impact Craft Breweries, Wineries and Distilleries

A draft amendment to the 2017-19 Wisconsin budget could negatively impact Wisconsin's craft breweries, wineries and distilleries. There is a fear that the proposed amendment will be slipped into the Wisconsin budget bill, at the last minute, under a 999 motion—a procedure pursuant to which legislation can be anonymously proposed. Wisconsin's craft breweries, wineries and distilleries have banded together in opposition to the proposed amendment by forming the Wisconsin Craft Beverage Coalition.

Here are some frequently asked questions about [the proposal](#).

What is the main thrust of the proposal?

The proposal would more strictly define Wisconsin's three tier system of alcohol beverage distribution, which generally provides that producers (e.g., breweries, wineries and distilleries) must sell their products to a distributor, for the distributor to then sell the products to retailers (e.g., restaurants, bars and grocery stores). Essentially, a player from one tier is not supposed to perform the activities of another tier. For example, a producer is generally not supposed to engage in distributing its product—the producer must rely on a distributor for that function. In addition, a player from one tier of an alcohol category (beer, wine or spirits) is not supposed to own any part of a player from any other tier of that beverage.

The proposal creates an automatic presumption that—unless there is a statutory exception—the three tiers for each of beer, wine and spirits cannot "cross" for purposes of either business activity or ownership. For purposes of business activity, this means that a producer of one type of alcohol beverage (say, a winery) generally cannot act as a distributor or retailer of its type of alcohol beverage (wine) or any other type of alcohol beverage (beer or spirits). For purposes of ownership, this means that a winery cannot have an ownership interest in any producer of the other kinds of alcohol beverages (beer or spirits).

But there are existing statutory exceptions to the above generalities. For example, under the Wisconsin Statutes, breweries and brewpubs may offer on-premises sales to customers, most craft breweries may self-distribute to retailers,

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and brewpubs may self-distribute a limited amount of barrels to retailers. The Wisconsin Statutes also provide that, generally, wineries and distilleries may offer on-site sales to customers and that wineries may ship directly to individuals. According to the proposal, such existing statutory exceptions would remain in force.

However, suppose a producer contemplates a business practice about which the Wisconsin Statutes are silent? Under that scenario, the proposal would effectively prohibit the producer from acting.

Here is a real life example: The Wisconsin Statutes expressly permit *brewpubs* to sell growlers; conversely, they do not expressly provide that *breweries* may sell growlers.^[1] Most (if not all) breweries have interpreted this as an inadvertent omission in the statute, and so they do sell growlers. After all, what is the difference between a brewpub selling growlers and a brewery selling growlers? The proposal would provide an argument that growler sales by breweries is, strictly speaking, a crossing of the three tiers—the producer acting as a retailer—and that the statutory silence results in a prohibition of growler sales by breweries. That would be an unfortunate result for lovers (like me) of growlers to go from breweries.

What impact will the amendment have upon breweries, wineries, and distilleries?

Will brewery taprooms be outlawed as a result of the proposal? Will breweries and brewpubs lose the ability to self distribute their product? Will wineries and distilleries lose the ability to have on site sales?

No. Contrary to some reports, the proposal does not prohibit these business practices, as they are already specifically permitted by statute. That said, the proposal does open up a slippery slope argument: If the three tier system is to be so rigorously enforced, then one could argue that the existing exceptions must be stricken. However, for what it is worth, the proposal's drafting instructions state: "This proposal would not modify existing statutory exceptions which allow for certain existing specified cross tier interests and business practices."

Does the proposal really create a "Liquor Czar" for

Wisconsin?

Yes. Currently, the Wisconsin Department of Revenue is the agency that administers the regulation of breweries, wineries and distilleries. The proposal creates a new office designed to usurp that role: the Office of Alcohol Beverages Enforcement. This office would be located within the Department of Revenue and would be headed by a political appointee—the so-called "Liquor Czar." The proposal's drafting instructions note that initial funding for the new office would come from alcohol-related permit and administrative fees; however, no source of future funding is identified. What problem this new office would solve is unknown. Does this really look like a Wisconsin that's "Open for Business"?

Some reports indicate that there is no legislative support behind the proposal—is that accurate?

The available information is conflicting. Senators and Representatives from both parties have spoken out against the proposal, some more adamantly than others. That said, political parties are not unified in their views. And the ability of a legislator to anonymously use the 999 motion means that public pronouncements are not necessarily gospel.

One distressing scenario—all too common in politics—would see legislators choosing between voting against an entire budget bill just because of the proposal, or voting for the budget bill (while holding their noses).

The best course would be to avoid that scenario entirely and prevent the proposal from ever being added to a budget bill.

So, if you do not support the proposal, you should still contact [your Senator](#) and [your Representative](#) to urge them to oppose it. (You can find your Senator and Representative on [this map](#).) A sample letter is attached as Exhibit A.^[2]

What prompted this proposal?

The proposal is purportedly intended to counter a February 2017 Wisconsin Department of Justice informal opinion that held that a winery could serve beer so long as the winery complied with certain other statutory requirements. The proposal's drafter(s) believe this opinion resulted, inappropriately, in "two separate and parallel three tier structures: one for fermented malt beverages and one for intoxicating liquor." The proposal's drafter(s) are trying to ensure



that there is "a single three tier system of production, distribution, and retail sale of alcohol beverages."

Who is behind the proposal?

No one has claimed responsibility. The drafting instructions regarding the proposal contain a header of "WI TLW_WBDA_WWSI_Drafting Instructions Cross Tier and Alcohol Beverage Office." The abbreviations likely stand for the Tavern League of Wisconsin, the Wisconsin Beer Distributors Association and the Wisconsin Wine and Spirit Institute. So speculation has naturally focused on these three groups. However, the Tavern League of Wisconsin and the Wisconsin Beer Distributors Association have each issued statements disclaiming ownership of the proposal. Further, New Glarus Brewing Company's [Deb Carey told Brewbound](#) that she doesn't think the Tavern League of Wisconsin is behind the proposal.

Importantly, Wisconsin's craft breweries, wineries and distilleries were not consulted about the proposal. They should, of course, have a seat at the table when alcohol beverage regulatory changes are being discussed.

If you have additional questions about the proposal or any other regulations that impact the brewery, winery or distillery communities, please feel free to contact [Robert Heinrich](#).

EXHIBIT A: SAMPLE LETTER FOR WISCONSIN SENATORS AND REPRESENTATIVES

Dear Senator/Representative,

I am writing in opposition to the recently disclosed potential budget amendment that would amend Chapter 125 of the Wisconsin State Code. Please do not support this possible amendment.

The proposal opens the door to regulatory changes that would threaten the continued growth of many craft breweries, wineries and distilleries.

Wisconsin's craft breweries, wineries and distilleries provide quality jobs and foster economic development. Their ability to grow should not be restricted by the efforts of unknown groups who refuse to step into the light. Any proposed regulatory changes should be made only after an open debate involving all affected parties.



Thank you for your support of Wisconsin's craft breweries, wineries and distilleries.

Sincerely,

[Name]

[1] [This article](#) provides a summary of a proposed Wisconsin bill that in 2016 would have expressly permitted breweries to sell growlers. The legislation died.

[2] While you're at it, if you live in the districts of Paul Ryan (R WI 1) or Glenn Grothman (R WI 6), please contact them to urge them to support the federal Craft Beverage Modernization Tax Reform Act—the CBMTRA would slash federal excise taxes for the vast majority of Wisconsin's craft breweries and distilleries and expand federal excise tax credits for craft wineries. Representatives Ryan and Grothman are the only members of Wisconsin's Congressional delegation who are not co-sponsors of this bipartisan legislation. [This article](#) contains links to contact Representatives Ryan and Grothman and provides a sample letter.

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