



DUEY STROEBEL

STATE SENATOR • 20TH DISTRICT

Testimony on Senate Bills 56 & 57

February 4, 2021

Good afternoon again Senator Felzkowski and colleagues of the Senate Committee on Government Operations, Legal Review and Consumer Protection. In the interest of time, Representative Tauchen and I have combined our testimony on Senate Bill 56 and Senate Bill 57. As a whole, I believe today's public hearing on both bills serves as a great starting point and opportunity for highlighting the growing interest in bringing more competition, consumer choice, clarity, flexibility, and innovation to Wisconsin's system of alcohol regulation. This comes against a backdrop where a growing number of states have introduced similar proposals seeking to bring much-needed modernization to their three-tier regulatory systems, with at least 30 states currently allowing some form of home delivery from licensed retailers.

Representative Tauchen and some of the speakers to follow will be better able to speak to the details of both bills and any questions from committee members, but I will provide a brief summary of the proposals:

SB 56, known colloquially as "Click and Collect," would allow Class A (e.g., a grocery store) and Class B (e.g., a bar or restaurant) retail alcohol licensees to provide a curbside pickup service for remote orders placed by Internet or by phone for pre-packaged alcohol products to be consumed away from the licensed premises. The pickup would occur in the parking lot of the licensed retailer, with the sale occurring after the customer is verified to be of legal age and comes into physical possession of the alcohol product(s).

SB 57 would allow the same Class A and Class B retail alcohol licensees to offer a localized home delivery service for pre-packaged alcohol products ordered remotely by consumers for consumption away from the licensed premises. To allow for growth and upscaling of home delivery, the bill allows the alcohol licensee *or* an independent third-party delivery service (e.g., DoorDash, GrubHub, Postmates) to complete the delivery. All delivery drivers would be required to first complete an alcohol server training course. The bill requires full payment by the customer at the time the remote order is placed, which is considered the point of sale. However, the bill provides a refund and return mechanism for orders requiring cancellation (either at the discretion of the delivery driver or the customer). At the point of delivery, the delivery driver would be required to verify that the customer is of legal age both visually and electronically. Finally, retail licensees and independent delivery service providers would be required to retain records of customer age verification.

Representative Tauchen and I welcome input on both pieces of legislation and look forward to continued discussions with colleagues and stakeholders pertaining to these two bills and the modernization and improvement of Wisconsin's alcohol statutes as a whole. Thank you for your time.



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Testimony for Senate Bill 56 and 57
Senate Committee on Government Operations, Legal Review, and Consumer Protection
February 4, 2021

Thank you, Chairman Stroebel and committee members, for allowing me to testify today on Senate Bill 56 and 57, which is related to remote orders for the sale of alcohol beverages to be picked-up on retail licensed premises (aka "Click-and-Collect"), and also relating to alcohol beverages delivery and the face-to-face requirement for retail sales of alcohol beverages.

When I introduced these pieces of legislation last Session, I did so to provide consumers more choice and provide new revenue opportunities for businesses in Wisconsin. I believe in legislation that does not pick "winners and losers," but instead encourages growth and opportunity to all retail license holders. There was a dramatic shift due to the COVID-19 pandemic, the resulting public health protocols, and in-person restrictions on local businesses.

These pieces of legislation provide consumer choice and a necessary lifeline for local businesses.

These two bills do the following:

Senate Bill 56 "Click and Collect"

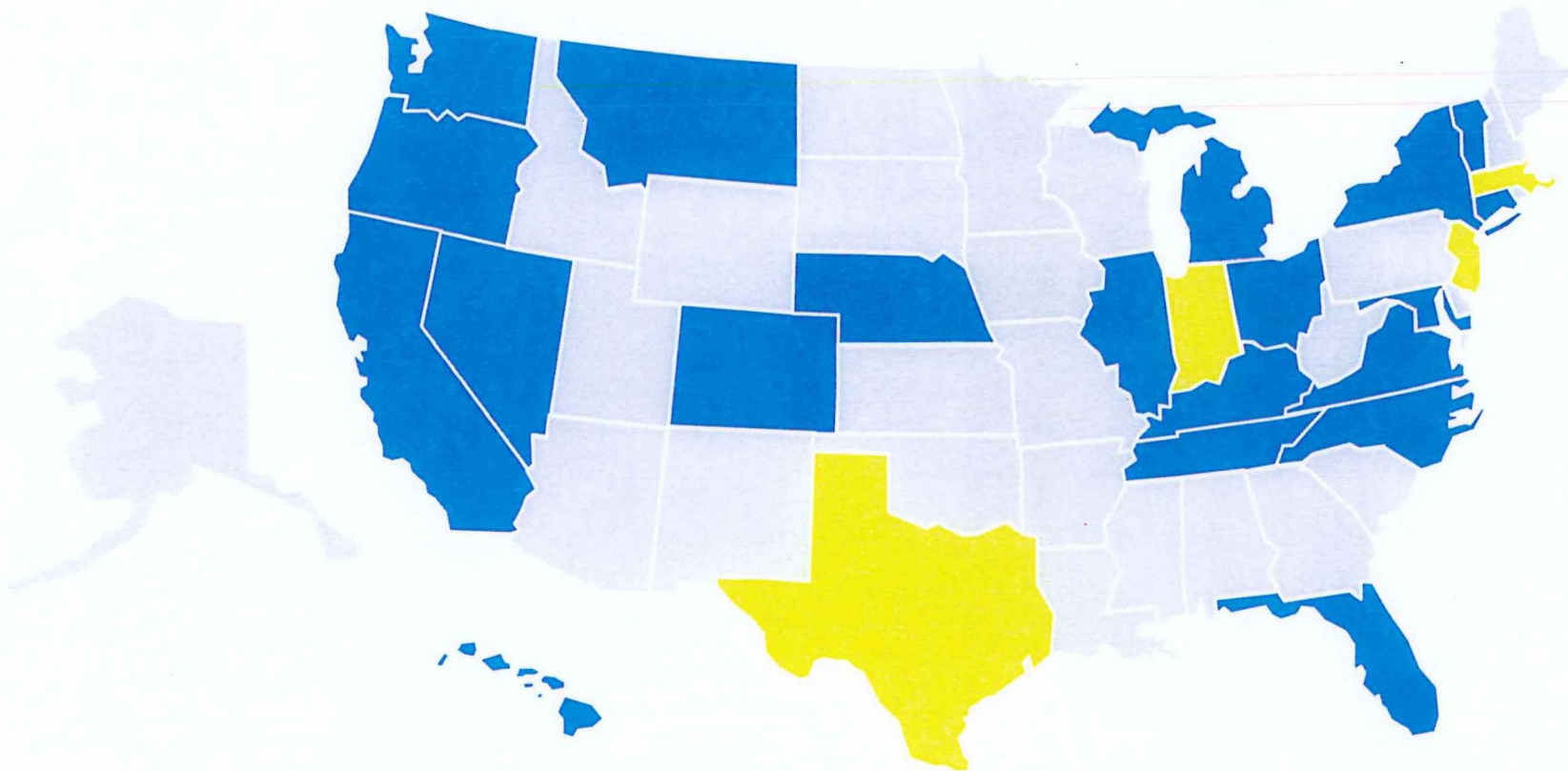
1. Allows Class "A," "Class A," Class "B," or "Class B" licensees to accept remote orders and to allow for the curbside pickup via the existing license. I've included the definitions and examples of these license classes from the Department of Revenue in the attached document.
2. Maintains age verification and ID checks for the retailer.
3. Prohibits municipalities from treating licensee holders differently via ordinances that impose additional restrictions on retailers' sales via remote orders.




Senate Bill 57 "Wisconsin Home Delivery"

1. Allows a retailer (Class "A," "Class A," Class "B," or "Class B" licensee) to deliver alcohol directly or through an independent third-party delivery service that derives less than half its revenues from selling alcohol beverages.
2. Deliveries can be made during the same hours as on-premise sales.
3. Payment must be received on the licensed premises at the time of order. This can be in-person, online, or over the phone. Payment cannot be accepted at delivery.
4. Verifies both visually and via electronic scanning that a customer is at least 21 years old.
5. The following information must be kept for one year after delivery: signature of recipient, quantity delivered, recipient's name, and recipient's address.
6. It is the licensee's responsibility to ensure the customer making the order is 21 or older at the time of sale. The delivery person is responsible for doing the same at the time of delivery, utilizing an electronic scan.
7. The delivery personnel must be 21 years of age, ensure the recipient is not intoxicated, and complete "TIPS" (bartender) training or the equivalent.
8. If the order is not completed, alcohol can be returned to the store and a refund issued.

I want to personally thank Senator Duey Stroebel for authoring these important consumer and business-based reforms. I'd like to thank Senator Kelda Roys for her cosponsorship as well. I have tried to be transparent and forthcoming with various groups and legislators to get the best possible reform enacted into law this Session. COVID-19 has expedited the need for these types of reforms. Again, thank you for hearing my testimony, and I would be happy to answer any questions you might have.

States Allowing Delivery of Spirits from On-Premise Retailers



-  States with permanent laws allowing spirits delivery from on-premise retailers (4)
-  States allowing spirits delivery from on-premise retailers in response to Covid-19 (20)
-  No delivery from on-premise retailers allowed

* Rules and regulations vary by state.



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City of Milwaukee Testimony on SB-22, SB-56, and SB-57
Senate Committee on Government Operations, Legal Review & Consumer Protection

February 4, 2021

RE: City of Milwaukee request to amend SB-22, support SB-56 and oppose SB-57.

Chairman Stroebel and committee members, my name is Jim Bohl and I am with the Intergovernmental Relations Division of the City of Milwaukee. I appreciate the opportunity to testify today on Senate Bills 22, 56 and 57. In addition to currently serving as a lobbyist for the City, I have the unique perspective of having served as a Milwaukee Alderman for over 18 years, with 14 years of service on the City's alcohol licensing committee, including two stints as its chairman.

There are a couple of measures in these bills being heard today which the City sees as beneficial, namely some efforts to ease access of legal alcoholic beverage purchases by consumers, along with the desire to assist struggling businesses during the economic turmoil we are facing.

However, there is one specific issue that looms large over the ramifications of these bills and that is the dramatic expansion of state alcoholic beverage purchase mandates which co-opt local control. Some of the law changes being sought in these bills are being expressed as a long-term fix for an economic situation that we hope is short-lived. Nonetheless, the impact on decisions being weighed, including the possible increase of illegal consumption of alcoholic beverages while driving; the expanded hours upon which purchases for off premise purchases can be made; and the ability to legally enforce purchases, should not be done lightly. It is locally where problems may arise from these decisions and it is locally where the legal purchases of alcoholic beverages are enforced. It is for these reasons that the City is taking varied positions on these three bills.

SB-22

Regarding SB-22, the City hopes the bill can be amended to establish it as enabling legislation. Again, our issue is not so much with giving restaurants, taverns and supper clubs a means of financial benefit by permitting to-go sales of sealed, mixed hard liquor and wine drinks by the glass, or consumers the ability to make these purchases for safe consumption in their homes. The issue is inconsistency.

Authorization under the statutes already exists from 2019 Wis. Act 6 for “Class B” establishments to provide pre-packaged retail purchases of hard spirits and bottles of wine if a municipality elects to allow it by ordinance enactment. What the proposed legislation in SB-22 as currently written does is circumvent a municipality’s ability to allow intoxicating liquor sales in another form—by the glass purchases.

Local governments should be able to decide whether or not they believe a single glass container, even if sealed at the onset of a purchase, might impact open consumption in a vehicle. Furthermore, this bill allows for bars and restaurants to circumvent the current 9:00 pm ordinance for Milwaukee, and other local retail closure laws, for retail intoxicating sales off premise otherwise restricted to establishments with “Class A”, Class “B” or “Class C” licenses (i.e., retail liquor stores, and wine and grocery establishments). In effect, this bill would permit “Class B” licensees to allow purchases of hard liquor for take home consumption up to bar time—and in doing so it restricts municipalities of any say on the matter. Lastly, the City has concerns that any potential gross violations that might come by this policy could be weighed only by suspension or by the wholesale non-renewal or revocation of an entire “Class B” license. If authorized locally, a municipality could elect to allow to-go sales of mixed spirits and wine by the glass as an addendum to a license, much like similar authorization is given for extension of a premise at restaurants. If violations occurred that were specific to that policy, a municipality could simply opt to take that authority away without jeopardizing the overall premises license.

In summary, the City believes that not only should consistency hold with established state laws governing off-premise sales of intoxicating liquor, but that the decision is best left as an option for local governments to weigh and decide upon for themselves. We therefore request that SB-22 be amended to reflect this change.

SB-56

The City supports SB-56. We regard the use of remote orders for the sale of alcoholic beverages to be picked up on retail license premises as largely a minor extension to current on premise sales. While the purchase of alcoholic beverages could be made remotely, the requirement rests on a licensed establishment with a licensed manager or bartender to supervise the enforcement of legal age purchases on premise. The same holds true for adherence to hours during which alcohol is picked up. These enforcement practices are mandated by law currently and we believe can be effectively enforced under this proposed

change. Lastly, we favor this bill as it would not further alter or expand local retail purchase hour restrictions of intoxicating beverages.

SB-57

The City opposes SB-57. While SB-57 would provide an additional mechanism of convenience for off-premise purchases of alcoholic beverages by online or telephone service, the City has strong reservations about the efficacy of both licensed premises delivery services and those used by third-party delivery services. We oppose any off-premise retail sales that would expand retail sales beyond our current 9:00 pm ordinance. We also have questions about the bill's language, which appears to not address viable hours of delivery so long as the sale was conducted during the legal hours of purchase. Finally, the City has strong concerns that this bill mandates this service upon municipalities and does not authorize its use under enabling legislation.

Under state law, licensed retail establishments are subject to police enforcement actions for legal age sales. They must be open to police inspection and must have a licensed manager or bartender, or someone who is working under the direct supervision of that person, on the premises. Licensed bartenders and managers must take and pass a responsible beverage course in order to be licensed for sales. But in this case, the responsibility rests on approved licensees to properly enforce all laws surrounding legal sales. Licensed bartenders are subject to police background checks when undergoing evaluation for a license. The fitness of a potential alcohol delivery driver who has an extensive background with drug sales violations would be heavily scrutinized if such a license were required. This, however, is not an option under this bill.

While there is a designated mechanism in SB 57 calling for delivery drivers to check for proof of age and obtain a photographic copy of a license or other legal identification which might be retained for a period of one year, the bill does not call for the delivery service driver to be a licensed bartender with an understanding of the law and subject to suspension or revocation of the license if violations were to occur. With this bill, there is no consequential repercussions to prevent delivery violations from being allowed by a delivery person short of a potential municipal citation, and there is no ramifications found for violations by a licensed establishment or delivery service who may become chronic violators. Is it even realistic to assume delivery drivers will nullify transactions if they find a purchaser is inebriated? At the very least a bartender must be licensed and they and the establishments they work for can be held accountable through its own licensure for such violations on premise. Absolving licensed establishments from delivery violations that may come from an establishments' own delivery service is simply an invitation for overlooking the potential intoxicated state of a purchaser.

Lastly, it is unclear in the bill, but it would appear that this proposal would mandate allowance for "Class B" establishments to conduct sales up to the legal bar time, circumventing local retail alcohol sales closing hour restrictions, and also provide delivery beyond those hours. Are "Class

A", Class "B" and "Class C" establishments only going to be allowed to conduct sales up to 9 pm or the locally designated retail ordinance restriction time under this bill? If so, that is an inconsistency.

In Milwaukee's licensed retail alcohol establishments, police will periodically conduct sting operations using underage police aides. It is not uncommon to encounter violations of this law. Further, Milwaukee police will also occasionally encounter violations of our legal hours of sale ordinance. With regard to SB-57 and the use of delivery services, the ability to have police openly inspect or conduct enforcement is impossible. While this bill is well-intentioned, it guts enforcement mechanisms currently in place for cities like Milwaukee for dealing with issues like after-hour and potential underage sales. Finally, this bill unravels the measure of local control found in the aforementioned 2019 Wis. Act 9. As it stands, municipalities may elect or not elect to allow "Class B" establishments the ability to sell pre-packaged intoxicating liquor on a retail to-go basis. If this bill were to pass, those very establishments would have the ability to conduct such sales by delivery as a right, and to do so in a manner in which the potential enforcement of laws is weakened. We would ask the committee to either not pass this bill, or at the very least consider its passage only as enabling legislation.

I thank you for the ability to testify here today and stand ready for any questions you may have.



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Testimony

February 4, 2021

TO: Senate Committee on Government Operations, Legal Review and Consumer Protection
Senator DUEY Stroebel, Chair

FR: Kristine Hillmer, President and CEO

RE: Testimony in support of SB 22, SB 56 and SB 57

Thank you Mr. Chairman and members of the committee for hearing our testimony today. If possible, I would like to provide comments in support of all three alcohol related bills at this time, since our industry's desperate need for all three provisions are closely related.

The Wisconsin Restaurant Association represents over 7,000 restaurant locations statewide. Our organization represents all segments of the restaurant and hospitality industry; our membership includes food establishments of all types and sizes, such as seasonal drive-ins, supper clubs, diners, locally owned franchisees, fine-dining and hotels/resorts. Over 75 percent of our membership are independent restaurants and the majority of our members have alcohol licenses. Regardless of ownership type, all restaurants are the cornerstones of their neighborhoods and communities. Restaurants not only provide great food, drink and hospitality, they support schools, teams, charities and churches with fundraising and donations. They provide meeting places to celebrate, mourn and organize, or just provide a safe, tasty meal for a busy family. Prior to the pandemic, the restaurant industry employed nine percent of Wisconsin's workforce.

I am sure you all know the toll the COVID-19 pandemic has taken on the entire hospitality and tourism industry. The vast majority of restaurants have seen steep declines in their sales, steep increases in prices for supplies and services and in some places, severe restrictions on their ability to be open and safely serve customers. It seems like every time we turn on the news or read publications, public health officials across the country are scapegoating restaurants and other public facing businesses as places to avoid, or even worse, close in order to protect the public. And worst of all, our industry has been forced to lay off a large number of our employees, who in turn are suffering economically and having a hard time paying their own bills. Restaurant owners are desperately looking for ways to keep their employees they have working and to bring back those they were forced to lay off.

Wisconsin is one of a handful of states that does not allow mixed cocktails to leave the restaurant or allow alcohol to be delivered in any form.

Consumers can have a Friday night fish fry delivered from their favorite restaurant but cannot include a bottle of wine or six-pack of beer with that delivery. It is also not legal to carry out a house-made cocktail when customers pick up their dinner orders, but they can take home a growler of tap beer.

Even before the COVID-19 pandemic, restaurant industry surveys showed consumers were demanding the ability to have alcohol delivered. Restaurants and bars were experiencing a decrease in alcohol sales as

consumers drank less on premise. Consumers were also ordering restaurant quality food to enjoy in their homes at a rapidly increasing rate and were demanding alcohol delivery with those orders. Wisconsin has a high per capita number of eating and drinking establishments. Competition is fierce and Wisconsinites are very price conscious. Food sales for sit-down restaurants are very low margin or break even at best. Restaurants depend upon bar sales to keep their restaurants in the black.

Now consumers are staying home and avoiding dining in restaurants and customers are demanding cocktails-to-go and the safe delivery of alcohol with their restaurant deliveries. The Marquette Law School poll states that 50 percent of Wisconsinites are not comfortable dining inside a restaurant – that is a huge number of people who are only patronizing their local restaurants via carryout and delivery. WRA's recent survey shows over 76 percent of Wisconsin consumers support both cocktails-to-go and the ability for alcohol to be delivered to their homes. Attached to this testimony are the results of a survey we conducted in late November, giving you more detailed information on consumer demand for both cocktails-to-go and alcohol delivery.

Industry economists are predicting that restaurants with bars and inside dining will not see a “full” recovery until at least 2024. Consumers will be slow to returning to inside drinking and dining. Restaurants in areas with strong recreational tourism may see a return of customers at a faster rate than those in other areas of the state. However, table service restaurants in the majority of the state will not see a fast recovery and in order to survive, they need to tap those customers who are staying home. Over 10 percent of restaurants have already closed – we estimate at least another 20-30 percent will not survive the next few months unless they are able to improve sales, whether inside their restaurants or in consumer’s homes.

Now more than ever restaurants need these kinds of tools to keep their restaurants afloat and to keep their team employed. Passing all three of these bills to allow cocktails-to-go, allow alcohol delivery and clarify click and collect activities makes sense. It helps restaurants stay in business, keep their employees and provides the safe service and delivery of alcohol that consumers want.



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Wisconsin Off-Premises Alcohol Survey

Summary of Results – November 2020

Consumer Usage of Off-Premises Alcoholic Beverages

- Sixty-one percent of Wisconsin adults said they purchased takeout or delivery food from a restaurant for dinner during the week before they were surveyed.
 - Among this group, 20 percent of adults age 21+ said they included beer or wine with one of their takeout orders.
 - Among this same group, 29 percent of adults age 21+ said the option of including alcoholic beverages with their order would make them more likely to choose one restaurant over another similar restaurant.

Consumer Sentiment about Off-Premises Alcoholic Beverages

- Seventy-six percent of Wisconsin adults said they would favor a proposal that would allow customers to purchase cocktails or mixed drinks (made with distilled spirits) with their takeout and delivery food orders from restaurants. This is in addition to beer and wine, or factory sealed spirits, which is currently allowed for takeout only.
 - The intensity of support for this proposal is very strong. Twenty-eight percent of adults said they strongly favor the proposal, while only 7 percent said they strongly oppose it.
- A strong majority of adults across all demographic categories said they would favor this proposal. Millennials, Gen-Xers and individuals in higher-income households were the most likely to say they would favor this proposal.

Support among Wisconsin adults for a proposal that would allow customers to purchase cocktails or mixed drinks (made with distilled spirits) with their takeout and delivery food orders from restaurants. This is in addition to beer and wine, which is currently allowed (for takeout only).

Demographic	Total Favor	Strongly Favor	Somewhat Favor	Total Oppose	Somewhat Oppose	Strongly Oppose
All adults	76%	28%	48%	24%	17%	7%
Gender						
Male	75%	31%	45%	25%	16%	8%
Female	76%	25%	51%	24%	18%	6%
Age Group						
Millennials (24-39)	83%	36%	46%	17%	13%	5%
Gen X (40-55)	80%	32%	48%	20%	16%	4%
Baby boomers (56-74)	70%	20%	50%	30%	18%	12%
Household Income						
Less than \$50,000	68%	19%	49%	32%	22%	10%
\$50,000 to \$99,999	78%	33%	44%	22%	15%	7%
\$100,000 or more	82%	32%	50%	18%	14%	4%
Type of community						
Urban	77%	35%	42%	23%	17%	6%
Suburban	76%	25%	51%	24%	19%	5%
Rural	73%	26%	47%	27%	15%	12%

Source: National Restaurant Association, online survey of 500 Wisconsin residents age 18 and older conducted by Engine, November 24-29, 2020
 Note: Rows may not add precisely to 100% due to rounding.

Good afternoon, Mr. Chairman and members of the committee.

My name is Molly Moran. I am here on behalf of my business Table Wine. I own a wine shop and bar here in Madison that's been in business for just over five years. In a typical year, we employ about 6 people, but for the past year, our staff is down to 3 people plus myself. We truly are a small, mom and pop shop. We hold a Class B liquor license, so all of the alcohol-related bills before the committee today apply to me. I am also here on behalf of the Wisconsin Grocers Association.

I am here in support of SB 56 & SB 57, which allow all retailers to deliver alcohol and clarify alcohol pick-up laws. I'm asking this committee to not pick winners and losers by only passing the "cocktails to go" bill but rather to allow ALL retailers to benefit from delivering alcohol and providing curbside service.

This past year brought about many unforeseen challenges to my business. To make it safe and easy for people to see what we have in the store, we've created an online gallery of sorts where people can read about every product we carry. However, because of current restrictions, they can't actually purchase the wine right then and there. More than $\frac{2}{3}$ of my customers currently use this online service, and it's clear that it's a direction people want to head. I need to remain competitive with online wine websites that already exist and ship wines from out of state to my customers' doorsteps. For example, my in-laws in Waukesha County are able to get on wine.com and buy wine from some unnamed corporation to have shipped to family here in Madison. They can't buy online from me, their actual family member who owns a wine business in this state, and have me deliver it within my own city limits. Being able to sell alcohol online and deliver it would go a long way in helping me stay relevant.

Additionally, I have lost innumerable sales because I can't deliver alcohol. My holiday season was spent having to explain to people who wanted to shop local and support my business why I wasn't able to deliver wine to their parents for Christmas or why the gift recipient had to come inside my store during a pandemic. The loss of sales is particularly felt in corporate gift giving where delivery is essential to the buyers I've talked with. Just one corporate account stands to be worth what my shop brings in during a normal week, if not a whole month. Small businesses like mine, regardless of them being a bar or a retailer, would only stand to benefit from the passage of SB 56 & SB 57.

By supporting SB 56 & SB 57, you will ensure a level playing field and expand pick-up and delivery options for both Class A licensees (grocery stores) and Class B licensees (restaurants & bars). I would like to ask for your support to **allow all retailers the ability to deliver alcohol and provide curbside service by supporting SB 56 & SB 57.**

**Senate Committee on Government Operations, Legal Review & Consumer Protection
February 3, 2021**

2021 Senate Bill 57

**On behalf of the Wisconsin Beer Distributors Assoc. and the Wisconsin Wine & Spirit Institute
Testimony of Mike B. Wittenwyler**

Face-to-Face Sales Requirement a Key Element of Chapter 125

- Since the repeal of Prohibition, Wisconsin has relied on a three-tier system for the responsible distribution of alcohol beverages.
- The regulatory framework involves the sale of alcohol beverages from manufacturers to licensed wholesale distributors to retailers to consumers through face-to-face, on premises sales.
- This current statutory framework provides uniform statewide regulation of the sale of alcohol beverages for the benefit of the public health and welfare and economic stability.
- Moreover, “[f]ace-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.”¹
- By weakening the face-to-face sales requirement of state law, and permitting the sale of alcohol beverages to take place at an unlicensed premises, the legislation weakens the effectiveness of state law.
- By weakening the requirements for face-to-face, on-premise retail sales and enabling unlicensed, independent third-party delivery services, the bill also weakens the important distinction between in-state and out-of-state retailers, and its role in effective taxation and regulation.
- Internet sales are already out-of-control and illegal alcohol beverage deliveries into Wisconsin by third-party common carriers need stop.

Increased Litigation Risk

- The proposed legislation would provide benefits to in-state businesses, but not out-of-state competitors, exposing the state to litigation and disruption to the state’s ability to regulate alcohol beverage sales.
- In *Granholm v. Heald*, the U.S. Supreme Court held that the direct shipment laws in both Michigan and New York discriminated against interstate commerce in violation of the Commerce Clause by allowing in-state wineries to sell wine directly to consumers in each respective state but

¹ Wis. Stat. § 125.01.

prohibiting out-of-state wineries from doing the same (or, at the least, making direct shipment from an out-of-state winery impractical).²

- The Court struck down two state laws that gave in-state wineries a competitive advantage over out-of-state wineries, reasoning that “[s]tates may not enact laws that burden out-of-state producers or shippers simply to give a competitive advantage to in-state businesses.”
- The proposed legislation could invite claims from similarly situated out-of-state retailers that they are at a competitive disadvantage by not being allowed access to the remote order and delivery market in Wisconsin.
- The bill authorizes a business model for an in-state retailers that could be made available to similar out-of-state entities, but denies them access to do so on equal terms.
- Any erosion of the face-to-face sales requirement, such as proposed here, places current state law at risk of challenge under *Granholm*.
- Other states that allow for in-state delivery by retailers and third-party delivery companies are already experiencing such litigation, including:
 - *Lebamoff Enters., Inc. v. O’Connell* (Indiana retailer suing to deliver to Illinois consumers);³
 - *Lebamoff Enters., Inc. v. Whitmer* (Indiana retailer suing to deliver to Michigan consumers);⁴
 - *Sarasota Wine Mkt., LLC v. Schmitt* (Florida retailer suing to deliver to Missouri consumers);⁵
 - *Chicago Wine Co. v. Holcomb* (Illinois retailer suing to deliver to Indiana consumers);⁶
 - *Tannins of Indianapolis, LLC v. Taylor* (Indiana retailer suing to deliver to Kentucky consumers);⁷
 - *Anvar v. Tanner* (Massachusetts retailer suing to deliver to Rhode Island consumers);⁸

² 544 U.S. 460 (2005).

³ No. 16-CV-8607 (N.D. Ill. Filed Sept. 1, 2016).

⁴ 956 F.3d 863 (6th Cir. 2020), *cert. denied*, No. 20-47, 2021 WL 78088 (U.S. Jan. 11, 2021).

⁵ No. 19-1948 (8th Cir. filed May 8, 2019), *argued* Sept. 24, 2020.

⁶ No. 19-CV-2785 (S.D. Ind. filed July 8, 2019).

⁷ No. 19-CV-504 (W.D. Ky. Filed July 10, 2019).

⁸ No. 19-CV-523 (D.RI. filed Oct. 3, 2019).

- *Bernstein v. Graziano* (New York retailer suing to deliver to New Jersey consumers);⁹
- *B-21 Wines, Inc. v. Guy* (Florida retailer suing to deliver to North Carolina consumers);¹⁰
- *Miller v. Canepa* (Illinois retailer suing to deliver to Ohio consumers).¹¹

Third-Party Delivery Further Increases Legal Risk

- The delegation of deliveries to an unlicensed, independent third-party further accentuates the risk the proposed legislation creates for the overall structure of Chapter 125.
- Under the bill, a remote order may be delivered by “a 3rd-party delivery service that is independent of the licensee and that derives less than 50 percent of its annual revenues associated with food and beverage delivery from the delivery of alcohol beverages.”
- The introduction of unlicensed, independent third-party delivery services undermines Wisconsin’s interest in effective taxation and regulation of alcohol beverages.
- Illegal Internet sales from non-Wisconsin retailers via FedEx and UPS are already a problem in search of a solution.
- The proposed legislation would exacerbate the situation while removing liability from retailers when using delivery services.
- As licensees, retailers have a greater incentive in complying with the law for fear of losing their license.
- No similar incentive applies for unlicensed, independent third-party delivery services.
- An unlicensed, independent third party delivery service does not need to be within Wisconsin or the same geographic region as the retailer making the sale.
- Common carriers located in other states could provide services to these retailers. And, there is no restriction on the number of deliveries that could be made to multiple consumers during any one trip.

⁹ No. 19-CV-14716 (D.NJ. filed July 3, 2019).

¹⁰ No. 20-CV-99 (W.D.N.C. filed Feb. 18, 2020).

¹¹ No. 20-CV-3686 (S.D. Ohio filed July 21, 2020).

If Delivery to Occur, Must Be a Function of a Licensed Retailer

- Any delivery of alcohol beverages must be within the existing three-tier system.
- It must be local delivery from beverage-alcohol licensed retailers, with delivery executed by their employees.
- The delivery person must conduct legal drinking age verification and provide beverages in safe, sealed containers with proper labeling.
- Deliveries must follow all laws/regulations including, for example, geographic restrictions and not be a sale for resale.
- Moreover, state and local government should regulate delivery to maintain proper oversight and uphold public health and safety standards until the alcohol is in the hands of a legal-age consumer.
- Accordingly, changes to this proposed legislation must include:

Employees

- Deliveries may be made only by individuals who are employed by the licensed retailer as a W-2 employee. Independent contractors, third-party delivery services and common carriers would be prohibited from making deliveries on behalf of a license retailer.

Licensed Retailers Only, Not Suppliers

- Suppliers (breweries, distilleries and wineries) are prohibited from making deliveries, including through any affiliated licensed retailers. The bill must make clear that any Class “A” / “Class A” or Class “B” / “Class B” retail license adjacent to or in connection with a brewery, distillery or winery premises is not eligible to make deliveries.

Same Day Sales within Hours of Operation

- Deliveries must occur on the same day that an order is placed and during the same hours of the retailer’s operation. Orders cannot be placed in advance and deliveries may not occur when the retailer’s licensed premise is not open for business and allowed to sell alcohol beverages. The same hours for alcohol sales apply for delivery. If a retailer has agreed to more restrictive hours as a license condition, it applies to alcohol beverage deliveries.

Method of Purchase

- A licensed retailer must accept an order directly from the individual consumer via telephone or an electronic means – website, app, etc. – that is controlled by the retailer. Orders may not be made through a third-party website, app, etc. that is not a purchase directly with a specific retailer.

Limitation on Amount of Alcohol Beverage Delivery Sales

- A licensed retailer's alcohol beverage sales must primarily occur at the retail premise. Alcohol beverage sales by delivery cannot be more than 50% of the licensed retailer's total monthly alcohol beverage sales. Delivery-only retailers are prohibited. Sale-for-resale or personal shoppers are prohibited.

License Approval and Notation

- A licensed retailer would need to notify its municipal clerk that it desires to engage in alcohol beverage delivery. The clerk would determine each year if the retailer qualifies under state law to do so and, if permitted, note on the license that alcohol beverage delivery is allowed by the retailer and will be occurring in the municipality. Municipal clerks must provide a monthly update to the Department of Revenue of all retailers with a license that allows for alcohol beverage delivery.

Delivery within Municipal Boundary

- A licensed retailer would be allowed to deliver alcohol beverages only to addresses within the boundaries of the municipality that issued the retail license. If a municipality desires, it may adopt by local ordinance a more restrictive mile radius within which all retailers in that municipality may deliver.
- Deliveries to other licensed premises are prohibited. With the exception of a hotel room, licensed retailer could not deliver to an address that is a licensed premise under a municipal license or state permit. A licensed retailer also could not make a delivery to any location that is a public place or college dormitory.

Delivery is Not Required to All Addresses

- A licensed retailer is not required to deliver alcohol beverages to all eligible addresses. It may decide to self-restrict delivery to college campuses or to individuals who frequently are intoxicated.

Original, Unopened Containers, Pre-Mixed Cocktails and All Brands

- A licensed retailer may deliver alcohol beverages that are in the original, unopened packages, containers or bottles. A Class B licensed retailer also may deliver pre-mixed cocktails.
- A licensed retailer cannot make only certain brands available for delivery. Any alcohol beverage product sold by the retailer must be available for delivery.

Underage and Intoxicated Persons

- As it would with any individual who purchases alcohol beverages on premise, a licensed retailer has an obligation to confirm that the individual is not underage or intoxicated. Proof of identity and age is required at time of delivery.

- A delivery person will be subject to a totality of the circumstances standard and expected to use reasonable judgment before handing over the alcohol beverages. Delivery should not be completed if there is an indication that the alcohol beverages will be consumed by minors.

Delivery Fees and Price of Alcohol Beverages

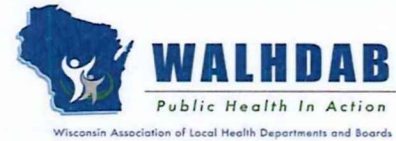
- A licensed retailer may charge an additional fee for delivery but the price of alcohol beverages must be the same as the price charged if purchased at the retailer's premise.

Recordkeeping

- For each sale, a licensed retailer must keep a record of the address to which delivery was made, the individual who purchased and received the alcohol beverages (it must be the same), the name of the delivery person and method of age verification. A retailer must use an identification verification software when scanning ID's at the time of delivery. Records must be kept for a minimum of three years.



Wisconsin Public Health Association
Wisconsin Association of Local Health
Departments and Boards



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DATE: February 3, 2021
TO: The Senate Committee on Government Operations, Legal Review and Consumer Protection
FROM: The Wisconsin Association for Local Health Departments and Boards
The Wisconsin Public Health Association
RE: Senate Bill 22, Senate Bill 56, and Senate Bill 57

WPHA is the largest statewide association of public health professionals in Wisconsin and serves as the collective voice for public health in Wisconsin.

WALHDAB is the statewide organization of city, county, and tribal board of health members and health department administrators providing a unified forum for improvement of public health at the local level.

Together, WPHA and WALHDAB represent over 1,200 public health professionals in communities across Wisconsin, striving to prevent, promote, and protect the health of Wisconsin residents. WPHA and WALHDAB want to provide feedback for Senate Bill 22, Senate Bill 56, and Senate Bill 57.

In recognition of the burden of excessive drinking in Wisconsin, we oppose any permanent change to state statute that makes alcohol more accessible. Binge drinking and heavy drinking can relate to other target public health problems like mental health and addiction. During the COVID-19 pandemic, this is not the time to increase access to unhealthy choices.

Key facts make alcohol misuse and excessive drinking one of the main priorities of public health professionals across Wisconsin:

- Wisconsin's adult **binge drinking rate exceeds the national average** (24% versus 16%).ⁱ
- Adult **binge drinking cost Wisconsin \$3.9 billion** in 2018.ⁱⁱ
- Binge drinking can result in preventable injury and even death from **accidents and violence**.ⁱⁱⁱ
- Recent studies suggest 60% of self-reported binge drinkers in the United States have **increased alcohol consumption during the pandemic**, while 28% of non-binge drinkers report increased alcohol consumption.^{iv} One study explains **reasons for increased drinking include increased alcohol availability** (34%) and increased stress (46%).^v
- **Bing drinking increases risk of chronic diseases**, such as colon, liver, and breast cancer

Examples of public health and safety controls missing from these bills are:

- Limiting container size and quantity;
- Requiring food/meal purchase to purchase alcohol for off-premises consumption;
- Limiting number of alcohol beverages purchased;
- Defining an end date;
- Including funding for law enforcement to implement interventions to prevent underage drinking and operating while intoxicated; and
- Funding emergency medical services to staff any resulting increase in preventable injuries.

We strongly support the bills' desired outcome to support small and local business during the COVID-19 pandemic, but there are many ways to support business without promoting problem drinking. Promising policies recognized by public health authorities include microfinance programs, which provide small loans aimed to grow jobs, alleviate poverty, develop skills development, etc.^{vi}

WPHA and WALHDAB support business development policies that do not risk public health.

ⁱ Centers for Disease Control and Prevention (CDC). Behavioral Risk Factor Surveillance System Survey Data. Atlanta, Georgia: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, 2018.

ⁱⁱ Linnan, S. Paltzer, J. Skalitzky, E. (October 14, 2019). The Burden of Binge Drinking in Wisconsin. Retrieved from go.wisc.edu/burdenofbingedrinking.

ⁱⁱⁱ Moberg, P., Kuo, D. "Intoxicated Driver Program-2: Analysis of Arrests, IDP Compliance and 3 Year Recidivism" Prepared for: Intoxicated Driver Program, Wisconsin Department of Health Services, Bureau of Prevention Treatment and Recovery, University of Wisconsin-Madison, Population Health Institute, 2019.

^{iv} Weerakoon, S.M., Jetelina, K.K., Knell, G. Longer time spent at home during Covid 19 pandemic is associated with binge drinking among US adults. American Journal of Drug and Alcohol Abuse. December 2020

^v Grossman, E., Benjamin-Neelon, S, Sonnenschein. Alcohol Consumption during the COVID-19 Pandemic: A Cross-Sectional Survey of US Adults.

^{vi} Servon 2006* - Servon LJ. Microenterprise development in the United States: Current challenges and new directions. Economic Development Quarterly. 2006;20(4):351-67.

Testimony in Support of SB 56 & SB 57

Senate Committee on Government Operations, Technology and Consumer Protection

My name is Dave Spiegelhoff, I am the owner of Gooseberries Fresh Food Market. Our store is located in Burlington, Wisconsin. My family has been in business in Burlington since 1914. We employ 150 hard working associates. I am also a member of the Wisconsin Grocers Association.

I would like to register my support for Senate Bill 56 and Senate Bill 57 which allows all retailers to deliver alcohol and clarifies alcohol pick-up laws. I am opposed to SB 22, which only allows bars & restaurants to deliver mixed drinks to the curb.

I hope this committee is open to allowing all retailers the ability to deliver alcohol and will not pick winners and losers by only passing the “cocktails to go”.

SB 57 allows all of us to deliver. Deliveries can only be made during the same hours as on-premise sales. In addition, payment is required when the order is placed and age verification is done online and electronically at the door. The delivery must be made by someone over 21 years of age who has bartender or “TIPS” training. Finally, delivery information must be maintained by the retailer for a year. This makes the transaction more strict and secure than the transaction in store.

Sb 56 also includes all of the age restrictions required under current law, but provides a uniform set of guidelines that apply statewide.

Online shopping is here to stay. Pre-COVID, we did maybe 15 to 20 orders each week. When COVID hit, we capped out at 140 per day. We then realized that was not sustainable, so we cut it back to 80 per day—with 60 as curbside and 20 deliveries. We now are doing 25 orders a day and this is our limit until we can get more coolers and freezer space. Every time we do any promotions, that number jumps to 35 or 40.

While a modest percentage of baby boomers prefer online grocery shopping to traditional shopping, when it comes to Millennials and Generation X, nearly 75% prefer online grocery shopping. Knowing this trend, there are still some grocers that don't offer on line shopping or would prefer in-store shopping. I believe this is short-sided thinking. We need to give our guests what they are looking for. And they want us to be able to deliver all their groceries, alcohol included. This is not about us wanting to do this. This is about us needing to do this. The more on-line shopping grows, the more our guests will wonder why alcohol cannot be delivered with their groceries.

I can't imagine what bars and restaurants have gone through with COVID. By supporting SB 56 & SB 57, you will help everyone. Why not get a six pack delivered with your pizza? Why not have a bottle of wine delivered with your fish fry? And why not get your favorite bourbon delivered with your steaks and groceries.

I would like to ask for your support to allow all retailers the ability to deliver alcohol and provide curbside service by supporting SB 56 & SB 57.