

**5035 SELLING FERMENTED MALT BEVERAGE WITHOUT A LICENSE —
§125.04(1)****Statutory Definition of the Crime**

Section 125.04(1) of the Wisconsin Statutes makes it a crime for a person to sell a fermented malt beverage without holding the appropriate license.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Charged Crime That the State Must Prove

1. The defendant sold¹ a fermented malt beverage containing 0.5% or more of alcohol by volume.²
2. The defendant did not hold an appropriate license for the sale of fermented malt beverage.

Jury's Decision

If you are satisfied beyond a reasonable doubt that both elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 5035 was originally published in 1992. This revision was approved by the Committee in April 2005 and involved adoption of a new format.

This instruction is drafted for violations of § 125.04(1), which provides as follows:

General licensing requirements. (1) License or permit; when required. No person may sell, manufacture, rectify, brew or engage in any other activity for which this chapter provides a license, permit, or other type of authorization without holding the appropriate license, permit or authorization issued under this chapter.

...

Subsection (13) provides the penalty: "Any person who violates sub. (1) may be fined not more than \$10,000 or imprisoned for not more than 9 months or both."

1. "Sell" is defined in § 125.02(20) as "any transfer of alcohol beverages with consideration" and as "any transfer without consideration if knowingly made for purposes of evading the law relating to the sale of alcohol beverages. . ." The Committee concluded that a jury would be likely to understand "sell" without including the statutory definition in the instruction.

Because "sell" is broadly defined to include transfers without consideration if made with intent to evade the laws, a variety of situations could be presented that would not be adequately addressed by the instruction as drafted. Common schemes to avoid restrictions on selling beer – selling the cup, for example – would appear to be covered by broader definition of "sale." The instruction should be modified to include the statutory definition or its equivalent in such cases.

2. "Fermented malt beverage" is defined as follows in § 125.02(6):

"Fermented malt beverages" means any beverage made by the alcohol fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains of decorticated and degerminated grains or sugar containing 0.5% or more of alcohol by volume.

The Committee concluded that defining the first element to require selling a fermented malt beverage containing 0.5% or more alcohol captured the significant aspects of the statutory definition.