2005 DRAFTING REQUEST

Bill

Received: **10/24/2005**

Received By: **agary**

Wanted: **Today**

Identical to LRB:

For: **Ronald Brown (608) 266-8546**

By/Representing: **Daniel Lindstedt (aide)**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Beverages**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Brown@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

beer distribution rights and requirements affecting wholesalers, brewers, and out-of-state shippers

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Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	agary 10/24/2005	csicilia 10/24/2005		_____ _____			
/1			jfrantze 10/24/2005	_____ _____	lemery 10/24/2005	lemery 10/24/2005	

FE Sent For:

<END>

↳ Not Needed

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/?	agary	1 gs 10/24 05					

FE Sent For:

<END>

PA's: Please send "/1" out jacketed. Thanks. AHG

Gary, Aaron

From: Lindstedt, Daniel
Sent: Monday, October 24, 2005 2:00 PM
To: Gary, Aaron
Subject: FW: LRB-3764

Please see the e-mail below and prepare a senate jacket companion for LRB-3764.

Thanks much!

- Dan

From: Emery, Lynn
Sent: Monday, October 24, 2005 1:51 PM
To: Lindstedt, Daniel
Subject: RE: LRB-3764

Dan,

I forwarded Brian's email to Aaron Gary, the drafting attorney of the bill. He will have to give the companion a new LRB number. You can either contact Aaron and let him know that you would like the bill jacketed once it's finished, or you can wait until you receive the draft via email and click on the jacketing button.

Hope that makes sense!

From: Lindstedt, Daniel
Sent: Monday, October 24, 2005 1:45 PM
To: Emery, Lynn
Cc: Pleva, Brian
Subject: RE: LRB-3764

Lynn:

Please send over a jacket for a senate companion.

Thank you.

- Dan

From: Pleva, Brian
Sent: Monday, October 24, 2005 1:12 PM
To:
Cc: Lindstedt, Daniel
Subject: LRB-3764
Importance: High

Lynn, I believe Senator Ron Brown's office would like a companion LRB drafted for them, too.

Dan, please let me know when you know that number.

Brian Pleva
Office of Rep. Jeff Fitzgerald
Assistant Majority Leader
(608) 266-2540

LRB-3764/1
ARG:cjs:jf

2005 BILL

AN ACT *to amend* 125.01, 125.25 (1), 125.26 (1), 125.28 (1), 125.29 (3), 125.30 (1), 125.31 (2) and (3) (intro.) and 125.33 (11) (a); and ***to create*** 125.34 of the statutes; **relating to:** the sale and distribution of fermented malt beverages.

Analysis by the Legislative Reference Bureau

Under current law, alcohol beverages are generally distributed from the manufacturer to the consumer under a three–tier distribution system: the manufacturer sells to a wholesaler; the wholesaler sells to a retailer or another wholesaler; and the retailer sells to the consumer. Current law generally prohibits a person from selling alcohol beverages unless the seller possesses a license or permit authorizing the sale.

With respect to fermented malt beverages (beer), a brewer's permit authorizes the brewer to manufacture, possess, and store beer on the brewery premises. An out–of–state shipper's permit authorizes the out–of–state shipper to ship beer into this state but only to a beer wholesaler.

A beer wholesaler's license authorizes the license holder to sell to retailers or wholesalers beer in original packages that may not be consumed on or about the wholesaler's premises. A brewer may hold a wholesaler's license and, if the brewer is a licensed wholesaler, may transport beer between the brewery premises and the brewer's wholesale premises and may sell beer to a wholesaler or retailer. A beer wholesaler may not receive beer directly shipped from outside this state unless the shipper holds an out–of–state shipper's permit. All beer shipments to a wholesaler in this state, whether shipped to the wholesaler from inside this state or from outside

this state, must be unloaded in and distributed from the wholesaler's warehouse in this state. Current law provides beer wholesalers with certain protections against termination of brand distribution rights within their distribution territory.

Under current law, a brewer may hold a Class "A" retail license (authorizing the retail sale of beer in original packages for consumption off the licensed premises) but, with exceptions, may not hold a Class "B" license (authorizing the retail sale of beer for consumption on or off the premises where sold). One exception allows a brewer to maintain and operate, and hold a Class "B" license for, one retail premises on brewery premises and one retail premises on property owned by the brewer or its subsidiary or affiliate. With exceptions, a brewer may not hold both a wholesaler's license and retail license. As of May 5, 1994, a beer wholesaler may not be issued a Class "A" license or a Class "B" license or permit, but a wholesaler holding these licenses before that date may, with certain exceptions, continue to operate under each of these licenses.

Current law also provides for the issuance of alcohol beverage warehouse permits that authorize the holder to store and warehouse alcohol beverages in warehouse premises covered by the permit, but does not authorize sales of alcohol beverages.

Under this bill, beer may not be sold, transported, or delivered to a retailer unless the beer is first unloaded at and distributed from a wholesaler's warehouse premises for which a wholesaler's license (including a wholesaler's license issued to a brewer) and an alcohol beverage warehouse permit are issued, which premises must be in this state and must be, with two exceptions, be a physically separate location from any retail premises or brewery premises. Under one exception, a brewer that manufactures less than 100,000 barrels of beer in a calendar year may maintain a wholesale premises on its brewery premises if the brewer does not, from these wholesale premises, sell or ship to retailers more than 30,000 barrels of fermented malt beverages in any calendar year. Under the other exception, a brewer may be issued a wholesaler's license for wholesale premises located on brewery premises if, from these wholesale premises, the brewer sells or ships beer only to other wholesalers.

The bill also prohibits a wholesaler (including a brewer or out–of–state shipper that holds a wholesaler's license) from selling, transporting, or delivering any brand of beer unless the wholesaler has entered into a written agreement with the brewer or out–of–state shipper supplying the brand that grants to the wholesaler distribution rights for the brand and precisely identifies the designated sales territory for which such distribution rights are granted. A brewer or out–of–state shipper may not, in any such agreement, grant to more than one wholesaler distribution rights for the same brand in the same designated sales territory. Within a wholesaler's designated sales territory for any brand, the wholesaler may not refuse to sell the brand, or refuse to offer reasonable service related to the sale of the brand, to any retailer. With specified exceptions, the bill prohibits a wholesaler from selling, transporting, or delivering, or causing to be sold, transported, or delivered, any brand of beer outside the wholesaler's designated sales territory.

BILL

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. A retailer may not transport beer from one retail premises to another retail premises for purposes of selling the beer at the other retail premises unless both retail premises are operated by a brewer holding the retail licenses.

The bill specifies that, with exceptions, a brewer or out–of–state shipper may sell, transport, and deliver beer only to a wholesaler and that the brewer or out–of–state shipper itself may be that wholesaler if, in its activities as a wholesaler, it complies with the requirements under the bill. However, a brewer or out–of–state shipper authorized to sell beer at retail may do so in accordance with applicable provisions of current law, and distribution by a brewer holding a retail license of beer sold at retail by that brewer is not subject to the requirements under the bill. Also, a brewer that holds an out–of–state shipper's permit for premises located in another state used for the manufacture of beer may ship beer from those premises to any brewery premises of the brewer in this state.

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

SECTION 1. 125.01 of the statutes is amended to read:

125.01 Legislative intent. This chapter shall be construed as an enactment ~~of statewide concern for the purpose of providing a uniform regulation of the sale of alcohol beverages~~ of the legislature's support for the 3–tier system for alcohol beverages production, distribution, and sale that, through uniform statewide regulation, provides this state regulatory authority over the production, storage, distribution, transportation, sale, and consumption of alcohol beverages by and to its citizens, for the benefit of the public health and welfare and this state's economic stability.

SECTION 2. 125.25 (1) of the statutes is amended to read:

125.25 **(1)** Every municipal governing body may issue Class "A" licenses for the sale of fermented malt beverages from premises within the municipality. ~~A~~ Subject to s. 125.34 (5) and (6), a Class "A" license authorizes retail sales of fermented malt beverages for consumption off the premises where sold and in original packages,

containers and bottles. A license may be issued after July 1. That license shall expire on the following June 30.

SECTION 3. 125.26 (1) of the statutes is amended to read:

125.26 **(1)** Every municipal governing body may issue Class "B" licenses for the sale of fermented malt beverages from premises within the municipality and may authorize an official or body of the municipality to issue temporary Class "B" licenses under sub. (6). ~~A~~ Subject to s. 125.34 (5) and (6), a Class "B" license authorizes retail sales of fermented malt beverages to be consumed either on the premises where sold or off the premises. A license may be issued after July 1. That license shall expire on the following June 30. Persons holding a Class "B" license may sell beverages containing less than 0.5% of alcohol by volume without obtaining a license under s. 66.0433 (1).

SECTION 4. 125.28 (1) of the statutes is amended to read:

125.28 **(1)** Every municipal governing body may issue licenses to wholesalers for the sale of fermented malt beverages from premises within the municipality. ~~A~~, which premises shall comply with the requirements under s. 125.34 (2). Subject to s. 125.34, a wholesaler's license authorizes sales of fermented malt beverages only in original packages or containers to retailers or wholesalers, not to be consumed in or about the premises where sold. In the case of a foreign corporation or foreign limited liability company whose wholesale premises is located outside of this state, the wholesaler's license shall be issued by the governing body of the municipality in which some part of the wholesaler's business is conducted in this state. No additional license or permit is required for the solicitation of orders for sale to or by licensed wholesalers.

SECTION 5. 125.29 (3) of the statutes is amended to read:

125.29 **(3)** ACTIVITIES. ~~A~~ Subject to s. 125.34 (2), a brewer may manufacture, possess and store fermented malt beverages on the brewery premises and transport fermented malt beverages between the brewery premises and any depot or warehouse maintained by the brewer for which the brewer has a wholesaler's license issued under s. 125.28.

SECTION 6. 125.30 (1) of the statutes is amended to read:

125.30 **(1)** The department shall issue out–of–state shippers' permits which, except as provided in s. 125.34 (6) (c), authorize the permittee to ship fermented malt beverages only to holders of a wholesaler's license issued under s. 125.28. No person may receive fermented malt beverages in this state which have been directly shipped from outside this state by any person other than the holder of a permit issued under this section. ~~All~~ Subject to s. 125.34 (2) and (6) (c), all shipments of fermented malt beverages to a wholesaler of fermented malt beverages in this state, whether shipped to the wholesaler from inside this state or from outside this state, shall be unloaded in and distributed from the wholesaler's warehouse in this state.

SECTION 7. 125.31 (2) and (3) (intro.) of the statutes are amended to read:

125.31 **(2)** ~~A~~ Subject to s. 125.34, a brewer may own, maintain or operate depots and warehouses from which sales of fermented malt beverages, not for consumption in or about the premises where sold, may be made in original packages to retailers and wholesalers. A separate wholesaler's license is required for each depot or warehouse owned, maintained or operated.

(3) (intro.) ~~A~~ Subject to ss. 125.29 (4) and 125.34, a brewer may sell fermented malt beverages in the original packages or containers, not to be consumed on the premises where sold:

SECTION 8. 125.33 (11) (a) of the statutes is amended to read:

125.33 **(11)** (a) ~~No~~ Subject to s. 125.34 (3), no wholesaler who holds a retail license issued under this chapter may sell a brand of fermented malt beverages to another retail licensee unless the wholesaler has an agreement for general wholesale distribution of that brand of fermented malt beverages with the brewer, brewer's agent or holder of an out–of–state shipper's permit supplying that brand.

SECTION 9. 125.34 of the statutes is created to read:

125.34 Distribution restrictions on wholesalers, brewers, and out–of–state shippers. (1) In this section:

(a) "Brand" means any word, name, group of letters, symbol, or combination thereof, including the name of the brewer or out–of–state shipper if the brewer's or out–of–state shipper's name is also a significant part of the product name, adopted and used by a brewer or out–of–state shipper to identify a specific fermented malt beverage product and to distinguish that product from other fermented malt beverages produced by that brewer or out–of–state shipper or other brewers or out–of–state shippers.

(b) "Brewer" means a permittee under s. 125.29.

(c) "Designated sales territory" means the geographical area identified in a written agreement between a wholesaler and a brewer or out–of–state shipper under which the wholesaler is authorized to distribute one or more brands of fermented malt beverages supplied by the brewer or out–of–state shipper.

(d) "Out–of–state shipper" means a permittee under s. 125.30.

(e) "Retailer" means any person holding a Class "A" license or a Class "B" license or permit.

(f) "Retail premises" means the premises described in a Class "A" license or a Class "B" license or permit.

(g) "Wholesaler" means a licensee under s. 125.28 and includes a brewer or out–of–state shipper that holds a wholesaler's license under s. 125.28.

(2) (a) No fermented malt beverages may be sold, transported, or delivered to a retailer unless, prior to such sale, transport, or delivery, the fermented malt beverages are first unloaded at and distributed from a wholesaler's warehouse premises covered by both a wholesaler's license issued under s. 125.28 and an alcohol beverage warehouse permit issued under s. 125.19, which premises shall be in this state and shall be a physically separate location from any retail premises or brewery premises.

(b) 1. Notwithstanding sub. (1) (b), in this paragraph, "brewer" means a brewer that, together with the fermented malt beverages manufactured during the same year by all producers identified in s. 125.31 (1) (a) 1. a. to e., manufactures less than 100,000 barrels of fermented malt beverages in a calendar year in any location, whether in this state or outside this state.

2. Notwithstanding par. (a), a brewer may be issued a wholesaler's license for wholesale premises located on brewery premises. A brewer issued a wholesaler's license under this paragraph may not sell or ship more than 30,000 barrels of fermented malt beverages in any calendar year to retailers from wholesale premises located on brewery premises.

(c) Notwithstanding par. (a), a brewer may be issued a wholesaler's license for wholesale premises located on brewery premises if, from these wholesale premises, the brewer sells or ships fermented malt beverages only to other wholesalers.

(3) (a) A wholesaler may not sell, transport, or deliver any brand of fermented malt beverages unless the wholesaler has entered into a written agreement with the brewer or out–of–state shipper supplying the brand that grants to the wholesaler

distribution rights for the brand and identifies the designated sales territory for which such distribution rights are granted, including the precise geographical area comprising the designated sales territory. A brewer or out–of–state shipper may not, in any agreement under this paragraph, grant to more than one wholesaler distribution rights for the same brand in the same designated sales territory or in any part of the same designated sales territory.

(b) Within a wholesaler's designated sales territory for any brand of fermented malt beverages, the wholesaler may not refuse to sell the brand of fermented malt beverages, or refuse to offer reasonable service related to the sale of the brand of fermented malt beverages, to any retailer.

(4) No wholesaler may sell, transport, or deliver, or cause to be sold, transported, or delivered, any brand of fermented malt beverages to any of the following:

(a) Any retailer located outside the wholesaler's designated sales territory for the brand. This paragraph does not apply if another wholesaler that has been granted distribution rights for the brand in the designated sales territory where the sale, transportation, or delivery occurs is unable to service this designated sales territory and the brewer or out–of–state shipper granting distribution rights has, notwithstanding sub. (3) (a), given consent for the sale, transportation, or delivery, which consent shall be limited to the time period that another wholesaler is unable to service this designated sales territory.

(b) Any person, other than another wholesaler, that the wholesaler knows or should know will transport the product for resale in a designated sales territory for which another wholesaler has been granted distribution rights for the brand.

(5) Deliveries of fermented malt beverages to retailers may be made only by wholesalers and shall be made to retailers only at their retail premises. No retailer may transport fermented malt beverages from one retail premises to another retail premises for purposes of selling the fermented malt beverages at the other retail premises unless both retail premises are operated by a brewer holding the retail licenses.

(6) (a) Except as provided in pars. (b) and (c) and ss. 125.06 (1) and 125.31 (1) and (3), a brewer or out–of–state shipper may sell, transport, and deliver fermented malt beverages only to a wholesaler, which may be the brewer or out–of–state shipper itself if, in its activities as a wholesaler, it complies with the requirements under subs. (2) to (5).

(b) A brewer or out–of–state shipper that holds a Class "A" license or Class "B" license may sell fermented malt beverages to persons other than licensees and permittees in accordance with the terms of the license, the provisions of s. 125.31, and the applicable provisions of this chapter relating to retailers. Subsections (2) to (5) do not apply with respect to fermented malt beverages provided by a brewer to any retail premises for which the brewer holds the retail license.

(c) A brewer that holds an out–of–state shipper's permit for premises located in another state used for the manufacture of fermented malt beverages may ship fermented malt beverages from those premises to any brewery premises of the brewer in this state.

SECTION 10. Initial applicability.

(1) This act first applies on the first day of the 7th month beginning after the effective date of this subsection with respect to any person holding a wholesaler's

license issued under section 125.28 of the statutes immediately prior to the effective date of this subsection.

(END)

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3764/1dn
ARG:cjs:jf

T
stays

October 24, 2005

ATTN: ~~Brian Pleva~~ Daniel Lindstedt

~~As discussed,~~ chapter 125 is riddled with ambiguities and inconsistencies related to beer distribution and sales. Depending on how certain provisions are interpreted, other provisions may be rendered meaningless or without real application. In the attached draft, I have not attempted to correct any of these existing problems (except for adding the cross–reference to s. 125.29 (4) in s. 125.31 (3), which appeared in the "/P1" draft) and have made the assumption that all existing provisions have at least some limited application.

I also note that, assuming ss. 125.29 and 125.31 require a brewer to hold a wholesale license in order to sell beer, then created s. 125.34 (3) (a) will require every brewer/wholesaler to have a written agreement with itself; I doubt that an agreement lacking at least two parties would be legally recognized.

Created s. 125.34 (6) (c) is drafted narrowly. I am not sure if an out–of–state shipper's permit actually specifies, or is issued for, a "premises." If not, this provision should be modified.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261–6926
E–mail: aaron.gary@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3908/1dn
ARG:cjs:jf

October 24, 2005

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