



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment II

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2011 LRB-3828/1 (For: Rep. Ringhand)

has been copied/added to the drafting file for

2011 LRB-4151 (For: Rep. Ringhand)

 Are These “Companion Bills” ?? ... No



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 02/20/2012 (Per: ARG)

 The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin
2011 - 2012 LEGISLATURE

TODAY

in 2/7



LRB-3828 PZ
ARG:cjs:jm

written by 2/8

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

stays

Gen Lat

d-note

1 AN ACT *to renumber and amend* 125.02 (3); *to amend* 125.02 (2) and 125.33
 2 (10) (b); and *to create* 125.02 (3) (b), 125.02 (4m), (11m) and (20g), 125.29 (3)
 3 (k), 125.29 (7) and 125.33 (10) (f) of the statutes; **relating to:** authorized
 4 operations of brewers, compensation for loss of fermented malt beverages
 5 distribution rights, providing an exemption from emergency rule procedures,
 6 and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, a brewer holding a brewer's permit may, among other activities authorized under its brewer's permit: 1) sell, ship, transport, and deliver its own fermented malt beverages (beer) to wholesalers; 2) transport beer between the brewer's brewery premises and any depot or warehouse maintained by the brewer; ~~and~~ 3) if the brewer produces 300,000 barrels or less of beer per year, sell, ship, and deliver its own beer to retailers, from the brewery premises.

This bill creates two new categories of brewers, to be known as "contract brewers" and "start-up brewers." A contract brewer is a brewer that, in addition to brewing its own beer, also brews beer at its brewery for other brewers. A start-up brewer does not have its own brewery and does not brew beer, but enters into contractual relationships with one or more contract brewers for the brewing of the start-up brewer's beer using recipes owned or licensed by the start-up brewer. Under the bill, when a contract brewer and a start-up brewer have entered into a

; and 4) conduct certain retail operations ✓

Insert
ANAL

X contractual relationship for the brewing of the start-up brewer's beer at the contract brewer's brewery, this brewery is considered the "brewery premises" of both the contract brewer and the start-up brewer, and all activities authorized on brewery premises are authorized for both the contract brewer and the start-up brewer. To operate as a contract brewer or a start-up brewer, a brewer must register with the Department of Revenue (DOR) and meet standards established by DOR by rule. These rules must require each contract brewer and start-up brewer to hold and operate under a brewer's permit and require a contract brewer to have a written agreement for any contract brewing relationship with an out-of-state brewer or other brewer. The bill includes a definition of an "out-of-state brewer" and requires out-of-state brewers to register with DOR before they may enter into an agreement with a contract brewer for the brewing of beer.

Current law also requires that beer wholesalers enter into written agreements with brewers and brewpubs supplying beer brands that grant to the wholesalers distribution rights within exclusive sales territories. Under current law, with certain exceptions, if a wholesaler's distribution rights to a beer brand are terminated, the successor wholesaler assuming distribution rights of the brand must compensate the terminated wholesaler for the fair market value of the terminated distribution rights.

This bill specifies that "fair market value," for these purposes, does not include any amount related to a brewer's or brewpub's retail sales within the terminated wholesaler's territory.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 125.02 (2) of the statutes is amended to read:

2 125.02 (2) "Brewer" means any person who ~~that~~ manufactures fermented malt
3 beverages for sale or transportation or a start-up brewer, except that "brewer" does
4 not include a permittee under s. 125.295.

5 **SECTION 2.** 125.02 (3) of the statutes is renumbered 125.02 (3) (intro.) and
6 amended to read:

7 125.02 (3) (intro.) "Brewery premises" means the following:

1 (a) Except as provided in par. (b), all land and buildings used in the
2 manufacture or sale of fermented malt beverages at a brewer's principal place of
3 business.

4 **SECTION 3.** 125.02 (3) (b) of the statutes is created to read:

5 125.02 (3) (b) With respect to a start-up brewer, all of the following:

- 6 1. The start-up brewer's principal place of business.
- 7 2. The brewery premises of any contract brewer with which the start-up
- 8 brewer has a contractual relationship for the manufacturing of the start-up brewer's
- 9 fermented malt beverages.

10 **SECTION 4.** 125.02 (4m), (11m) and (20g) of the statutes are created to read:

11 125.02 (4m) "Contract brewer" means a brewer that, in addition to
12 manufacturing its own fermented malt beverages, also manufactures at its brewery
13 premises fermented malt beverages for other brewers or out-of-state brewers.

14 (11m) "Out-of-state brewer" means a manufacturer of fermented malt
15 beverages that does not maintain an office or street address within this state and has
16 not been issued a permit under s. 125.29.

17 (20g) "Start-up brewer" means a person that does not have its own brewery
18 premises and does not manufacture fermented malt beverages, but has entered into
19 a contractual relationship with a contract brewer for the manufacturing of the
20 start-up brewer's fermented malt beverages using recipes owned or licensed by the
21 start-up brewer.

*Insert
3-21* →

22 **SECTION 5.** 125.29 (3) (k) of the statutes is created to read:

23 125.29 (3) (k) If the applicant is a contract brewer or start-up brewer, to operate
24 as a contract brewer or start-up brewer, subject to the requirements under sub. (7).

25 **SECTION 6.** 125.29 (7) of the statutes is created to read:

1 125.29 (7) REGISTRATION AND ACTIVITIES OF CONTRACT BREWERS AND START-UP
2 BREWERS. (a) To operate as a contract brewer or a start-up brewer, a brewer shall
3 register with the department and meet the standards established by the department
4 under par. (c).

5 (b) Before any out-of-state brewer may enter into an agreement with a
6 contract brewer for the manufacture of fermented malt beverages, the out-of-state
7 brewer shall register with the department.

8 (c) The department shall promulgate rules establishing standards for contract
9 brewers and start-up brewers. These rules shall include all of the following:

10 1. Each contract brewer and start-up brewer shall hold and operate under a
11 brewer's permit issued under this section.

12 2. A contract brewer may not contract with an out-of-state brewer or other
13 brewer to manufacture fermented malt beverages unless the parties have entered
14 into a written agreement.

15 **SECTION 7.** 125.33 (10) (b) of the statutes is amended to read:

16 125.33 (10) (b) Except as provided in par. (c) and subject to pars. (d) ~~and~~, (e),
17 ~~and (f)~~, a successor wholesaler shall compensate a terminated wholesaler for the fair
18 market value of the terminated wholesaler's distribution rights to any discontinued
19 brand of fermented malt beverages assumed by the successor wholesaler for the
20 same territory, less any amount paid to the terminated wholesaler by the brewer,
21 brewpub, brewer's agent, brewpub's agent, or holder of an out-of-state shipper's
22 permit for the discontinued brand. If the terminated wholesaler's distribution rights
23 to any discontinued brand of fermented malt beverages are divided among 2 or more
24 successor wholesalers, each successor wholesaler shall compensate the terminated
25 wholesaler for the fair market value of the distribution rights to any discontinued

1 brand of fermented malt beverages assumed by that successor wholesaler for the
2 applicable part of the same territory, less any amount paid to the terminated
3 wholesaler by the brewer, brewpub, brewer's agent, brewpub's agent, or holder of an
4 out-of-state shipper's permit for the discontinued brand. A terminated wholesaler
5 may not receive under this paragraph total compensation from the successor
6 wholesaler and brewer, brewpub, brewer's agent, brewpub's agent, or holder of an
7 out-of-state shipper's permit that exceeds the fair market value of the terminated
8 wholesaler's distribution rights specified under this paragraph.

9 **SECTION 8.** 125.33 (10) (f) of the statutes is created to read:

10 125.33 (10) (f) Fair market value under par. (b) shall not include any amount
11 related to a brewer's or brewpub's retail sales within the terminated wholesaler's
12 territory.

13 **SECTION 9. Nonstatutory provisions.**

14 (1) PROPOSED PERMANENT RULES. The department of revenue shall submit in
15 proposed form the rules required under section 125.29 (7) (c) of the statutes to the
16 legislative council staff under section 227.15 (1) of the statutes no later than the first
17 day of the 4th month beginning after the effective date of this subsection.

18 (2) EXCEPTION TO ECONOMIC IMPACT REPORT FOR RULES. Notwithstanding section
19 227.137 (2) of the statutes, the department of revenue is not required to prepare an
20 economic impact analysis for the rules required under section 125.29 (7) (c) of the
21 statutes.

22 (3) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
23 the department of revenue shall promulgate the rules required under section 125.29
24 (7) (c) of the statutes, for the period before the effective date of the permanent rules
25 promulgated under section 125.29 (7) (c) of the statutes, but not to exceed the period

1 authorized under section 227.24 (1) (c) of the statutes, subject to extension under
2 section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and
3 (3) of the statutes, the department is not required to provide evidence that
4 promulgating a rule under this subsection as an emergency rule is necessary for the
5 preservation of public peace, health, safety, or welfare and is not required to provide
6 a finding of an emergency for a rule promulgated under this subsection.
7 Notwithstanding section 227.24 (1) (e) 1d. and 1g. of the statutes, the department is
8 not required to obtain approval of a statement of scope as provided in section 227.135
9 (2) or (4) of the statutes, or submit the proposed emergency rule in final draft form
10 to the governor for approval and obtain such approval, for a rule promulgated under
11 this subsection.

12 **SECTION 10. Effective dates.** This act takes effect on the first day of the 4th
13 month beginning after publication, except as follows:

14 (1) SECTION 9 of this act takes effect on the day after publication.

15

(END)

d-note

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3828/P2ins
ARG:.....

1 **INSERT ANAL:**

(no ¶) , including sale and delivery of beer from the brewery premises to wholesalers

2

3 **INSERT 3-21:**

4 **SECTION 1.** 125.29 (3) (d) of the statutes is amended to read:

5 125.29 (3) (d) The sale, shipment, transportation, and delivery, in original
6 unopened packages or containers, to wholesalers, from the brewery premises, of
7 fermented malt beverages that have been manufactured by the brewer on those
8 premises or on other premises of the brewer or, if the brewer is a start-up brewer,
9 that have been manufactured on those premises by a contract brewer for the start-up
10 brewer.

as affected by 2011
Wisconsin Act 32

History: 1981 c. 79; 1989 a. 253; 1993 a. 378; 1995 a. 27; 2005 a. 103; 2007 a. 9, 20; 2011 a. 32.



SN

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3828/P2dn

ARG:j:....

js

date

ATTN: Maggie Gau and Joe Hoey

Please review the attached draft carefully to ensure that it is consistent with your intent.

In again reviewing s. 125.29 (3m) (b), I believe the provision is ambiguous in terms of how it applies to start-up brewers under this draft. The provision begins, "A brewer that manufactures 300,000 or less barrels of fermented malt beverages" On the one hand, one could argue that 0 is less than 300,000, so the provision applies to a start-up brewer. On the other hand, one could argue that the core of the provision is "[a] brewer that manufactures ... fermented malt beverages ..." and since a start-up brewer does not "manufacture" fermented malt beverages (beer), the provision does not apply to a start-up brewer. I'm uncertain what your intent is for this provision and I have left it untreated in the draft. If you would like to resolve this ambiguity, please let me know.

I also note that I have not treated in the draft the last sentence of s. 125.29 (6), allowing a brewer to hold an indirect interest in up to 20 restaurants if no beer "manufactured by the brewer" is offered for sale in any of these restaurants. Since a start-up brewer does not manufacture beer, this provision has a somewhat different meaning for a start-up brewer than an ordinary brewer. However, the provision has limited applicability, so I have not treated it. Please advise if you want me to treat it.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

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-3828/P2dn
ARG:cjs:jf

February 8, 2012

ATTN: Maggie Gau and Joe Hoey

Please review the attached draft carefully to ensure that it is consistent with your intent.

In again reviewing s. 125.29 (3m) (b), I believe the provision is ambiguous in terms of how it applies to start-up brewers under this draft. The provision begins, "A brewer that manufactures 300,000 or less barrels of fermented malt beverages" On the one hand, one could argue that 0 is less than 300,000, so the provision applies to a start-up brewer. On the other hand, one could argue that the core of the provision is "[a] brewer that manufactures ... fermented malt beverages ..." and since a start-up brewer does not "manufacture" fermented malt beverages (beer), the provision does not apply to a start-up brewer. I'm uncertain what your intent is for this provision and I have left it untreated in the draft. If you would like to resolve this ambiguity, please let me know.

I also note that I have not treated in the draft the last sentence of s. 125.29 (6), allowing a brewer to hold an indirect interest in up to 20 restaurants if no beer "manufactured by the brewer" is offered for sale in any of these restaurants. Since a start-up brewer does not manufacture beer, this provision has a somewhat different meaning for a start-up brewer than an ordinary brewer. However, the provision has limited applicability, so I have not treated it. Please advise if you want me to treat it.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

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

Gary, Aaron

From: Hoey, Joseph
Sent: Tuesday, February 14, 2012 9:48 AM
To: Gary, Aaron
Cc: Gau, Maggie
Subject: RE: Draft review: LRB 11-3828/P2 Topic: Contract brewing, non-producing brewers, brand compensation for wholesalers

Let's go with your suggestion –

"Fair market value under par. (b) shall not include any amount related to a brewer's or brewpub's sale of fermented malt beverages that it manufactures and sells at retail within the terminated wholesaler's territory."

Thanks!

Joseph P. Hoey
Office of State Representative Janet Bewley
74th Assembly District
(608) 266-7690 / (888) 534-0074

From: Gary, Aaron
Sent: Monday, February 13, 2012 1:18 PM
To: Hoey, Joseph
Cc: Gau, Maggie
Subject: RE: Draft review: LRB 11-3828/P2 Topic: Contract brewing, non-producing brewers, brand compensation for wholesalers

Hi Joe,

Couple thoughts on the suggested change, one is potentially large and the other is minor. If this language were enacted, it would apply to brewpubs, but not brewers. Is that what you want? After Act 32 (and having detoured away from earlier versions of this draft), a brewer no longer has a "licensed retail premises" but a brewpub does. So the proposed language below would not apply to retail sales by a brewer. The minor issue is that a retail sale is by its very nature a sale directly to a consumer, so some of this newly added underscored language is exactly redundant of the term "retail sales" that is already there. I guess there is no harm in that, but it seems unnecessary.

If your intention is to have this apply to both brewers and brewpub, how about the following:

"Fair market value under par. (b) shall not include any amount related to a brewer's or brewpub's [~~retail sales - delete~~] sale of fermented malt beverages that it manufactures and sells at retail within the terminated wholesaler's territory."

Let me know how you want to proceed. Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

2/14/2012

From: Hoey, Joseph
Sent: Monday, February 13, 2012 12:38 PM
To: Gary, Aaron
Cc: Gau, Maggie
Subject: FW: Draft review: LRB 11-3828/P2 Topic: Contract brewing, non-producing brewers, brand compensation for wholesalers

Aaron,

One last change and then we're ready for a "1" draft. Could we add the following to 125.33 (10) (f) -

"Fair market value under par. (b) shall not include any amount related to a brewer's or brewpub's retail sales of the fermented malt beverages it manufactures and sells directly to consumers at its licensed retail premises located within the terminated wholesaler's territory."

Let me know if you have any questions or see any problems with that change.

Thanks,

Joe

*Joseph P. Hoey
Office of State Representative Janet Bewley
74th Assembly District
(608) 266-7690 / (888) 534-0074*

From: LRB.Legal
Sent: Wednesday, February 08, 2012 10:42 AM
To: Rep.Ringhand
Subject: Draft review: LRB 11-3828/P2 Topic: Contract brewing, non-producing brewers, brand compensation for wholesalers

Following is the PDF version of draft LRB 11-3828/P2 and drafter's note.



in
2/14



LRB-3828 / 1
ARG:cjs:jf

wanted
by 2/16

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

stays

insert

Two changes - pp. 2, 5

Gen Cat

SA ✓

1 **AN ACT to renumber and amend** 125.02 (3); **to amend** 125.02 (2), 125.29 (3)
 2 (d) and 125.33 (10) (b); and **to create** 125.02 (3) (b), 125.02 (4m), (11m) and
 3 (20g), 125.29 (3) (k), 125.29 (7) and 125.33 (10) (f) of the statutes; **relating to:**
 4 authorized operations of brewers, compensation for loss of fermented malt
 5 beverages distribution rights, providing an exemption from emergency rule
 6 procedures, and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, a brewer holding a brewer's permit may, among other activities authorized under its brewer's permit: 1) sell, ship, transport, and deliver its own fermented malt beverages (beer) to wholesalers; 2) transport beer between the brewer's brewery premises and any depot or warehouse maintained by the brewer; 3) if the brewer produces 300,000 barrels or less of beer per year, sell, ship, and deliver its own beer to retailers, from the brewery premises; and 4) conduct certain retail operations.

This bill creates two new categories of brewers, to be known as "contract brewers" and "start-up brewers." A contract brewer is a brewer that, in addition to brewing its own beer, also brews beer at its brewery for other brewers. A start-up brewer does not have its own brewery and does not brew beer, but enters into contractual relationships with one or more contract brewers for the brewing of the start-up brewer's beer using recipes owned or licensed by the start-up brewer.

Under the bill, when a contract brewer and a start-up brewer have entered into a contractual relationship for the brewing of the start-up brewer's beer at the contract brewer's brewery, this brewery is considered the "brewery premises" of both the contract brewer and the start-up brewer, and all activities authorized on brewery premises are authorized for both the contract brewer and the start-up brewer, including sale and delivery of beer from the brewery premises to wholesalers. To operate as a contract brewer or a start-up brewer, a brewer must register with the Department of Revenue (DOR) and meet standards established by DOR by rule. These rules must require each contract brewer and start-up brewer to hold and operate under a brewer's permit and require a contract brewer to have a written agreement for any contract brewing relationship with an out-of-state brewer or other brewer. The bill includes a definition of an "out-of-state brewer" and requires out-of-state brewers to register with DOR before they may enter into an agreement with a contract brewer for the brewing of beer.

Current law also requires that beer wholesalers enter into written agreements with brewers and brewpubs supplying beer brands that grant to the wholesalers distribution rights within exclusive sales territories. Under current law, with certain exceptions, if a wholesaler's distribution rights to a beer brand are terminated, the successor wholesaler assuming distribution rights of the brand must compensate the terminated wholesaler for the fair market value of the terminated distribution rights.

This bill specifies that "fair market value," for these purposes, does not include any amount related to a brewer's or brewpub's ~~retail sales~~ within the terminated wholesaler's territory. insert
MAC

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 125.02 (2) of the statutes is amended to read:

2 125.02 (2) "Brewer" means any person who that manufactures fermented malt
3 beverages for sale or transportation or a start-up brewer, except that "brewer" does
4 not include a permittee under s. 125.295.

5 **SECTION 2.** 125.02 (3) of the statutes is renumbered 125.02 (3) (intro.) and
6 amended to read:

7 125.02 (3) (intro.) "Brewery premises" means the following:

1 (a) Except as provided in par. (b), all land and buildings used in the
2 manufacture or sale of fermented malt beverages at a brewer's principal place of
3 business.

4 **SECTION 3.** 125.02 (3) (b) of the statutes is created to read:

5 125.02 (3) (b) With respect to a start-up brewer, all of the following:

- 6 1. The start-up brewer's principal place of business.
- 7 2. The brewery premises of any contract brewer with which the start-up
8 brewer has a contractual relationship for the manufacturing of the start-up brewer's
9 fermented malt beverages.

10 **SECTION 4.** 125.02 (4m), (11m) and (20g) of the statutes are created to read:

11 125.02 (4m) "Contract brewer" means a brewer that, in addition to
12 manufacturing its own fermented malt beverages, also manufactures at its brewery
13 premises fermented malt beverages for other brewers or out-of-state brewers.

14 (11m) "Out-of-state brewer" means a manufacturer of fermented malt
15 beverages that does not maintain an office or street address within this state and has
16 not been issued a permit under s. 125.29.

17 (20g) "Start-up brewer" means a person that does not have its own brewery
18 premises and does not manufacture fermented malt beverages, but has entered into
19 a contractual relationship with a contract brewer for the manufacturing of the
20 start-up brewer's fermented malt beverages using recipes owned or licensed by the
21 start-up brewer.

22 **SECTION 5.** 125.29 (3) (d) of the statutes, as affected by 2011 Wisconsin Act 32,
23 is amended to read:

24 125.29 (3) (d) The sale, shipment, transportation, and delivery, in original
25 unopened packages or containers, to wholesalers, from the brewery premises, of

1 fermented malt beverages that have been manufactured by the brewer on those
2 premises or on other premises of the brewer or, if the brewer is a start-up brewer,
3 that have been manufactured on those premises by a contract brewer for the start-up
4 brewer.

5 **SECTION 6.** 125.29 (3) (k) of the statutes is created to read:

6 125.29 (3) (k) If the applicant is a contract brewer or start-up brewer, to operate
7 as a contract brewer or start-up brewer, subject to the requirements under sub. (7).

8 **SECTION 7.** 125.29 (7) of the statutes is created to read:

9 125.29 (7) REGISTRATION AND ACTIVITIES OF CONTRACT BREWERS AND START-UP
10 BREWERS. (a) To operate as a contract brewer or a start-up brewer, a brewer shall
11 register with the department and meet the standards established by the department
12 under par. (c).

13 (b) Before any out-of-state brewer may enter into an agreement with a
14 contract brewer for the manufacture of fermented malt beverages, the out-of-state
15 brewer shall register with the department.

16 (c) The department shall promulgate rules establishing standards for contract
17 brewers and start-up brewers. These rules shall include all of the following:

18 1. Each contract brewer and start-up brewer shall hold and operate under a
19 brewer's permit issued under this section.

20 2. A contract brewer may not contract with an out-of-state brewer or other
21 brewer to manufacture fermented malt beverages unless the parties have entered
22 into a written agreement.

23 **SECTION 8.** 125.33 (10) (b) of the statutes is amended to read:

24 125.33 (10) (b) Except as provided in par. (c) and subject to pars. (d) and, (e),
25 and (f), a successor wholesaler shall compensate a terminated wholesaler for the fair

1 market value of the terminated wholesaler's distribution rights to any discontinued
2 brand of fermented malt beverages assumed by the successor wholesaler for the
3 same territory, less any amount paid to the terminated wholesaler by the brewer,
4 brewpub, brewer's agent, brewpub's agent, or holder of an out-of-state shipper's
5 permit for the discontinued brand. If the terminated wholesaler's distribution rights
6 to any discontinued brand of fermented malt beverages are divided among 2 or more
7 successor wholesalers, each successor wholesaler shall compensate the terminated
8 wholesaler for the fair market value of the distribution rights to any discontinued
9 brand of fermented malt beverages assumed by that successor wholesaler for the
10 applicable part of the same territory, less any amount paid to the terminated
11 wholesaler by the brewer, brewpub, brewer's agent, brewpub's agent, or holder of an
12 out-of-state shipper's permit for the discontinued brand. A terminated wholesaler
13 may not receive under this paragraph total compensation from the successor
14 wholesaler and brewer, brewpub, brewer's agent, brewpub's agent, or holder of an
15 out-of-state shipper's permit that exceeds the fair market value of the terminated
16 wholesaler's distribution rights specified under this paragraph.

17 **SECTION 9.** 125.33 (10) (f) of the statutes is created to read:

18 125.33 (10) (f) Fair market value under par. (b) shall not include any amount
19 related to a brewer's or brewpub's ~~retail sales~~ within the terminated wholesaler's
20 territory.

21 **SECTION 10. Nonstatutory provisions.**

22 (1) PROPOSED PERMANENT RULES. The department of revenue shall submit in
23 proposed form the rules required under section 125.29 (7) (c) of the statutes to the
24 legislative council staff under section 227.15 (1) of the statutes no later than the first
25 day of the 4th month beginning after the effective date of this subsection.

insert
5-19

1 (2) EXCEPTION TO ECONOMIC IMPACT REPORT FOR RULES. Notwithstanding section
2 227.137 (2) of the statutes, the department of revenue is not required to prepare an
3 economic impact analysis for the rules required under section 125.29 (7) (c) of the
4 statutes.

5 (3) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
6 the department of revenue shall promulgate the rules required under section 125.29
7 (7) (c) of the statutes, for the period before the effective date of the permanent rules
8 promulgated under section 125.29 (7) (c) of the statutes, but not to exceed the period
9 authorized under section 227.24 (1) (c) of the statutes, subject to extension under
10 section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and
11 (3) of the statutes, the department is not required to provide evidence that
12 promulgating a rule under this subsection as an emergency rule is necessary for the
13 preservation of public peace, health, safety, or welfare and is not required to provide
14 a finding of an emergency for a rule promulgated under this subsection.
15 Notwithstanding section 227.24 (1) (e) 1d. and 1g. of the statutes, the department is
16 not required to obtain approval of a statement of scope as provided in section 227.135
17 (2) or (4) of the statutes, or submit the proposed emergency rule in final draft form
18 to the governor for approval and obtain such approval, for a rule promulgated under
19 this subsection.

20 **SECTION 11. Effective dates.** This act takes effect on the first day of the 4th
21 month beginning after publication, except as follows:

22 (1) SECTION 10 of this act takes effect on the day after publication.

23

(END)

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3828/lins
ARG:.....

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insert ANAL:

(ns 9)

sale of beer that it brews and sells at retail



4

insert 5-19:

(ns 9)

sale of fermented malt beverages that it manufactures and sells at retail

6





State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3828/1
ARG:cjs:rs

2011 BILL

1 **AN ACT to renumber and amend** 125.02 (3); **to amend** 125.02 (2), 125.29 (3)
2 (d) and 125.33 (10) (b); and **to create** 125.02 (3) (b), 125.02 (4m), (11m) and
3 (20g), 125.29 (3) (k), 125.29 (7) and 125.33 (10) (f) of the statutes; **relating to:**
4 authorized operations of brewers, compensation for loss of fermented malt
5 beverages distribution rights, providing an exemption from emergency rule
6 procedures, and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, a brewer holding a brewer's permit may, among other activities authorized under its brewer's permit: 1) sell, ship, transport, and deliver its own fermented malt beverages (beer) to wholesalers; 2) transport beer between the brewer's brewery premises and any depot or warehouse maintained by the brewer; 3) if the brewer produces 300,000 barrels or less of beer per year, sell, ship, and deliver its own beer to retailers, from the brewery premises; and 4) conduct certain retail operations.

This bill creates two new categories of brewers, to be known as "contract brewers" and "start-up brewers." A contract brewer is a brewer that, in addition to brewing its own beer, also brews beer at its brewery for other brewers. A start-up brewer does not have its own brewery and does not brew beer, but enters into contractual relationships with one or more contract brewers for the brewing of the start-up brewer's beer using recipes owned or licensed by the start-up brewer.

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Under the bill, when a contract brewer and a start-up brewer have entered into a contractual relationship for the brewing of the start-up brewer's beer at the contract brewer's brewery, this brewery is considered the "brewery premises" of both the contract brewer and the start-up brewer, and all activities authorized on brewery premises are authorized for both the contract brewer and the start-up brewer, including sale and delivery of beer from the brewery premises to wholesalers. To operate as a contract brewer or a start-up brewer, a brewer must register with the Department of Revenue (DOR) and meet standards established by DOR by rule. These rules must require each contract brewer and start-up brewer to hold and operate under a brewer's permit and require a contract brewer to have a written agreement for any contract brewing relationship with an out-of-state brewer or other brewer. The bill includes a definition of an "out-of-state brewer" and requires out-of-state brewers to register with DOR before they may enter into an agreement with a contract brewer for the brewing of beer.

Current law also requires that beer wholesalers enter into written agreements with brewers and brewpubs supplying beer brands that grant to the wholesalers distribution rights within exclusive sales territories. Under current law, with certain exceptions, if a wholesaler's distribution rights to a beer brand are terminated, the successor wholesaler assuming distribution rights of the brand must compensate the terminated wholesaler for the fair market value of the terminated distribution rights.

This bill specifies that "fair market value," for these purposes, does not include any amount related to a brewer's or brewpub's sale of beer that it brews and sells at retail within the terminated wholesaler's territory.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 125.02 (2) of the statutes is amended to read:

2 125.02 (2) "Brewer" means any person ~~who~~ that manufactures fermented malt
3 beverages for sale or transportation ~~or a start-up brewer~~, except that "brewer" does
4 not include a permittee under s. 125.295.

5 **SECTION 2.** 125.02 (3) of the statutes is renumbered 125.02 (3) (intro.) and
6 amended to read:

7 125.02 (3) (intro.) "Brewery premises" means the following:

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1 (a) Except as provided in par. (b), all land and buildings used in the
2 manufacture or sale of fermented malt beverages at a brewer's principal place of
3 business.

4 **SECTION 3.** 125.02 (3) (b) of the statutes is created to read:

5 125.02 (3) (b) With respect to a start-up brewer, all of the following:

6 1. The start-up brewer's principal place of business.

7 2. The brewery premises of any contract brewer with which the start-up
8 brewer has a contractual relationship for the manufacturing of the start-up brewer's
9 fermented malt beverages.

10 **SECTION 4.** 125.02 (4m), (11m) and (20g) of the statutes are created to read:

11 125.02 (4m) "Contract brewer" means a brewer that, in addition to
12 manufacturing its own fermented malt beverages, also manufactures at its brewery
13 premises fermented malt beverages for other brewers or out-of-state brewers.

14 (11m) "Out-of-state brewer" means a manufacturer of fermented malt
15 beverages that does not maintain an office or street address within this state and has
16 not been issued a permit under s. 125.29.

17 (20g) "Start-up brewer" means a person that does not have its own brewery
18 premises and does not manufacture fermented malt beverages, but has entered into
19 a contractual relationship with a contract brewer for the manufacturing of the
20 start-up brewer's fermented malt beverages using recipes owned or licensed by the
21 start-up brewer.

22 **SECTION 5.** 125.29 (3) (d) of the statutes, as affected by 2011 Wisconsin Act 32,
23 is amended to read:

24 125.29 (3) (d) The sale, shipment, transportation, and delivery, in original
25 unopened packages or containers, to wholesalers, from the brewery premises, of

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1 fermented malt beverages that have been manufactured by the brewer on those
2 premises or on other premises of the brewer or, if the brewer is a start-up brewer,
3 that have been manufactured on those premises by a contract brewer for the start-up
4 brewer.

5 **SECTION 6.** 125.29 (3) (k) of the statutes is created to read:

6 125.29 (3) (k) If the applicant is a contract brewer or start-up brewer, to operate
7 as a contract brewer or start-up brewer, subject to the requirements under sub. (7).

8 **SECTION 7.** 125.29 (7) of the statutes is created to read:

9 125.29 (7) REGISTRATION AND ACTIVITIES OF CONTRACT BREWERS AND START-UP
10 BREWERS. (a) To operate as a contract brewer or a start-up brewer, a brewer shall
11 register with the department and meet the standards established by the department
12 under par. (c).

13 (b) Before any out-of-state brewer may enter into an agreement with a
14 contract brewer for the manufacture of fermented malt beverages, the out-of-state
15 brewer shall register with the department.

16 (c) The department shall promulgate rules establishing standards for contract
17 brewers and start-up brewers. These rules shall include all of the following:

18 1. Each contract brewer and start-up brewer shall hold and operate under a
19 brewer's permit issued under this section.

20 2. A contract brewer may not contract with an out-of-state brewer or other
21 brewer to manufacture fermented malt beverages unless the parties have entered
22 into a written agreement.

23 **SECTION 8.** 125.33 (10) (b) of the statutes is amended to read:

24 125.33 (10) (b) Except as provided in par. (c) and subject to pars. (d) and, (e),
25 and (f), a successor wholesaler shall compensate a terminated wholesaler for the fair

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1 market value of the terminated wholesaler's distribution rights to any discontinued
2 brand of fermented malt beverages assumed by the successor wholesaler for the
3 same territory, less any amount paid to the terminated wholesaler by the brewer,
4 brewpub, brewer's agent, brewpub's agent, or holder of an out-of-state shipper's
5 permit for the discontinued brand. If the terminated wholesaler's distribution rights
6 to any discontinued brand of fermented malt beverages are divided among 2 or more
7 successor wholesalers, each successor wholesaler shall compensate the terminated
8 wholesaler for the fair market value of the distribution rights to any discontinued
9 brand of fermented malt beverages assumed by that successor wholesaler for the
10 applicable part of the same territory, less any amount paid to the terminated
11 wholesaler by the brewer, brewpub, brewer's agent, brewpub's agent, or holder of an
12 out-of-state shipper's permit for the discontinued brand. A terminated wholesaler
13 may not receive under this paragraph total compensation from the successor
14 wholesaler and brewer, brewpub, brewer's agent, brewpub's agent, or holder of an
15 out-of-state shipper's permit that exceeds the fair market value of the terminated
16 wholesaler's distribution rights specified under this paragraph.

17 **SECTION 9.** 125.33 (10) (f) of the statutes is created to read:

18 125.33 (10) (f) Fair market value under par. (b) shall not include any amount
19 related to a brewer's or brewpub's sale of fermented malt beverages that it
20 manufactures and sells at retail within the terminated wholesaler's territory.

21 **SECTION 10. Nonstatutory provisions.**

22 (1) PROPOSED PERMANENT RULES. The department of revenue shall submit in
23 proposed form the rules required under section 125.29 (7) (c) of the statutes to the
24 legislative council staff under section 227.15 (1) of the statutes no later than the first
25 day of the 4th month beginning after the effective date of this subsection.

