



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Wisconsin Brewer's Permits as Affected by 2011 Wisconsin Act 32

Wisconsin statutes regulate the production, distribution, and sale of all alcohol beverages under a system of laws known as the three-tier system. To conduct business in one of these three levels of activity, the statutes require a person to obtain authorization through a license or a permit.¹ According to the legislative intent expressed in s. 125.01, Stats., this three-tier system is “for the benefit of the public health and welfare and this state’s economic stability.”

2011 Wisconsin Act 32, the 2011-13 Biennial Budget Act, amended the three-tier system regarding fermented malt beverages (beer). The amendments, among other things, converted a beer wholesaler’s license into a permit issued by the state, changed requirements for obtaining a beer wholesaler permit and out-of-state shipper’s permit, and restructured the brewer’s permit. This memorandum describes the brewer’s permit as amended and restructured by Act 32, but does not address changes made by Act 32 to the beer wholesaler’s permit or out-of-state shipper’s permit.

Act 32 was enacted on June 26, 2011. The Act, along with the provisions addressed in this memorandum, took effect on June 30, 2011.

BREWER’S PERMIT PRIOR TO ACT 32

To manufacture beer, a person must generally obtain either a ***brewer’s permit*** or a ***brewpub permit*** from the Department of Revenue (DOR) as well as comply with federal regulations.² Among other things, the brewpub permit is designed for a person who brews a total of not more than 10,000 barrels of beer in a calendar year and has a restaurant where the beer is manufactured. [See s. 125.295 (2), Stats.] ***Act 32 amends current law relating to the brewer’s permit, not the brewpub permit.***

¹ A license under ch. 125, Stats., is issued by a municipality. A permit under ch. 125, Stats., is issued by the state.

² There is one exception: the homemade fermented malt beverages exception. Under this exception, a person manufacturing beer does not need a permit to brew beer if: (1) the consumption is for that person or his or her family and guests; and (2) the person receives no compensation. [s. 125.06 (3), Stats.]

Prior to Act 32, a person holding a brewer's permit was also authorized to hold the following licenses or permits:

- A wholesaler's license to self-distribute his or her own beer and distribute other brewers' beer as well. [s. 125.29 (4), 2009 Stats.]
- Not more than two Class "B" (beer bar) retail licenses for the sale of beer for on- or off-premises consumption at the brewery and another place for which a Class "B" license was required. [ss. 125.29 (4) and 125.31 (1) (a) 2., 2009 Stats.]

Also, prior to Act 32, a brewer's permit authorized a brewer to provide **free taste samples** at a Class "A" (beer store) retail location under s. 125.33 (12), 2009 Stats. Regarding **restaurants**, a brewer was authorized to possess or hold an indirect interest in a Class "B" retail license for not more than 20 restaurants in each of which the sale of alcohol beverages accounts for less than 60% of the restaurant's gross receipts if the brewer's beer was not offered for sale at the restaurant. [s. 125.31 (1) (a) 4., 2009 Stats.] This was an exception to the general prohibition against a brewer holding a restaurant permit after November 25, 2007. [s. 125.29 (6), 2009 Stats.] A brewer was not prohibited from holding **ownership interest in any wholesaler business**.

RESTRUCTURED BREWER'S PERMIT

Act 32 restructured brewer's permits, making numerous changes. As amended, Wisconsin law now provides that a person is prohibited from registering as a brewer if he or she also holds a retail license (including both Class "A" and Class "B" licenses) or a wholesaler's permit.³ However, the restructured brewer's permit law specifies how any brewer, regardless of size, may conduct retail sales, provide taste samples, and operate restaurants. Although Act 32 prohibits a brewer from obtaining a wholesaler's permit, the Act's restructured permit authorizes brewers manufacturing 300,000 or less barrels of beer in a calendar year (commonly referred to as "craft brewers") to self-distribute his or her beer. Additionally, as discussed below, the restructured brewer's permit authorizes a brewer regardless of size to distribute beer in a wholesaler's designated sales territory for a period of not more than one year, if the wholesaler is unable to service the designated sale territory (unless the reason is a result of an action by the brewer).

RETAIL SALES

The restructured brewer's permit authorizes all brewers to engage in all of the following retail sales of beer without the need to obtain a Class "A" or Class "B" retail license:

- Retail sale of **beer** that has been manufactured on the brewery premises or on other premises of the brewer for **on-premise consumption** by individuals if the sale occurs at the brewery premises or an off-site retail outlet established by the brewer.

³ Act 32 changed the wholesaler's license to a permit because it is now issued by the DOR.

- Retail sale to individuals of **beer** in original unopened packages or containers and manufactured on the brewery premises or on other premises of the brewer for **off-premise consumption** by individuals, if the sale occurs at the brewery premises or an off-site retail outlet established by the brewer.
- Retail sale of **beer** for **on-premises consumption** or **off-premises consumption** in original unopened packages or containers that has been manufactured on another brewery premises in this state if the beer has been purchased by the brewer from a wholesaler holding a permit or from another brewery located in this state that manufactures 300,000 or fewer barrels of beer in a calendar year.
- Retail sale of **intoxicating liquor** (wine or liquor) for **on-premise consumption** by individuals on the brewery premises or an off-site retail outlet established by the brewer if the brewer held a permit or license authorizing the sale of the intoxicating liquor and if the intoxicating liquor on June 1, 2011, is purchased from a wholesaler holding a permit.

[s. 125.29 (3) (e) to (h), Stats.]

Thus, a brewer of any size may sell at retail his or her own beer at the brewery premises or from an offsite retail outlet for on- or off-premises consumption. A brewer may also sell at retail another brewer's beer for on- or off-premises consumption as long as the beer was manufactured on another brewery premises in Wisconsin. However, the brewer may only sell another brewer's beer if the beer was purchased by a wholesaler or by a brewer located in Wisconsin that is able to distribute beer under one of the exceptions described in the next section of this memorandum.

If a brewer decides to conduct retail sale of beer at the brewery premises or at an off-site retail location, the brewer must obtain a restructured brewer's permit because brewers are no longer permitted to obtain a Class "A" or Class "B" retail license. It should be noted, however, that a brewer may subsequently sell the retail portion of the brewery premises (i.e., a bar or store). Similar to the law prior to Act 32, the buyer must apply to the issuing authority (the municipality) for the required retail license. Prior to Act 32, if a brewer sold his or her retail operations, a municipality would not transfer the retail license to the buyer unless the buyer was acceptable to the municipality and the municipality gave its consent to the transfer. [See s. 125.04 (12) (b) 4., Stats.]

Additionally, the restructured brewer's permit neither explicitly authorizes nor prohibits a brewer owning or operating a gift shop on his or her brewery premises or off-site retail outlet. Thus, any brewer, regardless of size, that wishes to own or operate a gift shop must also satisfy regulatory obligations applicable to general retail business operations in Wisconsin.

SELF-DISTRIBUTION

As noted above, prior to Act 32, any brewer could obtain a wholesaler's license. This license allowed the brewer to distribute his or her own beer as well as beer made by any manufacturer. Now, after the changes from Act 32, the restructured brewer's permit generally prohibits a

brewer from acting as a wholesaler by distributing beer to a retail licensee. [s. 125.29 (3m) (a), Stats.] However, there are two exceptions:

- ***A brewer that manufactures 300,000 or less barrels in a calendar year*** may self-distribute his or her own beer as follows:

Brewers that manufacture 300,000 or less barrels in a calendar year to self-distribute their own beer by selling, shipping, transporting, and delivering from the brewery premises beer in unopened packages or containers that has been manufactured on the brewery premises to retailers, if the brewer complies with the requirements in ss. 125.33⁴ and 125.34,⁵ Stats., to the same extent as if the brewer were a wholesaler. [s. 125.29 (3m) (b), Stats.]

- A brewer of any size may self-distribute his or her own beer as well as distribute another brewer's beer in the event that a wholesaler is unable to distribute the beer under limited circumstances, described as follows:

The wholesaler that has been granted distribution rights by a brewer for a brand in a designated sales territory is unable to service the designated sale territory for any reason, including the discontinuation of the wholesaler's distribution rights, bankruptcy, or criminal prosecution of the wholesaler in connection with operation of the wholesaler, and the reason is not the result of an action by the brewer, for a period of not more than one year, to sell or ship any brand of fermented malt beverages to retailers located in the wholesaler's designated sales territory. [s. 125.29 (3m) (c), Stats.]

OWNERSHIP INTEREST IN WHOLESALER BUSINESSES

Act 32 limits a brewer's ability to hold ownership interest in any wholesaler business. To qualify for the restructured brewer's permit, a person may only hold ownership interest in two situations. First, the changes in Act 32 only allow a brewer to hold ownership interest of less than 50% if it will not occur for more than three years. Second, Act 32 also allows a brewer to hold ownership interest in a wholesaler business in the case where the brewer takes temporary control and operation of a wholesaler due to the wholesaler's inability to distribute the brewer's beer as described in the previous section. [s. 125.29 (2) (b) 1.-3., Stats.]

⁴ Restrictions on dealings between brewers, brewpubs, wholesalers, and retailers.

⁵ Distribution restrictions on wholesalers, brewers, brewpubs, and out-of-state shippers.

TASTE SAMPLES

The restructured brewer's permit authorizes all brewers, regardless of size, to offer free taste samples of beer at the following locations:

- The brewery premises.
- An off-site retail outlet established by the brewer.
- A location holding a Class "A" retail license according to s. 125.33 (12), Stats.

[s. 125.29 (3) (i), Stats.]

The restructured brewer's permit does not specify what type of beer a brewer may offer as free taste samples. However, it appears from Act 32 that the brewer may only offer taste samples of beer that the brewer may sell at retail (i.e., his or her own beer, as well as another brewer's beer that is manufactured in Wisconsin, if the beer is purchased by a wholesaler or a brewer who is authorized to self-distribute).

STATE FAIR AND COUNTY FAIRGROUNDS

Similar to prior law, the restructured brewer's permit authorizes all brewers to own, maintain, or operate places for the sale of beer at the state fair park or on any county fairgrounds located in Wisconsin. [s. 125.29 (3) (i) and (j), Stats.]

RESTAURANT ACTIVITIES

As noted above, prior to Act 32, a brewer issued a permit after November 25, 2007 could not also hold a restaurant license. However, a brewer could possess or hold an indirect interest in a Class "B" retail license for not more than 20 restaurants if certain conditions were met. The restructured brewer's permit now authorizes a brewer regardless of size to do the following:

Operate a restaurant on the brewery premises and at an off-site retail outlet established by the brewer. A brewer may not hold a restaurant permit for the operation of a restaurant at any other location except that a brewer may possess or hold an indirect interest in a Class "B" retail license for not more than 20 restaurants in each of which the sale of alcohol beverages accounts for less than 60 percent of the restaurant's gross receipts if no fermented malt beverages manufactured by the brewer are offered for sale in any of these restaurants. [s. 125.29 (6), Stats.]

IMPACT OF ACT 32 ON BREWPUBS

As previously stated, Act 32 does not amend the brewpub permit. However, because it does restructure the brewer's permit, Act 32 may impact how a brewpub purchases beer manufactured from other brewers. For example, prior to Act 32, a brewpub, as well as any retailer licensed to sell alcohol beverages, could purchase more than one brewer's beer from a

single brewer if that brewer also held a wholesaler's license. After Act 32, a brewpub and any licensed retailer may only purchase from a brewer that is authorized to self-distribute his or her own beer or in the limited circumstance where the brewer may distribute when a wholesaler is unable to do so.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Melissa Schmidt, Staff Attorney, on August 10, 2011 (revised August 12, 2011).

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