

2005 ASSEMBLY BILL 787

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

Analysis by the Legislative Reference Bureau

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

4 SECTION 1. 125.01 of the statutes is amended to read:
5 **125.01 Legislative intent.** This chapter shall be construed as an enactment
6 of statewide concern for the purpose of providing a uniform regulation of the sale of
7 alcohol beverages of the legislature's support for the 3-tier system for alcohol
8 beverages production, distribution, and sale that, through uniform statewide
9 regulation, provides this state regulatory authority over the production, storage,
10 distribution, transportation, sale, and consumption of alcohol beverages by and to its

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1 citizens, for the benefit of the public health and welfare and this state's economic
2 stability.

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

4 125.25 (1) Every municipal governing body may issue Class "A" licenses for the
5 sale of fermented malt beverages from premises within the municipality. ~~A- Subject~~
6 ~~to s. 125.34 (5) and (6), a~~ Class "A" license authorizes retail sales of fermented malt
7 beverages for consumption off the premises where sold and in original packages,
8 containers and bottles. A license may be issued after July 1. That license shall expire
9 on the following June 30.

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

11 125.26 (1) Every municipal governing body may issue Class "B" licenses for the
12 sale of fermented malt beverages from premises within the municipality and may
13 authorize an official or body of the municipality to issue temporary Class "B" licenses
14 under sub. (6). ~~A- Subject to s. 125.34 (5) and (6), a~~ Class "B" license authorizes retail
15 sales of fermented malt beverages to be consumed either on the premises where sold
16 or off the premises. A license may be issued after July 1. That license shall expire
17 on the following June 30. Persons holding a Class "B" license may sell beverages
18 containing less than 0.5% of alcohol by volume without obtaining a license under s.
19 66.0433 (1).

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

21 125.28 (1) Every municipal governing body may issue licenses to wholesalers
22 for the sale of fermented malt beverages from premises within the municipality. ~~A,~~
23 which premises shall comply with the requirements under s. 125.34 (2). Subject to
24 s. 125.34, a wholesaler's license authorizes sales of fermented malt beverages only
25 in original packages or containers to retailers or wholesalers, not to be consumed in

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1 or about the premises where sold. In the case of a foreign corporation or foreign
2 limited liability company whose wholesale premises is located outside of this state,
3 the wholesaler's license shall be issued by the governing body of the municipality in
4 which some part of the wholesaler's business is conducted in this state. No additional
5 license or permit is required for the solicitation of orders for sale to or by licensed
6 wholesalers.

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

8 125.29 (3) ACTIVITIES. ~~A~~ Subject to s. 125.34 (2), a brewer may manufacture,
9 possess and store fermented malt beverages on the brewery premises and transport
10 fermented malt beverages between the brewery premises and any depot or
11 warehouse maintained by the brewer for which the brewer has a wholesaler's license
12 issued under s. 125.28.

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

14 125.30 (1) The department shall issue out-of-state shippers' permits which,
15 except as provided in s. 125.34 (6) (c), authorize the permittee to ship fermented malt
16 beverages only to holders of a wholesaler's license issued under s. 125.28. No person
17 may receive fermented malt beverages in this state which have been directly shipped
18 from outside this state by any person other than the holder of a permit issued under
19 this section. ~~All~~ Subject to s. 125.34 (2) and (6) (c), all shipments of fermented malt
20 beverages to a wholesaler of fermented malt beverages in this state, whether shipped
21 to the wholesaler from inside this state or from outside this state, shall be unloaded
22 in and distributed from the wholesaler's warehouse in this state.

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

24 125.31 (2) ~~A~~ Subject to s. 125.34, a brewer may own, maintain or operate
25 depots and warehouses from which sales of fermented malt beverages, not for

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1 consumption in or about the premises where sold, may be made in original packages
2 to retailers and wholesalers. A separate wholesaler's license is required for each
3 depot or warehouse owned, maintained or operated.

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

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

8 125.33 **(11)** (a) ~~No~~ Subject to s. 125.34 (3), no wholesaler who holds a retail
9 license issued under this chapter may sell a brand of fermented malt beverages to
10 another retail licensee unless the wholesaler has an agreement for general wholesale
11 distribution of that brand of fermented malt beverages with the brewer, brewer's
12 agent or holder of an out-of-state shipper's permit supplying that brand.

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

14 **125.34 Distribution restrictions on wholesalers, brewers, and**
15 **out-of-state shippers. (1)** In this section:

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

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

24 (c) "Designated sales territory" means the geographical area identified in a
25 written agreement between a wholesaler and a brewer or out-of-state shipper under

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1 which the wholesaler is authorized to distribute one or more brands of fermented
2 malt beverages supplied by the brewer or out-of-state shipper.

3 (d) “Out-of-state shipper” means a permittee under s. 125.30.

4 (e) “Retailer” means any person holding a Class “A” license or a Class “B”
5 license or permit.

6 (f) “Retail premises” means the premises described in a Class “A” license or a
7 Class “B” license or permit.

8 (g) “Wholesaler” means a licensee under s. 125.28 and includes a brewer or
9 out-of-state shipper that holds a wholesaler’s license under s. 125.28.

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

17 (bg) Notwithstanding par. (a), a brewer that, together with the fermented malt
18 beverages manufactured during the same year by all producers identified in s.
19 125.31 (1) (a) 1. a. to e., manufactures not more than 50,000 barrels of fermented malt
20 beverages in a calendar year in any location may be issued a wholesaler’s license for
21 wholesale premises located on brewery premises.

22 (bm) Notwithstanding par. (a), a brewer that, together with the fermented malt
23 beverages manufactured during the same year by all producers identified in s.
24 125.31 (1) (a) 1. a. to e., manufactures more than 50,000 barrels of fermented malt
25 beverages in a calendar year in any location may be issued a wholesaler’s license for

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1 wholesale premises located on brewery premises but may not sell or ship more than
2 a total of 1,000 barrels of fermented malt beverages in any calendar year to retailers
3 from these wholesale premises. Fermented malt beverages provided by a brewer to
4 any retail premises for which the brewer holds the retail license shall not be included
5 in any calculation of the 1,000 barrel limitation under this paragraph.

6 (c) 1. Except as provided in par. (bm) and notwithstanding par. (a), a brewer
7 may be issued a wholesaler's license for wholesale premises located on brewery
8 premises if, from these wholesale premises, the brewer sells or ships fermented malt
9 beverages only to other wholesalers.

10 2. Notwithstanding subd. 1., a brewer issued a wholesaler's license under subd.
11 1. may, from the wholesale premises located on brewery premises, sell or ship any
12 brand of fermented malt beverages to retailers located in a designated sales territory
13 for the brand if the wholesaler to which the brewer has granted distribution rights
14 for the brand in this designated sales territory is unable to service the designated
15 sales territory for any reason, including because of discontinuance of the
16 wholesaler's distribution rights. A brewer may sell or ship fermented malt beverages
17 to retailers under this subdivision for not more than 12 months after the wholesaler
18 becomes unable to service the wholesaler's designated sales territory.

19 (3) (a) 1. Subject to subd. 3., a wholesaler may not sell, transport, or deliver any
20 brand of fermented malt beverages unless the wholesaler has entered into a written
21 agreement with the brewer or out-of-state shipper supplying the brand that grants
22 to the wholesaler distribution rights for the brand and identifies the designated sales
23 territory for which such distribution rights are granted, including the precise
24 geographical area comprising the designated sales territory.

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1 2. A brewer or out-of-state shipper may not, in any agreement under this
2 paragraph, grant to more than one wholesaler distribution rights for the same brand
3 in the same designated sales territory or in any part of the same designated sales
4 territory.

5 3. If the wholesaler and the brewer or out-of-state shipper specified in subd.
6 1. are the same person, in lieu of the written agreement specified in subd. 1., the
7 wholesaler and brewer or out-of-state shipper shall maintain in writing the
8 information specified in subd. 1. and the wholesaler and brewer or out-of-state
9 shipper are, in this writing, subject to the restriction specified in subd. 2.

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

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

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

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1 distribution rights for the brand in the designated sales territory where the sale,
2 transportation, or delivery occurs has, notwithstanding sub. (3) (a), given consent for
3 the sale, transportation, or delivery or refused to service this territory.

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

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

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

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

24 (c) A brewer that holds an out-of-state shipper’s permit for premises located
25 in another state used for the manufacture of fermented malt beverages may ship

