

2005 Assembly Bill 787

Date of enactment: **January 5, 2006**  
Date of publication\*: **January 20, 2006**

## 2005 WISCONSIN ACT 103

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.

*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 lim-

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\* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

ited 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.

(bg) Notwithstanding par. (a), 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 not more than 50,000 barrels of fermented malt beverages in a calendar year in any location may be issued a wholesaler's license for wholesale premises located on brewery premises.

(bm) Notwithstanding par. (a), 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 more than 50,000 barrels of fermented malt beverages in a calendar year in any location may be issued a wholesaler's license for wholesale premises located on brewery premises but may not sell or ship more than a total of 1,000 barrels of fermented malt beverages in any calendar year to retailers from these wholesale premises. Fermented malt beverages provided by a brewer to any retail premises for

which the brewer holds the retail license shall not be included in any calculation of the 1,000 barrel limitation under this paragraph.

(c) 1. Except as provided in par. (bm) and 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.

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

(3) (a) 1. Subject to subd. 3., 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.

2. 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.

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

(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. This paragraph does not apply if the wholesaler is also a brewer and another wholesaler to whom this brewer has granted distribution rights for the brand in the designated sales territory where the sale, transportation, or delivery occurs has, notwithstanding sub. (3) (a), given consent for the sale, transportation, or delivery or refused to service this 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.

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