

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3764/P1dnins
ARG:.....

D-NOTE INSERT A

(I believe that sales made at the state fair park can be made without any license or permit, while sales made on county fairgrounds are made under one temporary Class "B" license issued to the fair association that licenses the entire fairgrounds for all vendors.)

D-NOTE INSERT B

Also, the brewer's ability to "give consent" under created s. 125.34 (4) (a) seems to be an exception from the prohibition on the brewer under created s. 125.34 (3) (a) granting distribution rights to more than one wholesaler in a territory, and therefore I have added a "notwithstanding" provision in created s. 125.34 (4) (a).

D-NOTE INSERT C

Current law is rather unclear in some respects as to ownership restrictions on brewers. As I interpret current law, a brewer can hold a wholesaler's license *or* retail licenses (Class "A" and Class "B" with limitations) but generally cannot hold *both* a wholesaler's license and a retail license except for a brewer that holds a wholesaler's license and a Class "B" license. See ss. 125.29 (4) and 125.31 (1) and (3). In my view, the statutes are ambiguous as to whether a brewer can hold a wholesaler's license and Class "A" licenses all of which were issued before May 5, 1994; I am unaware of whether the absence of a cross-reference to s. 125.28 (2) in s. 125.31 (3) is the result of a drafting oversight or was done intentionally. (As discussed in my drafter's note to LRB-3112/P1, s. 125.31 (3) contains more glaring errors than the mere omission of a cross-reference.) In addition, I believe the statutes are ambiguous as to whether a brewer that is a wholesaler can hold one or two Class "B" licenses under s. 125.31 (1) (a) 2. Compare s. 125.29 (4) with s. 125.31 (1) (a) 2. Nonetheless, while the breadth of the exceptions to brewer ownership restrictions may be unclear, I believe the general principle is clear that a brewer is typically not allowed to maintain ownership interests whereby it could distribute to itself as the wholesaler and then distribute to itself as the retailer. However, it is possible that, under s. 125.31 (1) (a) 2., a brewer could distribute to itself as the wholesaler and then distribute to itself as the retailer for a location on brewery premises or off brewery premises. (It is also possible that a

wholesaler that is not a brewer and that holds licenses issued before May 5, 1994 could distribute to itself.) As discussed by e-mail, I have struggled in trying to decipher the intent with respect to brewers that are also wholesalers and retailers and in trying to assess how part (1) and part (2) of the drafting instructions were intended to interact with each other. A brewer may operate Class "A" and Class "B" premises on and off the brewery premises, and I have tried to determine how the bill is intended to affect distribution by a brewer where the brewer may have retail interests. I have interpreted the drafting instructions to create an exception to the requirements of the bill for a brewer that is also a wholesaler and holds a retail Class "B" license only when the Class "B" licensed premises are on the brewery premises. If the Class "B" licensed premises are off the brewery premises as allowed under s. 125.31 (1) (a) 2., or the retail sale is made off the brewery premises under circumstances where no retail license is required, the brewer must sell to itself as a wholesaler, unload the product on its wholesale premises, have a written agreement with itself (which would probably be legally void, as there would not be two parties to form an agreement) identifying an exclusive sales territory, and otherwise satisfy the requirements under the bill. Is this consistent with your intent? In addition, if the brewer does not hold a wholesaler's license and holds a Class "A" license on the brewery premises, the brewer may distribute directly to the Class "A" licensed premises on the brewery premises and is also not subject to the requirements under the bill. Is this consistent with your intent? Finally, the bill does not include any provision clarifying distribution requirements in the limited circumstances where a wholesaler can distribute to its own retail premises. Is this consistent with your intent?