

**2005 DRAFTING REQUEST**

**Bill**

Received: **09/29/2005**

Received By: **agary**

Wanted: **Soon**

Identical to LRB:

For: **Jeff Fitzgerald (608) 266-2540**

By/Representing: **Brian Pleva (aide)**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Beverages**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Fitzgerald@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

beer distribution rights and requirements affecting brewers, wholesalers, and out-of-state shippers

---

**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1	agary 10/13/2005	csicilia 10/17/2005	jfrantze 10/17/2005	_____	lnorthro 10/17/2005		
/1	agary 10/21/2005	csicilia 10/24/2005	jfrantze 10/24/2005	_____	lemery 10/24/2005	mbarman 10/24/2005	

FE Sent For:

<END>

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10/24/05  
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FE Sent For:

<END>

## Gary, Aaron

---

**From:** Pleva, Brian  
**Sent:** Thursday, September 29, 2005 4:57 PM  
**To:** Gary, Aaron  
**Subject:** RE: Final Draft

Yeah, might as well. Thanks!

---

**From:** Gary, Aaron  
**Sent:** Thursday, September 29, 2005 4:55 PM  
**To:** Pleva, Brian  
**Subject:** RE: Final Draft

Brian,

I will sort through this and get back to you with any questions. It looks significantly different from LRB-3112/P1; I think it would be easier for me to start with a new LRB number. Is that OK with you? Aaron

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

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**From:** Pleva, Brian  
**Sent:** Thursday, September 29, 2005 11:43 AM  
**To:** Gary, Aaron  
**Subject:** Final Draft

Aaron, we would like the following language drafted.

This is what should be the final version of the direct shipping legislation we've been working on over the past few months. As you can see near the end, the provision exempting "small brewers" isn't complete because there is still some disagreement on how we should define "small brewer" for the purposes of this legislation (re: number of barrels manufactured annually). I will give you a total when we figure that out, but I thought you could get started on the rest of the language since I'm sure you have to modify it to fit our statutes.

You can disregard the strikeouts and underlines, as these are modifications to a draft from a month ago that I had not shared with you.

### **Re-write 125.01**

This chapter shall be construed as an enactment of the Legislature's support for the three-tiered system for alcohol 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.

**125.34 Direct Shipping Prohibited. (1)** (a) Prior to sale, transport or delivery to a retailer, all fermented malt beverages shall have first been unloaded at and distributed from a licensed wholesale premise located in this state that is a warehouse for which a permit is issued under s. 125.19 and that is a separate physical location from any brewer's, out-of-state shipper's or retailer's premises.

(b) No holder of a wholesaler's license shall transport, sell, deliver or cause to be transported, sold or delivered any brand or brands of fermented malt beverage to any holder of a retail alcohol license or permit that

is located outside the holder of the wholesale license's exclusive designated sales territory for the brand or brands. Within that exclusive designated sales territory, a holder of a wholesale license may not refuse to sell or offer reasonable service to licensed retailers during the normal business hours of the wholesaler. ~~A wholesaler may allow another wholesaler of the same brand or brands to deliver to retailers in the wholesaler's exclusive sales territory. The exclusive sales territory shall be mutually agreed upon by the brewer or out-of-state shipper and the holder of the wholesale license, and the~~ A written agreement between the holder of the wholesale license and the brewer or out-of-state shipper agreement shall specify the brand or brands for which the distribution rights are granted, and the exact geographical area of the territory. A brewer or out-of-state shipper may not provide by such written agreement for the distribution of a brand or brands to more than one holder of a wholesaler's license for all or any part of the designated sales territory. ~~Written exclusive sales territory agreements and any modifications thereof shall be filed with the Department by the brewer or out-of-state shipper.~~

1. For the purposes of this section:

- a. "Brand" is any word, name, group of letters, symbol or combination thereof, that is adopted and used by a brewer or out-of-state shipper to identify a specific fermented malt beverage product, and to distinguish that fermented malt beverage product from another fermented malt beverage product.
- b. "Brand Extension" is any brand that incorporates all or a substantial part of the unique features of a preexisting brand of the same brewer or out-of-state shipper, and which relies to a significant extent on the goodwill associated with that preexisting brand.

2. Where a brewer or out-of-state shipper sells several brands of fermented malt beverages, the designated sales territory agreement may apply to all brands sold by the brewer or out-of-state shipper or may apply to one brand or several brands so long as each brand is covered by a written designated territory agreement.

3. A brewer or out-of-state shipper who assigns a brand extension to a holder of a wholesale license must assign the brand extension to the holder of a wholesale license granted the designated sales territory to the brand from which the brand extension resulted. This requirement does not apply to assignments of brand extensions to holders of a wholesale license that were made by a brewer or importer before (effective date of statute).

(c) No holder of a wholesaler's license shall transport, sell, deliver, or cause to be transported, sold, or delivered, any brand of fermented malt beverage to any person or entity that is located in an exclusive designated sales territory for which another wholesaler has been granted the exclusive right to distribute the same brand pursuant to subsection (b).

(d) No holder of a wholesaler's license shall transport, sell, deliver, or cause to be transported, sold, or delivered, any brand of fermented malt beverage to any person or entity that the licensee knows or should know will transport the product for resale in a exclusive designated sales territory for which another wholesaler has been granted the right to distribute the same brand pursuant to subsection (b).

(e) All deliveries of fermented malt beverages to retailers must be made by the holder of a wholesaler's license to the retail premise or location from which the fermented malt beverages will be sold at retail. Unless otherwise permitted pursuant to 125.31, no retailer may transport fermented malt beverages from one retail premise to any other retail premise for sale to persons other than licensees or permittees.

(f) Except as provided in part (2) of this Section, a holder of a brewer's or out-of-state shipper's permit

may transport, sell, and deliver fermented malt beverages only to a holder of a wholesaler's license, which may be the brewer or out-of-state shipper itself provided that the fermented malt beverages are then unloaded at and distributed from a licensed wholesale warehouse that is a separate physical location from any brewer's, out-of-state shipper's or retailer's premises.

(2) Notwithstanding the foregoing provisions in part (1) of this Section:

(a) A brewer or out-of-state shipper holding a Class "A" or Class "B" license may sell fermented malt beverages pursuant to that Class "A" or Class "B" license to persons other than licensees and permittees.

(b) A brewer or out-of-state shipper holding a wholesaler's license may transport, sell, and deliver fermented malt beverages to a licensed retail location on a brewer's or out-of-state shipper's premises.

(c) A retailer located on a brewer's or out-of-state shipper's premises may purchase and receive fermented malt beverages from that brewer or out-of-state shipper for resale to consumers at that retail location.

(d) A brewer holding an out-of-state shipper's permit may transport fermented malt beverages from outside this state to the brewer's premises in this state.

(e) Exception for small brewers. For the purposes of this subparagraph, "small brewer" has the same meaning as s. 125.31(1)(a) except that in this subparagraph a "small brewer" is one that manufactures less than barrels of beer annually, whether manufactured in this state or outside this state. A small brewer may be issued a wholesaler's license for a wholesale warehouse that is located on the small brewer's premises.

(3) In the event that a court of competent jurisdiction holds that any section of this chapter is unconstitutional or otherwise invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

10/3/05

Re Jim Binder

- Brian Pleva out
- small brewers
  - 75,000 barrels produced
  - direct ship 50,000 barrels → over that, use wholesale

10/4

• Brian & Jim

- talked to small brewers
- not 50/75

- small brewers produce up to 100,000 barrels
  - small brewers cannot direct ship more than 30,000 barrels to a single retailer

30,000 of the 100,000

- could direct ship to as few as 4 retailers



## Gary, Aaron

---

**From:** Pleva, Brian  
**Sent:** Wednesday, October 05, 2005 5:03 PM  
**To:** Gary, Aaron  
**Subject:** RE: Final Draft

Correct on the interpretation. Correct that no notice has to be given to DOR. We thought it should be, but the brewers disagreed. The enforcement agent tell us they have the authority to see the documents at the brewery or wholesaler anyway, so they could always get it if the territory agreement was not shared voluntarily if DOR asked, so it does not appear they feel the need for notice.

A provision that allows the agreements to be put together without causing actual or potential disruption in business operations of brewers and wholesalers might be a good idea – I'd be interested in your thoughts on how best to accomplish that in a reasonable, but still short timeframe.

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**From:** Gary, Aaron  
**Sent:** Wednesday, October 05, 2005 1:53 PM  
**To:** Pleva, Brian  
**Subject:** RE: Final Draft

Also, as to s. 125.34 (1) (b), I am interpreting this to mean that there must always be a written agreement between each brewer/out-of-state shipper and wholesaler specifying a designated sales territory, and (unlike liquor wholesalers) notice of the territory is not given to DOR. In other words, a wholesaler could not distribute unless there is such a written agreement. Is this right? If so, do you anticipate any affected wholesalers who may not have such an agreement on the effective date of the bill and, if there are any, do you want to shut them down until they can get such an agreement, grandfather them, or other? Thanks. Aaron

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*Legislative Attorney*  
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**From:** Gary, Aaron  
**Sent:** Wednesday, October 05, 2005 12:02 PM  
**To:** Pleva, Brian  
**Subject:** RE: Final Draft

Brian,  
As with the last draft, I will probably need to do some follow up in drafting this. At the beginning of your e-mail, in s. 125.34 (1) (a), are you saying that a wholesaler will now have to obtain both a wholesale license and an alcohol beverage warehouse permit for the same premises? (Usually the licensed wholesale premises and the warehouse premises under s. 125.19 are different places; the last draft allowed unloading/distribution from either, but the language you provided says the premises has to be covered by both the license and the permit). Can you confirm this is the intent? Thanks. Aaron

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**From:** Pleva, Brian  
**Sent:** Thursday, September 29, 2005 11:43 AM

## Gary, Aaron

---

**From:** Pleva, Brian  
**Sent:** Thursday, October 06, 2005 2:04 PM  
**To:** Gary, Aaron  
**Subject:** RE: Final Draft

Aaron, I think this is the last response you're looking for: I believe that is indeed our intention.

Wholesale licenses are issued by municipalities who do not have the enforcement responsibility for Chapter 125. Warehouse permits are issued by DOR who does have that enforcement responsibility. We're requiring the brewers wishing to sell to retailers thru the wholesale license to have a separate warehouse facility. It is a good idea that that warehouse is somehow licensed by the entity who must decide whether it is actually a separate warehouse or not, and therefore acceptable under this law.

The statutes are not clear that a wholesaler must have an alcohol warehouse beverage permit for their wholesale facility, but they also are not clear that it is not required.

I believe the wholesalers all do have such a warehouse permit.

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You can disregard the strikeouts and underlines, as these are modifications to a draft from a month ago that I had not shared with you.

### Re-write 125.01

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## Gary, Aaron

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**From:** Gary, Aaron  
**Sent:** Tuesday, October 11, 2005 9:31 AM  
**To:** Pleva, Brian  
**Subject:** RE: Final Draft

Brian,

Sorry for the delay in getting back to you. I've been out of the office with sick kids. In response to your voice mail, I will have the drafting finished this week and will try to push it through editing as fast as possible.

As for your question, I haven't yet (I'm still looking) found anything in the statutes to suggest a retailer cannot hold a warehouse permit. I am unaware of what the practice in the industry is. I agree with you that a retailer cannot move product to different retail locations, but I think it is less clear if they have (assuming they could obtain) a warehouse permit whether they could store product at such a warehouse. I appreciate your suggestion to contact Roger Johnson, and I will go ahead and do so.

I'm following up with one more e-mail.

Aaron R. Gary  
*Legislative Attorney*  
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**From:** Pleva, Brian  
**Sent:** Thursday, October 06, 2005 8:53 AM  
**To:** Gary, Aaron  
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Aaron, what is allowed now? This provision is supposed to simply put into a single statutory provision the existing prohibition (that is derived from several different provisions of Ch. 125 and the tax code) on a retailer taking delivery of a product at one location (whether a retail premise or a distribution facility) and self-distributing it to other retail locations owned or controlled by that retailer.

I am not aware that retailers have "alcohol warehouse permits" or need to. I believe their authority to have alcohol on the licensed premise is based purely on their retail licenses (Class A or B).

I believe that Roger Johnson at DOR would say that it is not legal for a retailer to move alcohol to any premise distinct from the licensed retail premise – that they are required to take delivery at the actual premise where the product will be sold to consumers. But I do not know that for sure, so he might be the best source for you to ask the question, what is currently allowed? From that point, we can make a better decision as to what exactly we want to allow under this bill.

Does that make sense?

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**From:** Gary, Aaron  
**Sent:** Wednesday, October 05, 2005 4:51 PM  
**To:** Pleva, Brian  
**Subject:** RE: Final Draft

With respect to s. 125.34 (1) (e), is it your intent that retailers could not warehouse inventory on premises for which a permit is issued under s. 125.19? Or would it be ok for retailers to warehouse inventory on such premises if it was first delivered to the retail-licensed premises?

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## Gary, Aaron

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**From:** Pleva, Brian  
**Sent:** Tuesday, October 11, 2005 11:20 AM  
**To:** Gary, Aaron  
**Subject:** RE: Final Draft

Aaron, let's go with 6 months.

---

**From:** Gary, Aaron  
**Sent:** Tuesday, October 11, 2005 9:36 AM  
**To:** Pleva, Brian  
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Brian,

There are two scenarios that might complicate things for an existing wholesaler when the bill is enacted (assuming that either scenario actually exists in the industry): 1. a wholesaler that has no written agreement, and 2. a wholesaler that has a written agreement but not an exclusive territory. I would suggest a provision that gives current wholesalers a short window (3 months, 6 months, 1 year - whatever you prefer) to comply with the provisions of the bill, including obtaining a written agreement and working out exclusive territories w/ the brewer out-of-state shipper if those aren't in place already. The provision would probably take the form of a nonstatutory initial applicability provision. Should I proceed with that?

Aaron R. Gary  
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## Gary, Aaron

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**From:** Gary, Aaron  
**Sent:** Tuesday, October 11, 2005 4:03 PM  
**To:** Pleva, Brian  
**Subject:** RE: Final Draft

Brian,

I don't have a definitive answer on this yet, but it appears at this point that DOR would issue a warehouse permit to a retailer if the retailer wanted to store (but not sell) product at this warehouse. Do you want the draft to retain the status quo on this, or do you want to eliminate this ability for a retailer to warehouse product at a warehouse for which a permit is issued under s. 125.19?

*Yes, status quo*

Aaron R. Gary  
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I am not aware that retailers have "alcohol warehouse permits" or need to. I believe their authority to have alcohol on the licensed premise is based purely on their retail licenses (Class A or B).

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## Gary, Aaron

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**From:** Gary, Aaron  
**Sent:** Tuesday, October 11, 2005 3:56 PM  
**To:** Pleva, Brian  
**Subject:** RE: Final Draft

Thanks. Also, with item (2) (c) of the instructions, a retailer could not be located on an out-of-state shipper's premises because that premises is outside the state. I will make this adjustment unless you think this is incorrect.

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

*I think it is correct*

---

**From:** Pleva, Brian  
**Sent:** Tuesday, October 11, 2005 3:45 PM  
**To:** Gary, Aaron  
**Subject:** RE: Final Draft

Aaron, we agree with the latter part of your question. The brewer may transport the product produced out-of-state to a wholesale premises for which the brewer holds a wholesaler's license.

---

**From:** Gary, Aaron  
**Sent:** Tuesday, October 11, 2005 3:11 PM  
**To:** Pleva, Brian  
**Subject:** RE: Final Draft

Brian,

With regard to item (2) (d) of the instructions, this seems contrary to existing s. 125.30 (1), under which any product shipped from out of state must be shipped by the holder of an out-of-state shipper's permit to a licensed wholesaler in this state. Did you intend item (2) (d) to create an exception to s. 125.30 (1), or do you want to specify that the brewer may transport the product produced out-of-state to a wholesale premises for which the brewer holds a wholesaler's license?

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

**Gary, Aaron**

---

**From:** Gary, Aaron  
**Sent:** Wednesday, October 12, 2005 4:59 PM  
**To:** Pleva, Brian  
**Subject:** RE: FW: Final Draft

Brian,

The complication of the draft is that many statutes and concepts have to interact with each other, and the statutes need to be internally coherent. If this issue hasn't been discussed (the response below is open-ended), I will just maintain the assumptions I have made, keep what I have drafted so far, and mention it in the drafter's note. That will at least expedite getting an initial work product to you.

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

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**From:** Pleva, Brian  
**Sent:** Wednesday, October 12, 2005 4:49 PM  
**To:** Gary, Aaron  
**Subject:** FW: FW: Final Draft

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**From:** Eric Jensen [mailto:ericj@wisbeer.org]  
**Sent:** Wednesday, October 12, 2005 4:39 PM  
**To:** Pleva, Brian  
**Subject:** RE: FW: Final Draft

See comments below in RED CAPITALS:

-----Original Message-----

From: Pleva, Brian [mailto:Brian.Pleva@legis.state.wi.us]  
Sent: Wednesday, October 12, 2005 4:18 PM  
To: Eric Jensen  
Subject: FW: FW: Final Draft

-----Original Message-----

From: Gary, Aaron  
Sent: Wednesday, October 12, 2005 4:11 PM  
To: Pleva, Brian  
Subject: RE: FW: Final Draft

10/12/2005



Brian,

I believe the structure of instructions in item (2) doesn't work with the content of item (1), and I am finding it very difficult to decipher the intent here.

In simplified form, under current law, a brewer may hold a retail license in 3 ways:

1. A Class "A" license
2. A Class "B" license on brewery premises.
3. A Class "B" license in a location off brewery premises.

The brewer may also act as a wholesaler.

In simplified form, the instructions you provided have a few main requirements affecting all wholesalers, including brewers acting as wholesalers:

1. Every wholesaler must unload product at a distinct wholesale warehouse before delivering to a retailer. (UNLESS THE WHOLESALE LICENSE IS ISSUED TO A BREWER BREWING LESS THAN 100,000 BBL - IN WHICH CASE THEY CAN DELIVER RIGHT FROM THE BREWERY)

2. Every wholesaler must have a written agreement with the brewer for exclusive distribution rights in a designated territory. No wholesaler may sell outside the territory.

3. Deliveries to retailers must be made by wholesalers and only to retail premises.

4. A brewer may sell only to a wholesaler, which may be the brewer itself acting as a wholesaler.

I'm trying to mesh these two lists above, in circumstances where the brewer is also a retailer.

My best guess as to the intent of the instructions is that, if the brewer is supplying its own Class "B" establishment on the brewery premises, these wholesaler requirements do not apply. (CORRECT. OUR INTENT IS TO ALLOW THE BREWER TO SUPPLY PRODUCT TO THESE ON-BREWERY-PREMISE ESTABLISHMENTS - WHETHER A OR B. THE KEY IS ON-THE-BREWERY PREMISES.)

However, if the brewer is supplying its own Class "B" establishment off the brewery premises or is supplying its own Class "A" premises, the brewer must distribute the product acting as a wholesaler under its wholesale license (or through an independent wholesaler) and must unload the products at its wholesale warehouse, have an agreement with itself for a distribution territory, and sell the product to itself as a wholesaler before distributing it to its retail premises. Is this interpretation correct? (THESE PROVISIONS WERE WRITTEN BY THE BREWERS - THEY DO NOT MAKE AND HAVE NOT THRU THE COURSE OF NEGOTIATIONS MADE ANY REFERENCE TO A BREWER OWNED RETAIL PREMISE (A OR B) LOCATED OFF THE BREWERY PREMISES. THEIR STATED CONCERNS HAVE BEEN ABOUT THE "HOSPITALITY SUITS" AT THE BREWERIES AND THEIR ACTUAL RETAIL ESTABLISHMENTS (A OR B) AT THE BREWERIES. THE TERRITORY PROVISIONS ALLOW THE BREWER AND WHOLESALER TO AGREE TO LET ANOTHER WHOLESALE LICENSE HOLDER DELIVER INTO AN EXCLUSIVE TERRITORY - WHICH IS PRACTICALLY HOW THIS SITUATION WOULD BE HANDLED, I IMAGINE, FOR ANY OFF-PREMISE RETAILER LEGALLY OWNED BY A BREWERY. BUT IT WAS NEVER OUR INTENT TO DISALLOW A BREWER FROM SELLING TO THEIR OWN CLASS A RETAIL PREMISE THAT IS LOCATED ON THE BREWERY PREMISE.)

10/12/2005

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

-----Original Message-----

From: Pleva, Brian  
Sent: Wednesday, October 12, 2005 1:06 PM  
To: Gary, Aaron  
Subject: RE: FW: Final Draft

Aaron, the attached is correct. A total limit of 30,000 annually.

-----Original Message-----

From: Gary, Aaron  
Sent: Wednesday, October 12, 2005 1:04 PM  
To: Pleva, Brian  
Subject: RE: FW: Final Draft

Brian,

Item (2) (e) of the attached document relating to small brewers differs from the updated instructions you provided to me over the phone. The attached puts a total limit of 30,000, but in our conversations you instructed a limit of 30,000 to any single retailer. Which do you want?

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

-----Original Message-----

From: Pleva, Brian  
Sent: Wednesday, October 12, 2005 10:30 AM  
To: Gary, Aaron  
Subject: FW: FW: Final Draft

-----Original Message-----

From: ericj@chorus.net [mailto:ericj@chorus.net]  
Sent: Tuesday, October 11, 2005 4:12 PM  
To: Pleva, Brian  
Subject: Re: FW: Final Draft

Ok. Here's the document. I believe this incorporates everyone's changes. I have sent it to the brewers saying, "unless there is something major lets wait to see how it comes back from drafting." But I'm pretty confident it has no major errors.

My question for Aaron is this -

Currently wholesalers are allowed to sell to other wholesalers (clear under 125.28). That is a necessary part of the business. We do not

10/12/2005

want to take away that legal authority. Does (1)(d) as written in this attached document do that or threaten that? The Miller attorneys believe it does not, the Coors attorneys believe it does and needs to be tweaked. I think it is unclear and would lean toward clarifying it. What does Aaron think? And does he have any suggestions?

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---

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**Subject:** RE: FW: Final Draft

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608.261.6926 (voice)  
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-----Original Message-----

From: Pleva, Brian  
Sent: Wednesday, October 12, 2005 10:30 AM  
To: Gary, Aaron  
Subject: FW: FW: Final Draft

-----Original Message-----

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Sent: Tuesday, October 11, 2005 4:12 PM  
To: Pleva, Brian  
Subject: Re: FW: Final Draft

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## Gary, Aaron

---

**From:** Pleva, Brian  
**Sent:** Wednesday, October 12, 2005 10:30 AM  
**To:** Gary, Aaron  
**Subject:** FW: FW: Final Draft

**Attachments:** Direct Shipping Proposal.doc



Direct Shipping  
Proposal.doc (...)

-----Original Message-----

**From:** ericj@chorus.net [mailto:ericj@chorus.net]  
**Sent:** Tuesday, October 11, 2005 4:12 PM  
**To:** Pleva, Brian  
**Subject:** Re: FW: Final Draft

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## NEGOTIATED PROPOSAL

### **Re-write 125.01**

This chapter shall be construed as an enactment of the Legislature's support for the three-tiered system for alcohol 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.

**125.34 Direct Shipping Prohibited. (1)** (a) Prior to sale, transport or delivery to a retailer, all fermented malt beverages shall have first been unloaded at and distributed from a licensed wholesale premise located in this state that is a warehouse for which a permit is issued under s. 125.19 and that is a separate physical location from any brewer's, out-of-state shipper's or retailer's premises.

(b) No holder of a wholesaler's license shall transport, sell, deliver or cause to be transported, sold or delivered any brand of fermented malt beverage to any holder of a retail alcohol license or permit that is located outside the holder of the wholesale license's designated sales territory for the brand except in situations where a wholesaler in another designated sales territory is unable to service its territory and the brewer or out-of-state shipper has given consent. Within that designated sales territory, a holder of a wholesale license may not refuse to sell or offer reasonable service to licensed retailers during the normal business hours of the wholesaler. A written agreement between the holder of the wholesale license and the brewer or out-of-state shipper shall specify the brand for which the distribution rights are granted, and the exact geographical area of the territory. A brewer or out-of-state shipper may not provide by such written agreement for the distribution of a brand to more than one holder of a wholesaler's license for all or any part of the designated sales territory.

(c) No holder of a wholesaler's license shall transport, sell, deliver, or cause to be transported, sold, or delivered, any brand of fermented malt beverage to any retail licensee or permittee that is located in a designated sales territory for which another wholesale license holder has been granted the right to distribute the same brand pursuant to subsection (b).

(d) No holder of a wholesaler's license shall transport, sell, deliver, or cause to be transported, sold, or delivered, any brand of fermented malt beverage to any person or entity that the licensee knows or should know will transport the product for resale in a designated sales territory for which another wholesaler has been granted the right to distribute the same brand pursuant to subsection (b).

(e) All deliveries of fermented malt beverages to retail licensees or permittees must be made by the holder of a wholesaler's license to the retail premise or location from which the fermented malt beverages will be sold to persons other than licensees or permittees. Unless otherwise permitted pursuant to 125.31, no retail licensee or permittee may transport fermented malt beverages from one retail premise to any other retail premise for sale to persons other than licensees or permittees.

(f) Except as provided in part (2) of this Section, a holder of a brewer's or out-of-state shipper's permit may transport, sell, and deliver fermented malt beverages only to a holder of a wholesaler's license, which may be the brewer or out-of-state shipper itself provided that the fermented malt beverages are then unloaded at and distributed from a licensed wholesale warehouse that is a separate physical location from any brewer's, out-of-state shipper's or retailer's premises.

(2) Notwithstanding the foregoing provisions in part (1) of this Section:

(a) A brewer or out-of-state shipper holding a Class "A" or Class "B" license may sell fermented malt beverages pursuant to that Class "A" or Class "B" license to persons other than licensees and permittees.

(b) A brewer or out-of-state shipper holding a wholesaler's license may transport, sell, and deliver fermented malt beverages to a licensed retail location on a brewer's or out-of-state shipper's premises.

(c) A retailer located on a brewer's or out-of-state shipper's premises may purchase and receive fermented malt beverages from that brewer or out-of-state shipper for resale to consumers at that retail location.

(d) A brewer holding an out-of-state shipper's permit may transport fermented malt beverages from outside this state to the brewer's premises in this state.

(e) A brewer manufacturing less than 100,000 barrels of fermented malt beverages per calendar year may be issued a wholesaler's license for a wholesale warehouse that is located on the brewer's premise. A brewer may not sell or ship more than 30,000 barrels of fermented malt beverages to retail licensees or permittees from a wholesale warehouse located on the brewer's premise in any calendar year.

(3) In the event that a court of competent jurisdiction holds that any section of this chapter is unconstitutional or otherwise invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

10/12

MC w/ Brian Plesa & Eric Jensen

(1) (d) - should not apply to another wholesaler

- trying <sup>not</sup> to distinguish to between a brewer & a wholesaler - make sure draft clearly covers both
- instructions have changed - compare



# RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman

(Request Made By: ARG) (Date: 10 / 13 / 05)




Please transfer the drafting file for

2003 LRB \_\_\_\_\_ to the drafting file

for 2005 LRB \_\_\_\_\_

 The final version of the 2003 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2003 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".


 For research purposes, because the 2003 draft was incorporated into a 2005 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2005 drafting file. This request form will be inserted into the "guts" of the 2005 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.


**--- OR ---**

Please copy the drafting file for

2005 LRB 3112 / PI (include the version) and place it in the

drafting file for 2005 LRB 3764

 For research purposes, because the original 2005 draft was incorporated into another 2005 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2005 drafting file. This request form will be inserted into the "guts" of the new 2005 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

 The original drafting file will then be returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.

Needed by 10/17 end of day

in 10/13

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

cjs

D. Note

SA✓

Gen cat

inserts

1 AN ACT ...; relating to: the sale and distribution of fermented malt beverages.

Analysis by the Legislative Reference Bureau

Under current law, alcohol beverages generally must be distributed from the manufacturer to the consumer under a three-tier distribution system: the manufacturer may sell to a wholesaler; the wholesaler may sell to a retailer or another wholesaler; and the retailer may sell to the consumer. Current law generally prohibits a person from selling alcohol beverages unless the seller possesses a license or permit authorizing the sale.

With respect to fermented malt beverages (beer), a brewer's permit authorizes the brewer to manufacture, possess, and store beer on the brewery premises. A brewer generally, unless it holds another license, may sell beer only to a beer wholesaler. An out-of-state shipper's permit authorizes the out-of-state shipper to ship beer into this state but only to a beer wholesaler.

A beer wholesaler's license authorizes the license holder to sell to retailers or wholesalers beer in original packages that may not be consumed on or about the wholesaler's premises. A brewer may hold a wholesaler's license and, if the brewer is a licensed wholesaler, may transport beer between the brewery premises and the brewer's wholesale premises and may sell beer at wholesale. A beer wholesaler may not receive beer directly shipped from outside this state unless the shipper holds an out-of-state shipper's permit. All beer shipments to a wholesaler in this state, whether shipped to the wholesaler from inside this state or from outside this state, must be unloaded in and distributed from the wholesaler's warehouse in this state. Current law provides beer wholesalers with certain protections against termination of brand distribution rights within their distribution territory.

✓

*With exceptions, a brewer may not hold both a wholesaler's license and retail licenses.*

Under current law, a brewer may hold a Class "A" retail license (authorizing the retail sale of beer in original packages for consumption off the licensed premises), but, with exceptions, may not hold a Class "B" license (authorizing the retail sale of beer for consumption on or off the premises where sold). *An* exception allows a brewer to maintain and operate, and hold a Class "B" license for, *one* retail premises on brewery premises and *one* retail premises on property owned by the brewer or its subsidiary or affiliate. As of May 5, 1994, a beer wholesaler may not be issued a Class "A" license or a Class "B" license or permit, but a wholesaler holding these licenses before that date may, with certain exceptions, continue to operate under each of these licenses.

Current law also provides for the issuance of alcohol beverage warehouse permits that authorize the holder to store and warehouse alcohol beverages in warehouse premises covered by the permit, but does not authorize sales of alcohol beverages.

Under this bill, beer may not be sold, transported, *a wholesaler's* or delivered to a retailer unless the beer is first unloaded at and distributed from *a wholesaler's* warehouse premises for which a wholesaler's license (including a wholesaler's license issued to a brewer) and an alcohol beverage warehouse permit are issued, which premises must be in this state and must be a physically separate location from any retail premises or brewery premises. However, a brewer that manufactures less than 100,000 barrels of beer in a calendar year may maintain a wholesale premises on its brewery premises if the brewer does not, from these wholesale premises, sell or ship to retailers more than 30,000 barrels of fermented malt beverages in any calendar year.

The bill also prohibits a wholesaler (including a brewer or out-of-state shipper that holds a wholesaler's license) from selling, transporting, or delivering any brand of beer 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 precisely identifies the designated sales territory for which such distribution rights are granted. A brewer or out-of-state shipper may not, in any such agreement, grant to more than one wholesaler distribution rights for the same brand in the same designated sales territory. Within a wholesaler's designated sales territory for any brand, the wholesaler may not refuse to sell the brand, or refuse to offer reasonable service related to the sale of the brand, to any licensed retailer during the wholesaler's normal business hours. With specified exceptions, the bill prohibits a wholesaler from selling, transporting, or delivering, or causing to be sold, transported, or delivered, any brand of beer outside the wholesaler's designated sales territory.

The bill requires deliveries of beer to retailers to be made only by wholesalers and requires deliveries to retailers to be made only at their retail premises. A retailer may not transport beer from one retail premises to another retail premises for purposes of selling the beer at the other retail premises unless both retail premises are located on brewery premises.

The bill specifies that, with exceptions, a brewer or out-of-state shipper may sell, transport, and deliver beer only to a wholesaler and that the brewer or out-of-state shipper itself may be that wholesaler if, in its activities as a wholesaler,

or out-of-state shipper

it complies with the requirements under the bill. However, a brewer or out-of-state shipper authorized to sell beer at retail may do so in accordance with applicable provisions of current law, but distribution of beer sold at retail by a brewer must comply with the requirements under the bill unless the brewer's retail premises are on brewery premises.

, with respect to a brewer,

*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 #. 125.12(2)(ag) 7. of the statutes is repealed. ✓

**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) to (7), 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.

History: 1981 c. 79; 1989 a. 253; 1993 a. 378; 2003 a. 250.

**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

1 authorize an official or body of the municipality to issue temporary Class “B” licenses  
 2 under sub. (6). A Subject to s. 125.34 (5) to (7), a Class “B” license authorizes retail  
 3 sales of fermented malt beverages to be consumed either on the premises where sold  
 4 or off the premises. A license may be issued after July 1. That license shall expire  
 5 on the following June 30. Persons holding a Class “B” license may sell beverages  
 6 containing less than 0.5% of alcohol by volume without obtaining a license under s.  
 7 66.0433 (1).

History: 1981 c. 79; 1985 a. 302; 1987 a. 249, 399; 1989 a. 253; 1991 a. 269; 1993 a. 112, 378; 1995 a. 282; 1999 a. 9; 1999 a. 150 s. 672; 2005 a. 22.

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

9 125.28 (1) Every municipal governing body may issue licenses to wholesalers  
 10 for the sale of fermented malt beverages from premises within the municipality. ~~A,~~  
 11 which premises shall comply with the requirements under s. 125.34 (2). Subject to  
 12 s. 125.34, a wholesaler’s license authorizes sales of fermented malt beverages only  
 13 in original packages or containers to retailers or wholesalers, not to be consumed in  
 14 or about the premises where sold. In the case of a foreign corporation or foreign  
 15 limited liability company whose wholesale premises is located outside of this state,  
 16 the wholesaler’s license shall be issued by the governing body of the municipality in  
 17 which some part of the wholesaler’s business is conducted in this state. No additional  
 18 license or permit is required for the solicitation of orders for sale to or by licensed  
 19 wholesalers.

History: 1981 c. 79; 1989 a. 31, 253; 1993 a. 112, 259, 378, 491; 1995 a. 225; 1999 a. 163; 2003 a. 250.

20 **SECTION 5.** 125.29 (3) and (4) of the statutes ~~are~~ <sup>is</sup> amended to read:

21 125.29 (3) ACTIVITIES. A Subject to s. 125.34 (2), a brewer may manufacture,  
 22 possess and store fermented malt beverages on the brewery premises and transport  
 23 fermented malt beverages between the brewery premises and any depot or

1 warehouse maintained by the brewer for which the brewer has a wholesaler's license  
2 issued under s. 125.28.

3 ~~(4) MULTIPLE LICENSES. Notwithstanding ss. 125.26 (2) and 125.28 (2), and~~  
4 ~~subject to s. 125.34, a brewer may hold a wholesaler's license issued under s. 125.28~~  
5 ~~and a Class "B" license as provided under s. 125.31.~~

History: 1981 c. 79; 1989 a. 253; 1993 a. 378; 1995 a. 27.

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

7 125.30 (1) The department shall issue out-of-state shippers' permits which  
8 authorize the permittee to ship fermented malt beverages only to holders of a  
9 wholesaler's license issued under s. 125.28. No person may receive fermented malt  
10 beverages in this state which have been directly shipped from outside this state by  
11 any person other than the holder of a permit issued under this section. All Subject  
12 to s. 125.34 (2), all shipments of fermented malt beverages to a wholesaler of  
13 fermented malt beverages in this state, whether shipped to the wholesaler from  
14 inside this state or from outside this state, shall be unloaded in and distributed from  
15 the wholesaler's warehouse in this state.

History: 1981 c. 79; 1989 a. 253; 1993 a. 112, 259, 491; 1995 a. 27; 1997 a. 166.

16 **SECTION 7.** 125.31 (1) (a) 2. and (b) and (2) and (3) (intro.) of the statutes are  
17 amended to read:

18 125.31 (1) (a) 2. Notwithstanding ss. 125.29 (2) and 125.33 (1), and subject to  
19 s. 125.34, a brewer may maintain and operate one place on brewery premises and one  
20 place on real estate owned by the brewer or a subsidiary or affiliate corporation or  
21 limited liability company for the sale of fermented malt beverages for which a  
22 Class "B" license is required for each place, but, except as provided in subds. 3. and  
23 4., not more than 2 such Class "B" licenses shall be issued to any brewer.

1 (b) Notwithstanding ss. 125.29 (2) and 125.33 (1), and subject to s. 125.34, a  
2 brewer may own, maintain or operate places for the sale of fermented malt beverages  
3 at the state fair park or on any county fairgrounds located in this state, in addition  
4 to places authorized under par. (a).

5 (2) A Subject to s. 125.34, a brewer may own, maintain or operate depots and  
6 warehouses from which sales of fermented malt beverages, not for consumption in  
7 or about the premises where sold, may be made in original packages to retailers and  
8 wholesalers. A separate wholesaler's license is required for each depot or warehouse  
9 owned, maintained or operated.

10 (3) (intro.) A Subject to s. 125.34, a brewer may sell fermented malt beverages  
11 in the original packages or containers, not to be consumed on the premises where  
12 sold:

13 **SECTION 8.** 125.33 (11) of the statutes is repealed.

14 **SECTION 9.** 125.34<sup>^</sup> of the statutes is created to read:

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

17 (a) "Brand" means any word, name, group of letters, symbol, or combination  
18 thereof that is adopted and used by a brewer or out-of-state shipper to identify a  
19 specific fermented malt beverage product and to distinguish that product from any  
20 other fermented malt beverage product.

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

22 (c) "Designated sales territory" means the geographical area identified in a  
23 written agreement between a wholesaler and a brewer or out-of-state shipper under  
24 which the wholesaler is authorized to distribute one or more brands of fermented  
25 malt beverages supplied by the brewer or out-of-state shipper. ✓

1 (d) "Out-of-state shipper" means a permittee under s. 125.30. ✓

2 (e) "Retailer" means any person holding a Class "A" license or a Class "B"  
3 license or permit, any campus <sup>or state fair park</sup> not holding a Class "B" license, or any other person  
4 authorized under s. 125.06 (6) or ~~125.31(1)(b)~~ to sell fermented malt beverages to  
5 persons other than licensees or permittees under this chapter. ✓

6 (f) "Retail premises" means the premises described in a Class "A" license or a  
7 Class "B" license or permit, that portion of a campus <sup>or state fair park</sup> not holding a Class "B" license  
8 on which sales of fermented malt beverages are authorized, or the location from  
9 which fermented malt beverages are sold at retail as authorized under s. 125.06 (6)  
10 or ~~125.31(1)(b)~~. ✓

11 (g) "Wholesaler" means a licensee under s. 125.28 and includes a brewer or  
12 out-of-state shipper that holds a wholesaler's license under s. 125.28. ✓

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

19 (b) Notwithstanding par. (a), a brewer that manufactures less than 100,000  
20 barrels of fermented malt beverages in a calendar year may be issued a wholesaler's  
21 license for wholesale premises located on brewery premises. A brewer may not sell  
22 or ship more than 30,000 barrels of fermented malt beverages in any calendar year  
23 to retailers from wholesale premises located on brewery premises.

24 (3) (a) A wholesaler may not sell, transport, or deliver any brand of fermented  
25 malt beverages unless the wholesaler has entered into a written agreement with the



*Except for consent given under sub. (4)(a), a*

1 brewer or out-of-state shipper supplying the brand that grants to the wholesaler  
2 distribution rights for the brand and identifies the designated sales territory for  
3 which such distribution rights are granted, including the precise geographical area  
4 comprising the designated sales territory. A brewer or out-of-state shipper may not,  
5 in any agreement under this paragraph, grant to more than one wholesaler  
6 distribution rights for the same brand in the same designated sales territory or in  
7 any part of the same designated sales territory. ✓

8 (b) Within a wholesaler's designated sales territory for any brand of fermented  
9 malt beverages, the wholesaler may not refuse to sell the brand of fermented malt  
10 beverages, or refuse to offer reasonable service related to the sale of the brand of  
11 fermented malt beverages, to any person holding a Class "A" license or a Class "B"  
12 license or permit during the wholesaler's normal business hours. ✓

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

16 (a) Any retailer located outside the wholesaler's designated sales territory for  
17 the brand. This paragraph does not apply if another wholesaler that has been  
18 granted distribution rights for the brand in the designated sales territory where the  
19 sale, transportation, or delivery occurs is unable to service this designated sales  
20 territory and the brewer or out-of-state shipper granting distribution rights has  
21 given consent for the sale, transportation, or delivery. ✓

22 (b) Any retailer located in a designated sales territory for which another  
23 wholesaler has been granted distribution rights for the brand under an agreement  
24 described in sub. (3) (a).

*not with standing sub. (3)(a)*

1 (c) Any person, other than another wholesaler, that the wholesaler knows or  
2 should know will transport the product for resale in a designated sales territory for  
3 which another wholesaler has been granted distribution rights for the brand under  
4 an agreement described in sub. (3) (a).

5 (5) Deliveries of fermented malt beverages to retailers may be made only by  
6 wholesalers and shall be made to retailers only at their retail premises. No retailer  
7 may transport fermented malt beverages from one retail premises to another retail  
8 premises for purposes of selling the fermented malt beverages at the other retail  
9 premises unless both retail premises are located on brewery premises.

10 (6) (a) Except as provided in par. (b) and ss. 125.06 (1) and 125.31 (1) and (3),  
11 a brewer or out-of-state shipper, including a brewer that holds an out-of-state  
12 shipper's permit, may sell, transport, and deliver fermented malt beverages only to  
13 a wholesaler, which may be the brewer or out-of-state shipper itself if, in its  
14 activities as a wholesaler, it complies with the requirements under subs. (2) to (5).

15 (b) A brewer or out-of-state shipper that holds a Class "A" license or Class "B"  
16 license, or that is otherwise a retailer, may sell fermented malt beverages to persons  
17 other than licensees and permittees in accordance with the terms of the license, the  
18 provisions of s.125.31, and the applicable provisions of this chapter relating to  
19 retailers. Except as provided in sub. (7), the provisions of subs. (2) to (6) apply with  
20 respect to fermented malt beverages manufactured or supplied by a brewer or  
21 out-of-state shipper that is also a retailer.

22 (7) Subsections (2) to (6) do not apply with respect to fermented malt beverages  
23 provided by a brewer to retail premises operated by the brewer on the brewery  
24 premises.

25 **SECTION 10. Initial applicability.**

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1 (1) This act first applies on the first day of the 7th month beginning after the  
 2 effective date of this subsection with respect to any person holding a wholesaler's  
 3 license issued under section 125.28 of the statutes immediately prior to the effective  
 4 date of this subsection.

5 (END)

(A) Section #. Effective dates. This act takes effect on the first day of the 7th month beginning after publication, except as follows:

(B) D-Note

(A) (1) Section 10 (1) of this act takes effect on the day after publication.

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