

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3764/P1dn

ARG:/.....

45

*D-Note insert A*

ATTN: Brian Pleva

Please review the attached draft carefully to ensure that it is consistent with your intent. To accomplish the purposes of the draft, I have had to make certain assumptions and interpretations with respect to the drafting instructions, which may not be consistent with your expectations. ✓

Many of the major drafting decisions have already been discussed by e-mail or telephone. However, I would like to address some additional issues. ✓

The drafting instructions provided refer in item (1) (e) to "the retail premise or location from which the fermented malt beverages will be sold at retail." I am uncertain what was intended by this language. Under the definition of "premises" in s. 125.02 (14m), any retail sales made by a licensee or permittee are made from the "premises," so reference to a "location" other than the premises if a retail license has been issued would be unnecessary. However, I thought this additional language might have been intended to cover the few exceptions where retail beer sales may be made without a license or permit, in particular on a campus or under an exception identified in s. 125.06 or, as I interpret the provision, under s. 125.31 (1) (b). Accordingly, I have defined "retailer" in created s. 125.34 (1) (e) of this draft to include those exceptions where such retail sales can be made without a license or permit, and I have defined "retail premises" to include the location from which such sales are made. Please advise if this is not consistent with your intent. ✓ ✓ ✓ ✓ ✓

Also with respect to the definition of "retailer," this definition does not include sales made under authority of s. 125.06 (5) because the delivery could not be made to the place of sale as the sale must be while the railroad car or aircraft is "in transit." (A Class "B" license can be issued for sales in a railroad car not in transit.) I also note that I did not use this broader definition of "retailer" in created s. 125.34 (3) (b); instead, the duties under that paragraph run only to a person holding a retail license or permit. In s. 125.34 (4) (a), this definition of "retailer" is used, although I wondered from the instructions if you wanted s. 125.34 (4) (a) to identify any alcohol beverages retailer (including intoxicating liquor retailers as well). (I believe it would be unnecessary to refer to intoxicating liquor retailers in this draft. See the second to last paragraph of this drafter's note.) ✓ ✓

With respect to created s. 125.34 (4), which is based upon drafting instruction items (1) (b) to (d), is s. 125.34 (4) (b) necessary? It seems that a violation of s. 125.34 (4) (b)

(see also discussion of brewer ownership interests below.)

D-Note insert B

would always be a violation of s. 125.34 (4) (a) as well, and while a wholesaler should know its own distribution territory, there may be uncertainty as to what rights have been granted in another territory. If you want s. 125.34 (4) (b) retained in the bill, perhaps the "exception" provision now appearing in s. 125.34 (4) (a) would fit better in s. 125.34 (4) (b).

Item (1) (e) of the drafting instructions, appearing in the draft as created s. 125.34 (5), contains the phrase "unless otherwise permitted pursuant to s. 125.31." I cannot decipher what part of s. 125.31 is believed to be pertinent here. I have interpreted the intent to be allowing a brewer with retail licenses for brewery premises to transfer product between these retail premises, and have drafted ~~created~~ s. 125.34 (5) accordingly. Please advise if this is not consistent with your intent and, if so, please advise as to what part of s. 125.31 you believe is pertinent here.

STET: leave as typed

Regarding item (2) (d) of the drafting instructions, as discussed by e-mail, this item would apply to shipments into the state to a brewer's wholesale premises, and I don't see anything in the draft that is inconsistent with a brewer doing so. I therefore wonder about the need for such an "exception" to part (1) of the instructions. I have addressed this issue in the attached draft by adding the language "including a brewer that holds an out-of-state shipper's permit" to created s. 125.34 (6) (a) in the attached draft.

As discussed by e-mail, various provisions of the instructions have been modified to recognize the restriction under current law that an out-of-state shipper may only sell to an in-state wholesaler. Also, the attached draft omits in several places references to out-of-state shippers that were included in the drafting instructions on the basis that out-of-state shippers' premises are never located in this state. See, for example, item (2) (c) of the drafting instructions.

D-Note insert C

Item (1) (f) of the drafting instructions leads to complications in the draft. In simplified form, this provision requires a brewer to sell only to a wholesaler, which may be the brewer itself. Under current law, brewers may also sell at retail, so the issue of retail sales must be dealt with as an exception to the statement that brewers may sell only to wholesalers. 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 is the brewer, the wholesaler, and the retailer. I have interpreted the drafting instructions to create an exception for such a situation only when the retail premises are on the brewery premises. Otherwise, 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?

Also, a wholesaler may hold retail licenses if the licenses were issued before May 5, 1994. Do you want any provision in the bill, similar to created s. 125.34 (6), clarifying distribution requirements where a wholesaler distributes to its own retail premises?

(along with s. 125.12 (2) (a) 3-7.) ✓

The attached draft treats s. 125.31 (1) (a) 2. but does not treat s. 125.31 (1) (a) 3. or 4. because, under subd. 3., beer must be purchased from an independent wholesaler and, under subd. 4., the brewer's products cannot be sold on the retail premises. ✓

The attached draft repeals s. 125.33 (11), which requires an agreement between a wholesaler and a brewer, brewer's agent, or out-of-state shipper under specified circumstances. Because of the considerable overlap between this provision and created s. 125.34 (3) (a) in the attached draft, I believe that s. 125.33 (11) should be repealed. Is this consistent with your intent? ✓

*fix the single q. mark so it curves in same direction as the double q. mark*  
The revised instructions provided on October 12 omitted some items that I had drafted based upon the original instructions. Based upon these revised instructions, I have pulled from the draft the following: A definition of "brand extension," which read as follows: "Brand extension' means 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 that significantly benefits from the goodwill associated with that preexisting brand." (I have retained in the draft the definition of "brand," which was also omitted from the revised instructions, because this definition is necessary to the draft. The definition of brand in the attached draft varies slightly from the definition of brand in s. 125.33 (10) (a) 1.) The following language was removed from the end of created s. 125.34 (3) (a): "If a brewer or out-of-state shipper sells more than one brand of fermented malt beverages, the agreement under this paragraph may provide for distribution rights to the wholesaler of all or less than all of the brewer's or out-of-state shipper's brands as long as the provisions of this paragraph are satisfied for each brand for which distribution rights are granted. After the effective date of this paragraph .... [revisor inserts date], a brewer or out-of-state shipper may enter into an agreement under this paragraph with respect to a brand extension only if the agreement grants distribution rights for the brand extension to the wholesaler that is granted distribution rights for the preexisting brand in the same designated sales territory."

The attached draft does not include the severability provision in the drafting instructions. Section 990.001 (11) provides a global severability provision applicable to all statutes, so inserting another severability provision is unnecessary and contrary to our drafting practices.

As discussed, the draft includes ~~an~~ initial applicability *and effective date* provision so that existing wholesalers have six months to come into compliance with the various requirements of the bill, including the requirements of separate premises and written distribution agreements with exclusive territories.

This draft does not attempt to correct the problem with s. 125.31 (3) that is discussed in the drafter's note to LRB-3112/P1 and corrected in the text of LRB-3112/P1. ✓

I am uncertain how ownership interest restrictions under current law are interpreted with respect to out-of-state shippers. Section 125.30 does not contain any specific ownership interest restrictions on out-of-state shippers. However, out-of-state shippers wear two hats; while they are out-of-state shippers for permit purposes under s. 125.30, they also are typically either brewers or wholesalers operating in

another state. If an out-of-state shipper may not hold a retail license, then the text of created s. 125.34 (6) (b) in the attached draft should be modified. ✓

I note that this bill mandates written agreements creating exclusive wholesale sales territories. The impact of these provisions in the bill will intertwine with current s. 125.33 (10), relating to termination protections for such distribution rights. ✓

I also note that the attached draft does not affect a brewer's ability to wholesale wine under ss. 125.54 and 125.69 (1) (c). ✓

Finally, in interpreting the provisions of the attached draft, I note a few pertinent provisions of current law. Current law prohibits a person from selling beer at wholesale unless the person has a wholesaler's license, see s. 125.04 (1), and prohibits retailers from purchasing beer from any person other than licensed wholesalers. See s. 125.33 (9). The term "sell" is defined in a way that covers both direct and indirect sales, see s. 125.02 (20), and "person" is defined to include natural persons and business entities. See s. 125.02 (14). Current law also requires brewers, wholesalers, and retailers to have separate licenses or permits for each location from which sales or deliveries are made, see s. 125.04 (9), and prohibits a person from possessing on retail or wholesale premises alcohol beverages not authorized for sale on the premises. See s. 125.32 (6). ✓

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

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

**D-NOTE INSERT A**

*no #* (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**

*no #* 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 *an exception* ~~an "notwithstanding" provision~~ in created s. 125.34 (4) (a). *fix q. marks* (3) (a)

**D-NOTE INSERT C**

*no #* 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?

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3764/P1dn  
ARG:cjs:jf

October 17, 2005

ATTN: Brian Pleva

Please review the attached draft carefully to ensure that it is consistent with your intent. To accomplish the purposes of the draft, I have had to make certain assumptions and interpretations with respect to the drafting instructions, which may not be consistent with your expectations.

Many of the major drafting decisions have already been discussed by e-mail or telephone. However, I would like to address some additional issues.

The drafting instructions provided refer in item (1) (e) to "the retail premise or location from which the fermented malt beverages will be sold at retail." I am uncertain what was intended by this language. Under the definition of "premises" in s. 125.02 (14m), any retail sales made by a licensee or permittee are made from the "premises," so reference to a "location" other than the premises if a retail license has been issued would be unnecessary. However, I thought this additional language might have been intended to cover the few exceptions where retail beer sales may be made without a license or permit, in particular on a campus or under an exception identified in s. 125.06 or, as I interpret the provision, under s. 125.31 (1) (b) (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.). Accordingly, I have defined "retailer" in created s. 125.34 (1) (e) of this draft to include those exceptions where such retail sales can be made without a license or permit, and I have defined "retail premises" to include the location from which such sales are made. Please advise if this is not consistent with your intent.

Also with respect to the definition of "retailer," this definition does not include sales made under authority of s. 125.06 (5) because the delivery could not be made to the place of sale as the sale must be while the railroad car or aircraft is "in transit." (A Class "B" license can be issued for sales in a railroad car not in transit.) I also note that I did not use this broader definition of "retailer" in created s. 125.34 (3) (b); instead, the duties under that paragraph run only to a person holding a retail license or permit. In s. 125.34 (4) (a), this definition of "retailer" is used, although I wondered from the instructions if you wanted s. 125.34 (4) (a) to identify any alcohol beverages retailer (including intoxicating liquor retailers as well). (I believe it would be unnecessary to

refer to intoxicating liquor retailers in this draft. See the second to last paragraph of this drafter's note.)

With respect to created s. 125.34 (4), which is based upon drafting instruction items (1) (b) to (d), is s. 125.34 (4) (b) necessary? It seems that a violation of s. 125.34 (4) (b) would always be a violation of s. 125.34 (4) (a) as well, and while a wholesaler should know its own distribution territory, there may be uncertainty as to what rights have been granted in another territory. If you want s. 125.34 (4) (b) retained in the bill, perhaps the "exception" provision now appearing in s. 125.34 (4) (a) would fit better in s. 125.34 (4) (b). Also, the brewer's ability to "give consent" under created s. 125.34 (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 therefor I have added an exception in created s. 125.34 (3) (a).

Item (1) (e) of the drafting instructions, appearing in the draft as created s. 125.34 (5), contains the phrase "unless otherwise permitted pursuant to s. 125.31." I cannot decipher what part of s. 125.31 is believed to be pertinent here. I have interpreted the intent to be allowing a brewer with retail licenses for brewery premises to transfer product between these retail premises, and have drafted created s. 125.34 (5) accordingly. Please advise if this is not consistent with your intent and, if so, please advise as to what part of s. 125.31 you believe is pertinent here. (See also discussion of brewer ownership interests below.)

Regarding item (2) (d) of the drafting instructions, as discussed by e-mail, this item would apply to shipments into the state to a brewer's wholesale premises, and I don't see anything in the draft that is inconsistent with a brewer doing so. I therefore wonder about the need for such an "exception" to part (1) of the instructions. I have addressed this issue in the attached draft by adding the language "including a brewer that holds an out-of-state shipper's permit" to created s. 125.34 (6) (a) in the attached draft.

As discussed by e-mail, various provisions of the instructions have been modified to recognize the restriction under current law that an out-of-state shipper may only sell to an in-state wholesaler. Also, the attached draft omits in several places references to out-of-state shippers that were included in the drafting instructions on the basis that out-of-state shippers' premises are never located in this state. See, for example, item (2) (c) of the drafting instructions.

Item (1) (f) of the drafting instructions leads to complications in the draft. In simplified form, this provision requires a brewer to sell only to a wholesaler, which may be the brewer itself. Under current law, brewers may also sell at retail, so the issue of retail sales must be dealt with as an exception to the statement that brewers may sell only to wholesalers. 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?

The attached draft treats s. 125.31 (1) (a) 2. but does not treat s. 125.31 (1) (a) 3. or 4. because, under subd. 3., beer must be purchased from an independent wholesaler and, under subd. 4., the brewer's products cannot be sold on the retail premises.

The attached draft repeals s. 125.33 (11), which requires an agreement between a wholesaler and a brewer, brewer's agent, or out-of-state shipper under specified circumstances. Because of the considerable overlap between this provision and created s. 125.34 (3) (a) in the attached draft, I believe that s. 125.33 (11) should be repealed (along with s. 125.12 (2) (ag) 7.). Is this consistent with your intent?

The revised instructions provided on October 12 omitted some items that I had drafted based upon the original instructions. Based upon these revised instructions, I have pulled from the draft the following: A definition of "brand extension," which read as

follows: "Brand extension' means 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 that significantly benefits from the goodwill associated with that preexisting brand." (I have retained in the draft the definition of "brand," which was also omitted from the revised instructions, because this definition is necessary to the draft. The definition of brand in the attached draft varies slightly from the definition of brand in s. 125.33 (10) (a) 1.) The following language was removed from the end of created s. 125.34 (3) (a): "If a brewer or out-of-state shipper sells more than one brand of fermented malt beverages, the agreement under this paragraph may provide for distribution rights to the wholesaler of all or less than all of the brewer's or out-of-state shipper's brands as long as the provisions of this paragraph are satisfied for each brand for which distribution rights are granted. After the effective date of this paragraph .... [revisor inserts date], a brewer or out-of-state shipper may enter into an agreement under this paragraph with respect to a brand extension only if the agreement grants distribution rights for the brand extension to the wholesaler that is granted distribution rights for the preexisting brand in the same designated sales territory."

The attached draft does not include the severability provision in the drafting instructions. Section 990.001 (11) provides a global severability provision applicable to all statutes, so inserting another severability provision is unnecessary and contrary to our drafting practices.

As discussed, the draft includes initial applicability and effective date provisions so that existing wholesalers have six months to come into compliance with the various requirements of the bill, including the requirements of separate premises and written distribution agreements with exclusive territories.

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I am uncertain how ownership interest restrictions under current law are interpreted with respect to out-of-state shippers. Section 125.30 does not contain any specific ownership interest restrictions on out-of-state shippers. However, out-of-state shippers wear two hats; while they are out-of-state shippers for permit purposes under s. 125.30, they also are typically either brewers or wholesalers operating in another state. If an out-of-state shipper may not hold a retail license, then the text of created s. 125.34 (6) (b) in the attached draft should be modified.

I note that this bill mandates written agreements creating exclusive wholesale sales territories. The impact of these provisions in the bill will intertwine with current s. 125.33 (10), relating to termination protections for such distribution rights.

I also note that the attached draft does not affect a brewer's ability to wholesale wine under ss. 125.54 and 125.69 (1) (c).

Finally, in interpreting the provisions of the attached draft, I note a few pertinent provisions of current law. Current law prohibits a person from selling beer at wholesale unless the person has a wholesaler's license, see s. 125.04 (1), and prohibits retailers

from purchasing beer from any person other than licensed wholesalers. See s. 125.33 (9). The term "sell" is defined in a way that covers both direct and indirect sales, see s. 125.02 (20), and "person" is defined to include natural persons and business entities. See s. 125.02 (14). Current law also requires brewers, wholesalers, and retailers to have separate licenses or permits for each location from which sales or deliveries are made, see s. 125.04 (9), and prohibits a person from possessing on retail or wholesale premises alcohol beverages not authorized for sale on the premises. See s. 125.32 (6).

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: [aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

**Gary, Aaron**

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**From:** Pleva, Brian  
**Sent:** Friday, October 21, 2005 10:50 AM  
**To:** Gary, Aaron  
**Subject:** RE: Draft review: LRB 05-3764/P1 Topic: beer distribution rights and requirements affecting brewers, wholesalers, and out-of-state shippers  
**Importance:** High

Aaron, I think a /1 would be best! Thanks!

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**From:** Gary, Aaron  
**Sent:** Thursday, October 20, 2005 5:29 PM  
**To:** Pleva, Brian  
**Subject:** RE: Draft review: LRB 05-3764/P1 Topic: beer distribution rights and requirements affecting brewers, wholesalers, and out-of-state shippers

Brian,  
Please see comments below.

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

---

**From:** Pleva, Brian  
**Sent:** Thursday, October 20, 2005 11:59 AM  
**To:** Gary, Aaron  
**Subject:** RE: Draft review: LRB 05-3764/P1 Topic: beer distribution rights and requirements affecting brewers, wholesalers, and out-of-state shippers  
**Importance:** High

Aaron, I've put together some minor changes, as well as some comments in response to your drafter's notes:

Changes

- With regards to the statement in the 2nd paragraph of the LRB Analysis ("A brewer generally, unless it holds another license, may sell beer only to a beer wholesaler"...

Neither 125.29 nor 125.31 authorize a brewer to sell beer to anyone unless the brewer also holds a wholesale or retail license.

A more accurate statement, perhaps, would be, "A brewer, unless it holds another license, may not sell beer. Upon obtaining a wholesale license, a brewer may sell beer to wholesalers and to retailers." This is Leg. Council's interpretation, I believe, and is reflected in the fact that all in-state brewers have wholesale licenses.

This is important because recent cases in this area of the law have had to focus on legislative intent to make their decisions—it is important in this case that legislators understand exactly who is authorized to do what.

ARG: Under s. 125.31 (1) (b), I think a brewer may sell beer at retail without actually holding a license. As to the more fundamental question of brewer to wholesaler sales, I had made a mistaken assumption that, despite the silence in the statutes, it was beyond question that a brewer's permit authorized a brewer to sell beer to a wholesaler, as too many other statutory provisions would be rendered meaningless if this were not the case. Since this issue is in controversy, I will revise the analysis but cannot make the statement above because I don't believe it is clearly accurate. [While I have done some research, I did not see the cases you refer to, so I don't know what the courts have said on the issue, and I have not had time to visit the depths of legislative history, which I believe would be the best guideline.] I will try to keep the revised analysis limited to the statutory text and basically silent on the question.

BP: *O.K., we're fine with you keeping the revised analysis limited to statutory text.*

- In the small brewer exception [page 7, line 19 of draft], we should work in a reference to the definition of "small brewer" found in 125.31(1). Here the barrelage limits are 100k and 30k, but the remaining definitions of "small brewer" found in 125.31(1) should apply so that no one (including "contract brewers") can game the system by creatively organizing their business entity.

Example – begin (2)(b): "For purposes of this subsection, except for the manufacturing volume limitation, 'brewer' has the same meaning as 'small brewer' in s. 125.31(1)(a)1."

ARG: Based upon the original drafting instructions, I had initially included similar material in the draft but, based upon the revised instructions, pulled it out. Does this work for you:

Add to subsection (1) at p. 7 line 10 the definition: "'Small brewer' means a brewer that, together with the fermented malt beverages manufactured during the same year by those producers identified in s. 125.31 (1) (a) 1. a. to e., manufactures less than 100,000 barrels of fermented malt beverages in a calendar year in any location, whether in this state or outside this state." Subsection (2) (b) on p. 7, lines 19-23 would then be revised to read: "Notwithstanding par. (a), a small brewer may be issued a wholesaler's license for wholesale premises located on brewery premises. A small brewer issued a wholesaler's license under this paragraph may not sell or ship more than 30,000 barrels of fermented malt beverages in any calendar year to retailers from wholesale premises located on brewery premises."

BP: *I think your treatment of referencing 125.31(1) it is very good. HOWEVER - as we are talking about volumes up to 100,000 barrels, I don't think we want this phrased as "a small brewer is one brewing less than 100,000 barrels." The reference must simply be in the context that "a brewer brewing less than 100,000 barrels is exempt from the separate warehouse requirement" I don't know if any state defines "small brewer" at more than 50,000 barrels - we will be setting a dangerous precedent for other state if we define small brewer that way. 100,000 is not a "small brewer" by any definition. Our tax definition setting up the reduced rate for some brewers does not reference "small brewers" it simply references "brewers manufacturing less than..." so there is precedent in our statutes to handle this one in the same manner. Plus, we already define "small brewer" at 4000 barrels and I think using the same terminology risks confusion about what is a "small brewer". We have no interest in getting into revising 125.31(1) which primarily governs brew pubs because that will open up a whole new can of worms.*

*I would suggest adding a sentence to the beginning of (2)(b): "For the purposes of this subparagraph, 'brewer' means 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 less than 100,000 barrels of fermented malt beverages in a calendar year in any location, whether in this state or outside this state."*

*That may not be quite as clean, but it keeps all the references necessary for the exemption in one place .*

- In (3)(b) [Page 8, Line 8] of draft, delete "during the wholesaler's normal business hours" at the end of the paragraph.

ARG: OK.

Comments/Questions on Drafter's Notes

- Page 1, Paragraph 3: The goal is to clarify the current prohibition against large chains taking delivery at distribution centers or at a single retail location and self-distributing to other retail locations. I didn't intend to eliminate the exceptions you note beginning with "However, I thought..."

ARG: This is easily addressed by limiting the definition of "retailer" to only Class "A" licensees and Class "B" licensees and permittees. (Basically deleting all the text after "permit," on p. 7, lines 2 to 4.) Is this what you want? (With corresponding change to definition of "retail premises".)

BP: Yes.

- Page 1, Paragraph 4: O.K.
- Page 2, 1<sup>st</sup> Full Paragraph: I agree with the way you drafted (4)(a) & (4)(b). (4)(b) is a clear duplication and can be removed.

However, I think the reference to a brewer giving consent in (3)(a) should be removed [Page 8, Line 4 of the draft, "Except for consent given under sub.(4)(a)..."]. Allowing a wholesaler to deliver in another wholesaler's exclusive territory is specifically for an "emergency" type situation. I do not want to risk any interpretation that would allow a brewer to assign rights to multiple wholesalers for same area.

ARG: There is still a tension between (4) (a) and (3) (a). Would you be OK with removing the language from (3) (a) and rewriting p. 8, line 21 to read: ", 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." ?

BP: I think that works. It limits this to temporary situations, which I believe is the agreed-upon concept.

- Page 2, Paragraph 2: O.K.
- Page 2, Paragraph 3 & 4: O.K.
- Page 2, Paragraph 5 (extends to Page 3): The intent is to allow brewers who legally maintain retail establishments (whether Class A or Class B, and whether on or off the brewery premises) to continue operating them. Our presumption is that brewers legally operating retail premises today do sell beer "at wholesale" directly to those retail premises.

ARG: The draft will have to be revised to reflect this intent. With regard to my comment on the analysis above, your comment here highlights the catch-22 if you read the statutes to prohibit a brewer from selling to a wholesaler unless it also holds a wholesaler's license. Under current law, a brewer may not hold a wholesaler's license and a Class "A" license. (The statutes are ambiguous as to whether the brewer may do so if both licenses were issued before 1994, but s. 125.31 (3) (b) clearly contemplates that a brewer can hold a Class "A" license if it doesn't hold a wholesaler's license.) As a Class "A" licensee, the brewer may only buy from a wholesaler. (See s. 125.33 (9).) By holding a Class "A" license, the brewer may not obtain a wholesaler's license. Under this scenario (that the brewer holds a Class "A" license), the brewer can manufacture and store its beer but cannot sell its beer to anybody, not even itself. I think I can redraft to avoid having to address this issue directly, but it is there between the lines.

BP: That is fine. The "between the lines" issue is one for another day. I think the brewer must have a wholesale license to sell to anyone. I understand the catch-22, but I just don't want the analysis including a statement that a brewer may sell.

- Page 3, 1<sup>st</sup> Full Paragraph: O.K.
- Page 3, Paragraph 2: 125.33(11) deals with (as I understand it) a type of business commonly found in Milwaukee in the past, but which I think still exists. It is intended to prevent businesses who are primarily retailers, but who happen to have wholesale licenses, from acting as wholesalers. I agree, I think it is now

largely taken care of by 125.34, but unless you think it's critical to take it out to avoid confusion, I don't think we should strike it.

ARG: OK.

- Page 3, Paragraph 3 (extends to Page 4): Correct to pull "brand extension" from the draft.
- Page 4, 1<sup>st</sup> Full Paragraph: On severability, I would defer to your expertise on whether a clause specific to this section should be included, or whether we should rely on s. 990.001(11).
- Page 4, Paragraph 2: On initial applicability, I don't see in the draft where the 6-month period to come into compliance. Is that built into the reference to publication?

ARG: I apologize. In the rush through editing and typing, clerical errors were made. The text at p. 10, lines 1 to 3 were supposed to apply on the first day of the 7th month beginning after publication. I will fix this.

That's it...I imagine after this, it's ready for introduction?

ARG: Would you prefer the redraft be a "/1" or a "/P2" (if it is perfect, I can redraft the "/P2" to a "/1" almost immediately)?

---

**From:** Northrop, Lori

**Sent:** Monday, October 17, 2005 2:30 PM

**To:** Rep.Fitzgerald

**Subject:** Draft review: LRB 05-3764/P1 Topic: beer distribution rights and requirements affecting brewers, wholesalers, and out-of-state shippers

**Following is the PDF version of draft LRB 05-3764/P1 and drafter's note.**

## Gary, Aaron

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**From:** Pleva, Brian  
**Sent:** Monday, October 24, 2005 8:42 AM  
**To:** Gary, Aaron  
**Subject:** RE: Miller Items

Aaron, can you copy it but add "out-of-state shippers" so the 125.34 we're creating is internally consistent?

---

**From:** Gary, Aaron  
**Sent:** Friday, October 21, 2005 4:57 PM  
**To:** Pleva, Brian  
**Subject:** RE: Miller Items

Brian, The reason for the discrepancy is because the draft reflects the drafting instructions provided.

There is another difference between s. 125.33 (10) and the definition in this draft - s. 125.33 (10) refers only to brewers, whereas the definition provided also includes out-of-state shippers. Do you want me to use the definition in s. 125.33 (10) exactly "as is", or do you want me to copy it and also refer to out-of-state shippers as well?

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

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**From:** Pleva, Brian  
**Sent:** Friday, October 21, 2005 4:51 PM  
**To:** Gary, Aaron  
**Subject:** RE: Miller Items

Aaron, here's yet another one:

For some reason, when Aaron drafted the definition of "brand" in 125.34(1)(a) he did not adopt the exact definition of brand in 125.33(10). His new definition closely resembles the previous definition, but it omits the phrase "including the name of the brewer if the brewer's name is also a significant part of the product name."

For consistency purposes, I believe the new definition should mirror the previous definition and thus include this omitted phrase. I talked with Eric about this issue, and he agrees with me.

---

**From:** Gary, Aaron  
**Sent:** Friday, October 21, 2005 3:45 PM  
**To:** Pleva, Brian  
**Subject:** RE: Miller Items

Yes, I can incorporate these changes - The first and third are pretty significant changes but it won't really change the ETA.

Aaron R. Gary  
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---

**From:** Pleva, Brian  
**Sent:** Friday, October 21, 2005 3:37 PM



**To:** Gary, Aaron  
**Subject:** Miller Items  
**Importance:** High

Aaron, I'm really sorry to do this, but is it possible to incorporate these changes? If so, what would we be looking at as far as a final draft ETA?

We want to ensure that a brewer operating as a brewer and selling to a wholesaler is not required to have a separate wholesale premise to complete that transaction [combination of (2)(a), (6)(a) and (current 125.31(3))].

Our intent is that a brewer operating as a wholesaler and wishing to sell to retailers is one required to have a separate wholesale premise. (That's what solves the Granholm problem).

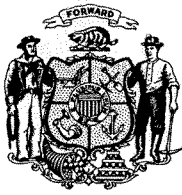
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We want to delete the words (6)(a) lines 10-11 ",including a brewer that holds an out-of-state shipper's permit," we believe that is covered by existing language without these words.

---

Add a (6)(c) - its the drafting instructions from (2)(d) - our goal is to allow Miller to ship beer from one of their out-of-state breweries (they have 5) to the brewery premises in Milwaukee if necessary. That was the original intent of (2)(d) in the instructions. Our goal with this provision is NOT to allow Miller to ship from one of the out-of-state breweries to their wholesale premise in Wisconsin (because that's already allowed by existing language in (6)(a)).

Brian Pleva  
Office of Rep. Jeff Fitzgerald  
Assistant Majority Leader  
(608) 266-2540



State of Wisconsin  
2005 - 2006 LEGISLATURE

Wanted by  
10/21  
end of  
day  
if possible

LRB-3764/07 12  
ARG:cjsqf

in 10/21

RMR

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

TODAY

SA ✓

stays

Ger cat

1 AN ACT *to repeal* 125.12 (ag) 7. and 125.33 (11); *to amend* 125.01, 125.25 (1),  
2 125.26 (1), 125.28 (1), 125.29 (3), 125.30 (1) and 125.31 (1) (a) 2. and (b) and (2)  
3 and (3) (intro.); and *to create* 125.34 of the statutes; **relating to:** the sale and  
4 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

to a wholesaler or retailer

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.

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

with two exceptions,

Under one exception,

insert ANAL-A

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.

*operated by a brewer holding the retail licenses*

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, 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~~ <sup>by a brewer</sup> distribution of beer sold at retail by a brewer ~~or an out-of-state shipper must comply with the requirements under the bill unless, with respect to a brewer, the brewer's retail premises are on brewery premises.~~

*Intent ANAL-B*

*holding a retail license is not subject to*

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

1 SECTION 1. 125.01 of the statutes is amended to read:

2 125.01 Legislative intent. This chapter shall be construed as an enactment  
3 of statewide concern for the purpose of providing a uniform regulation of the sale of  
4 alcohol beverages of the legislature's support for the 3-tier system for alcohol  
5 beverages production, distribution, and sale that, through uniform statewide  
6 regulation, provides this state regulatory authority over the production, storage,  
7 distribution, transportation, sale, and consumption of alcohol beverages by and to its  
8 citizens, for the benefit of the public health and welfare and this state's economic  
9 stability.

10 SECTION 2. 125.12 (ag) 7. of the statutes is repealed.

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

12 125.25 (1) Every municipal governing body may issue Class "A" licenses for the  
13 sale of fermented malt beverages from premises within the municipality. ~~A~~ Subject  
14 to s. 125.34 (5) <sup>and (6)</sup> ~~to (7)~~, a Class "A" license authorizes retail sales of fermented malt  
15 beverages for consumption off the premises where sold and in original packages,

1 containers and bottles. A license may be issued after July 1. That license shall expire  
2 on the following June 30.

3 **SECTION 4.** 125.26 (1) of the statutes is amended to read:

4 125.26 (1) Every municipal governing body may issue Class "B" licenses for the  
5 sale of fermented malt beverages from premises within the municipality and may  
6 authorize an official or body of the municipality to issue temporary Class "B" licenses  
7 under sub. (6). ~~A Subject to s. 125.34 (5) to (6)~~<sup>and (6)</sup> a Class "B" license authorizes retail  
8 sales of fermented malt beverages to be consumed either on the premises where sold  
9 or off the premises. A license may be issued after July 1. That license shall expire  
10 on the following June 30. Persons holding a Class "B" license may sell beverages  
11 containing less than 0.5% of alcohol by volume without obtaining a license under s.  
12 66.0433 (1).

13 **SECTION 5.** 125.28 (1) of the statutes is amended to read:

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

25 **SECTION 6.** 125.29 (3) of the statutes is amended to read:

1           125.29 (3) ACTIVITIES. ~~A~~ Subject to s. 125.34 (2), a brewer may manufacture,  
 2           possess and store fermented malt beverages on the brewery premises and transport  
 3           fermented malt beverages between the brewery premises and any depot or  
 4           warehouse maintained by the brewer for which the brewer has a wholesaler's license  
 5           issued under s. 125.28.

6           **SECTION 7.** 125.30 (1) of the statutes is amended to read:

, except as provided in  
s. 125.34 (6) (c), ✓

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) and (6) (c), 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.

16          **SECTION 8.** 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.

24          (b) Notwithstanding ss. 125.29 (2) and 125.33 (1), and subject to s. 125.34, a  
 25          brewer may own, maintain or operate places for the sale of fermented malt beverages

1 at the state fair park or on any county fairgrounds located in this state, in addition  
2 to places authorized under par. (a).

3 <sup>no ff</sup> (2) ~~A Subject to s. 125.34,~~ a brewer may own, maintain or operate depots and  
4 warehouses from which sales of fermented malt beverages, not for consumption in  
5 or about the premises where sold, may be made in original packages to retailers and  
6 wholesalers. A separate wholesaler's license is required for each depot or warehouse  
7 owned, maintained or operated.

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

11 ~~SECTION 9. 125.23 (1) of the statutes is repealed.~~

12 SECTION 10. 125.34 of the statutes is created to read:

13 **125.34 Distribution restrictions on wholesalers, brewers, and**  
14 **out-of-state shippers.** (1) In this section:

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

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

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

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

insert  
6-11

insert  
6-16

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

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

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

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

19 (b) <sup>②</sup> 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

*issued a wholesaler's license under  
 this paragraph ✓*

✓  
 insert  
 7-19  
 insert  
 7-22



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

5 a brewer or out-of-state shipper may not, in any agreement under this paragraph,  
 6 grant to more than one wholesaler distribution rights for the same brand in the same  
 7 designated sales territory or in 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 <sup>retailer</sup> ~~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: , notwithstanding sub. (3)(a),

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.

, which consent shall be limited to the time period  
 that another wholesaler is unable to service this  
 designated sales territory

1 (b) ~~(a)~~ 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.

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

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

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

21 ~~(5)~~ ~~(6)~~ Subsections (2) to ~~(6)~~ *move* do not apply with respect to fermented malt beverages  
22 provided by a brewer to ~~any~~ retail premises ~~operated by~~ *for which* the brewer ~~on the brewery~~  
23 ~~premises.~~ *holds the retail license*

24 SECTION 11. Initial applicability.

insert  
9-23

1 (1) This act first applies ~~to~~ a person holding a wholesaler's license issued under  
2 section 125.28 of the statutes immediately prior to the effective date of this  
3 subsection.

4 **SECTION 12. Effective dates.** This act takes effect on the day after publication,  
5 except as follows:

6 (1) SECTION 11 (1) of this act takes effect on the day after publication.

7 (END)

on the first day of the 7<sup>th</sup> month  
beginning after the effective date of  
this subsection with respect to any

D-Note

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3764/lins  
ARG:.....

**INSERT ANAL-A:**

(no P) Under the other exception, 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 beer only to other wholesalers ☉

**INSERT ANAL-B:**

(no P) Also, a brewer that holds an out-of-state shipper's permit for premises located in another state used for the manufacture of beer may ship beer from those premises to any brewery premises of the brewer in this state.

**INSERT 6-11:**

**SECTION 1.** 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.

History: 1981 c. 79, 202; 1983 a. 26, 67, 68, 182, 192, 538; 1985 a. 15, 135; 1987 a. 308; 1989 a. 31, 253; 1991 a. 39; 1993 a. 112, 301; 1995 a. 320; 1997 a. 132, 166; 2001 a. 16, 38, 105; 2003 a. 303.

**INSERT 7-19:**

1. Notwithstanding s. 125.34 (1) (b), in this paragraph, "brewer" means 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. <sup>sub.</sup> to e., manufactures less than 100,000 barrels of fermented malt beverages in a calendar year in any location, whether in this state or outside this state.

**INSERT 7-23:**

✓  
(c) 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. ✓

**INSERT 9-23:**

(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.

INSERT 6-16

or out-of-state  
shipper's

Section #. 125.33 (10) (a) 1. of the statutes is amended to read:

<use 3 x>

or out-of-state shipper

~~125.33 (10) (a) 1. "Brand" means any word, name, group of letters, symbols, or combination~~

no 9 thereof, including the name of the brewer if the brewer's name is also a significant part of the product name, adopted and used by a brewer to identify a specific fermented malt beverage product and to distinguish that product from other fermented malt beverages produced by that brewer or other brewers. or out-of-state shippers

History: 1981 c. 79, 202; 1983 a. 26, 67, 68, 182, 192, 538; 1985 a. 15, 135; 1987 a. 308; 1989 a. 31, 253; 1991 a. 39; 1993 a. 112, 301; 1995 a. 320; 1997 a. 132, 166; 2001 a. 16, 38, 105; 2003 a. 303.

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3764/1dn

ARG:.....

gs

ATTN: Brian Pleva

ambiguities and  
As discussed, chapter 125 is riddled with inconsistencies and conflicting provisions (not to mention ambiguities) related to beer distribution and sales. Depending on how certain provisions are interpreted, other provisions may be rendered meaningless or without real application. In the attached draft, I have not attempted to correct any of these existing problems (except for adding the cross-reference to s. 125.29 (4) in s. 125.31 (3), which appeared in the "/P1" draft) and have made the assumption that all existing provisions have at least some limited application. ✓ ✓

I also note that, assuming ss. 125.29 and 125.31 require a brewer to hold a wholesale license in order to sell beer, then created s. 125.34 (3) (a) will require every brewer/wholesaler to have a written agreement with itself; I doubt that an agreement lacking at least two parties would be legally recognized. ✓

Created s. 125.34 (6) (c) is drafted narrowly. I am not sure if an out-of-state shipper's permit actually specifies, or is issued for, a "premises." If not, this provision should be modified. ✓

Aaron R. Gary  
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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3764/1dn  
ARG:cjs:jf

October 24, 2005

ATTN: Brian Pleva

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**Emery, Lynn**

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**From:** Pleva, Brian  
**Sent:** Monday, October 24, 2005 1:08 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-3764/1 Topic: beer distribution rights and requirements affecting brewers, wholesalers, and out-of-state shippers

It has been requested by <Pleva, Brian> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-3764/1 Topic: beer distribution rights and requirements affecting brewers, wholesalers, and out-of-state shippers