



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 10/13/2005 (Per: ARG)



☞ The 2005 drafting file for LRB 05-3112/P1

has been copied/added to the 2005 drafting file for

LRB 05-3764

☞ The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as an appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2005 drafting file. The drafting file was then returned, intact, to its folder and filed.

2005 DRAFTING REQUEST

Bill

Received: 05/26/2005

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: Brian.Pleva@legis.state.wi.us
Bryon.Wornson@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Beer wholesalers, brewers, and out-of-state shippers; 3-tier interests; Granholm decision

Instructions:

See Attached

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>
/P1	agary 06/02/2005	kfollett 06/07/2005	jfrantze 06/08/2005	_____	sbasford 06/08/2005		

FE Sent For:

<END>

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For: Jeff Fitzgerald (608) 266-2540

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No specific pre topic given

Topic:

Beer wholesalers, brewers, and out-of-state shippers; 3-tier interests; Granholm decision

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/P1	agary		<i>J</i> 6/7	<i>J/RB</i> 6/8			
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FE Sent For:

<END>

Gary, Aaron

From: Pleva, Brian
Sent: Thursday, May 26, 2005 8:40 AM
To: Gary, Aaron
Subject: Draft Request

Aaron, attached is proposed legislation that Rep. Jeff Fitzgerald would like drafted. This is our highest drafting priority, and we would appreciate as quick a final product as possible. I believe Speaker Gard's office may be contacting you to convey the same message.

Thank you very much, and please let me know if you have any questions! We are working with Eric Jensen on this, and please feel free to speak directly with him, as well. His phone number is 255-6464, and his e-mail address is ericj@wisbeer.org.



Three-Tier.doc

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

Language is as it currently appears in Wisconsin statutes. ~~Strikethrough~~ indicates words and punctuation to be removed from statute. Underline indicates language to be added to statutes.

Only sections/subsections where deletions, additions or amendments should be made appear here.

Brief Summary - The goal of these changes is to bring Wisconsin's brewer/wholesaler licensing provisions into clear compliance with Granholm v. Heald by removing the requirement that in-state brewers carry "wholesaler's" licenses in order to sell beer to wholesalers. This eliminates statutory authority for in-state "brewers" to sell/deliver product directly to "retailers" (with some exceptions), eliminates (with some exceptions) ownership interests in wholesalers by brewers, and thereby clarifies the boundary between "Brewers" and "Wholesalers."

In addition - changes to ss. 125.04, 125.25 and 125.26 eliminate the grandfathered authority for a wholesaler to simultaneously carry either a Class A or Class B retail license. Elimination of this grandfather clause clarifies the boundary between "Wholesalers" and "Retailers."

Finally - changes to s. 125.28 (wholesaler's licenses) authorize Wisconsin municipalities to license wholesalers located in adjoining states for delivery to Wisconsin retailers from a warehouse in that state as long as that adjoining state allows Wisconsin-based wholesalers the same licensing privilege. (Example - a wholesaler based in MN may get a WI wholesale license and deliver beer from the MN warehouse to WI retailers - and vice versa, rather than requiring a warehouse in each state.)

AMEND 125.01

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 three-tiered system for alcohol production, distribution and sale that, through uniform statewide regulation, provides this State regulatory authority over the production, distribution and sale of alcohol beverages by and to its citizens, for the benefit of the public health and welfare and this State's economic stability.

AMEND - 125.04(12)

(a) *From place to place.* Every alcohol beverage license or permit may be transferred to another place or premises within the same municipality. An alcohol beverage warehouse permit under s. 125.19, a winery permit under s. 125.53 or an intoxicating liquor wholesaler's permit under s. 125.54 may be transferred to another premises within this state. ~~A Class A license and a wholesaler's license identified in s. 125.25(2)(b)2 may be transferred together as provided in s. 125.25(2)(b)4 if the receiving municipality approves the transfer. Transfers shall be made by the issuing authority upon payment of a fee of \$10 to the issuing authority and, for transfers as provided in s. 125.25(2)(b)4, transfers shall be received and the validity of the transferred licenses recognized by the receiving municipality upon approval of the transfer by the receiving municipality and payment to the receiving municipality of an additional fee of \$10 for each transferred license.~~ No retail licensee, retail permittee, intoxicating liquor wholesaler or holder of a warehouse or winery permit is entitled to more than one transfer during the license or permit year. This paragraph does not apply to a license issued under s. 125.51(4)(v) or to a reserve Class B license, as defined in s. 125.51(4)(a).

AMEND - 125.25(2)(b)

1. ~~Beginning on May 5, 1994, a~~ A Class A license may not be issued to a person holding a wholesaler's license issued under s. 125.28 or to a person who has a direct or indirect ownership interest in a premises operating under a wholesaler's license issued under s. 125.28.

THEN STRIKE Sections (2)(b)2 through (2)(b)4 in their entirety.

AMEND - 125.26(2)(b)2.

a. ~~Except as provided in s. 125.29, beginning on May 5, 1994, a~~ A Class B license may not be issued to a person holding a wholesaler's license issued under s. 125.28 or to a person who has a direct or indirect ownership interest in a premises operating under a wholesaler's license issued under s. 125.28.

THEN STRIKE Sections (2)(b)2.b. and (2)(b)2.c. in their entirety.

AMEND - 125.26(3)

(3) Class B licenses shall particular describe the premises for which issued and are not transferable, ~~except as provided in s. 125.04(12)~~. A Class B license is subject to revocation for violation of any of the terms or provisions thereof.

REPLACE - 125.28(1) - With the following:

(1) No person may directly or indirectly sell fermented malt beverages to retailers without obtaining a wholesale license issued under this section from the applicable municipal governing body and without owning or leasing warehouse space within the state into which all fermented malt beverages are unloaded. Licensed wholesalers may distribute fermented malt beverages only from the warehouse. The provisions of this section related to warehousing do not apply to a wholesaler of fermented malt beverages located in an adjoining state which permits wholesalers licensed in Wisconsin to deliver fermented malt beverages to retailers without warehousing in that state. The applicable municipal governing body is that within which the wholesaler's warehouse is located or, in the case of a wholesaler in an adjoining state as referenced above, that within which some part of the wholesaler's business is conducted in this state. A holder of a wholesaler license may not have any ownership, in whole or in part, directly or indirectly, in a business holding a Class "A", Class "B", or Class "C" license and the applicable municipal governing body may not issue a wholesaler license to a wholesaler if a holder of a Class "A", Class "B", or Class "C" license has any ownership, in whole or in part, directly or indirectly, in the wholesaler. No additional license or permit is required for the solicitation of orders for sale to or by licensed wholesalers.

AMEND 125.29

(1) Permit. No person may operate as a brewer unless that person obtains a permit from the department. ~~Each wholesaler required to register under s. 139.09 shall obtain a permit under this subsection.~~ A permit under this section may only be issued to a person who holds a valid certificate issued under s. 73.03(50).

(2) Limitation. Except as provided in s. 125.31, no person holding a Class "B" license or permit issued under this chapter may register as a brewer. Except as provided in s. 125.295, no person holding a wholesaler license issued under this chapter may register as a brewer.

(3) Activities. A brewer may manufacture, possess and store fermented malt beverages on the brewery premises, ~~and A brewer may transport fermented malt beverages between the brewery premises and any depot or warehouse maintained by the brewer for which the brewer has a wholesaler's license issued under s. 125.28, or between the brewery premises or any depot or warehouse maintained by the brewer and a wholesale premise licensed under s. 125.28.~~

(4) Multiple licenses. Notwithstanding s. 125.26(2) and ~~125.28(2)~~, a brewer may hold ~~a wholesaler's license issued under s. 125.28~~ and a Class "B" license as provided under s.125.31.

CREATE 125.295

125.295 Brewer or Out-of-State Shipper Interest in other Wholesaler Business

(1) Except as provided in this section, a holder of a permit as a brewer or out-of-state shipper may not have any ownership, in whole or in part, directly or indirectly, in a business holding a wholesale license and the department may not issue a permit under this section to a brewer or out-of-state shipper if a wholesaler or retailer of fermented malt beverages has any ownership, in whole or in part, direct or indirect, in the brewer or out-of-state shipper.

(2) Permitted interests in wholesale business.

(a) A brewer or out-of-state shipper may financially assist a wholesaler of fermented malt beverages through participation in a limited partnership in which the brewer or out-of-state shipper is the limited partner and the wholesaler is the general partner. A limited partnership authorized in this paragraph may not exist for more than ten years from the date of its creation, and may not, directly or indirectly, be recreated, renewed, or extended beyond that date.

(b) A brewer or out-of-state shipper may financially assist a fermented malt beverage wholesaler and collateralize the financing by taking a security interest in the inventory and assets, other than the corporate stock, of the wholesaler. A financial agreement authorized by this paragraph may not be in effect for more than ten years from the date of its creation and may not be directly or indirectly extended or renewed.

(c) A brewer or out-of-state shipper who, after creation of a financial agreement authorized by paragraph (2), or after creation of a limited partnership authorized in paragraph (1), acquires legal or equitable title to the wholesaler's business which was the subject of the agreement or limited partnership, or to the business assets, must divest the business or its assets within two years of the date of acquiring them. A fermented malt beverage wholesaler whose business or assets are acquired by a brewer or out-of-state shipper as described in this paragraph may not enter into another such financial agreement, or participate in another such limited partnership, for 20 years from the date of the acquisition of the business or assets.

(d) A brewer or out-of-state shipper may have an interest in the business, assets, or corporate stock of a fermented malt beverage wholesaler as a result of (1) a judgment against the wholesaler arising out of a default by the wholesaler or (2) acquisition of title of the business, assets or corporate stock as a result of a written request of the wholesaler. A brewer or out-of-state shipper may maintain ownership

of or an interest in the business, assets, or corporate stock under this paragraph for not more than two years and only for the purpose of facilitating an orderly transfer of the business to an owner not affiliated with the brewer or out-of-state shipper.

(e) A brewer or out-of-state shipper may continue to maintain an ownership interest in a fermented malt beverage wholesaler if it owned the interest on _____ [date] _____.

(f) A brewer that was actually and legally selling the brewer's own products at wholesale in Wisconsin on _____ [date] _____ may continue to sell those products at wholesale in the area where it was selling those products on that date.

(g) A brewer may, if the brewer does not manufacture in any year more than 4000 barrels of fermented malt beverages or its metric equivalent, own or have an interest in a fermented malt beverage wholesaler that sells only the brewer's products.

(h) When the department issues a license to a wholesaler described in paragraph (1) or (2), the department may issue the license only to the entity which is actually operating the wholesale business and may not issue the license to a brewer or out-of-state shipper that is a limited partner under paragraph (1) or providing financial assistance under paragraph (2) unless the brewer or out-of-state shipper has acquired a wholesaler's business or assets under paragraph (3) or (4).

1. For purposes of this subdivision "brewer" means:

- a. a holder of a brewer's permit;
- b. an officer, director, agent, or employee of such a permit holder; and
- c. an affiliate of such a permit holder, regardless of whether the affiliation is corporate or by management, direction, or control.

2. For purposes of this subdivision, "out-of-state shipper" means:

- a. a holder of an out-of-state shipper's permit;
- b. an officer, director, agent, or employee of such a permit holder; and
- c. an affiliate of such a permit holder, regardless of whether the affiliation is corporate or by management, direction, or control.

AMEND - 125.31

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

(3) A brewer may sell fermented malt beverages in the original packages or containers, not to be consumed on the premises where sold:

(a) To ~~retailers and wholesalers if the brewer obtains a wholesaler's license;~~ or

(b) To persons other than licensees and permittees, if the brewer obtains a Class A or Class B license.

Gary, Aaron

From: Wornson, Bryon
Sent: Thursday, May 26, 2005 4:42
To: Gary, Aaron
Subject: RE: Draft Request
Aaron:

Pls work with LFB, as it may come up as a budget amendment.

Pls keep both offices in the loop on the draft.

tk.

From: Gary, Aaron
Sent: Thursday, May 26, 2005 4:37 PM
To: Wornson, Bryon
Subject: RE: Draft Request

I'm sorry, I meant an LFB amendment (not JFC amendment). Were you planning to bring this as a motion before JFC? If so, and you want it to be an LFB amendment, I will need to coordinate with the LFB. If you want it as a "stand-alone" for Speaker Gard, there is no need for me to work with the LFB. Which route do you want to take?

Do you want the bill draft for the Speaker also or should I just prepare the draft for Rep. Fitzgerald per the e-mail forwarded to you?

Thanks. Aaron

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: Wornson, Bryon
Sent: Thursday, May 26, 2005 4:25 PM
To: Gary, Aaron
Subject: RE: Draft Request

Aaron:

Please draft as a JFC and separate bill.

tk.

From: Gary, Aaron

05/26/2005

Sent: Thursday, May 26, 2005 4:13 PM
To: Wornson, Bryon
Subject: RE: Draft Request

Do you want this drafted as a budget amendment? If so, will it be a stand-alone amendment or a JFC amendment?

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

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

From: Wornson, Bryon
Sent: Thursday, May 26, 2005 4:05 PM
To: Gary, Aaron
Subject: FW: Draft Request

Aaron:

The speaker would like to have this draft available as soon as possible to be considered as part of the budget.

Do you have a time line on the is bill?

tk.

Bryon Wornson
Deputy Chief of Staff
Assembly Speaker John Gard

From: Gary, Aaron
Sent: Thursday, May 26, 2005 2:56 PM
To: Pleva, Brian
Subject: RE: Draft Request

Brian,

I have entered this request and it will be LRB-3112.

I will make this a drafting priority, but I do have a number of priority drafts now, and budget drafts are given priority over all others.

The attached materials indicate that the Granholm decision has spawned the need for these changes to beer wholesaler laws. In Granholm vs. Heald, the US Supreme Court held that NY and Michigan laws effectively preventing out-of-state wineries from shipping wine into the state were invalid. I have not yet attempted to assess the significance of this decision on Wisconsin's out-of-state wine shipper laws, which the decision may directly impact. At this moment, the impact of this decision on beer

wholesalers operating within this state would be collateral and perhaps speculative. If you would like further information about the Granholm decision and its (potential) application to wine sales or beer sales in, into, or from Wisconsin, I would be happy to provide you with a written analysis as time permits.

Aaron R. Gary
Legislative Attorney
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aaron.gary@legis.state.wi.us

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

From: Pleva, Brian
Sent: Thursday, May 26, 2005 8:40 AM
To: Gary, Aaron
Subject: Draft Request

Aaron, attached is proposed legislation that Rep. Jeff Fitzgerald would like drafted. This is our highest drafting priority, and we would appreciate as quick a final product as possible. I believe Speaker Gard's office may be contacting you to convey the same message.

Thank you very much, and please let me know if you have any questions! We are working with Eric Jensen on this, and please feel free to speak directly with him, as well. His phone number is 255-6464, and his e-mail address is ericj@wisbeer.org.

<< File: Three-Tier.doc >>

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

Gary, Aaron

From: Pleva, Brian
Sent: Tuesday, May 31, 2005 9:09 AM
To: Gary, Aaron
Subject: RE: LRBb0225 and LRB-3112: beer wholesalers

Aaron, the answer to all the questions contained in 4 through 6 is "yes." Let me get back to you on 7.

From: Gary, Aaron
Sent: Friday, May 27, 2005 3:36 PM
To: Pleva, Brian
Subject: RE: LRBb0225 and LRB-3112: beer wholesalers

7. I find the text of created s. 125.295 in the drafting instructions to be quite confusing. In part (1), the language "may not issue a permit under this section" appears, but there is no text providing for issuance by the dept. of a new type of permit or what that permit would be for (or guidelines for issuance). Then in part (2) (h), there is reference to issuance by the department of a license. Again, no provision in the text specifies issuance of a license, what the license would authorize, or what criteria would guide issuance. Is the reference to license in part (2) (h) intended to be to a permit issued under s. 125.29 or 125.30 to a brewer or wholesaler? To the extent the reference is intended to be to a beer wholesaler license, that license is issued by the municipality, not the department, so this language also wouldn't work. I would appreciate any guidance you can provide in helping me understand this created statutory section.

Thanks. Aaron

Aaron R. Gary
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-----Original Message-----

From: Gary, Aaron
Sent: Friday, May 27, 2005 1:15 PM
To: Pleva, Brian
Subject: RE: LRBb0225 and LRB-3112: beer wholesalers

6. With regard to section 125.28 (1), the instructions refer to a Class "C" license. There is no such license. There is a "Class C" license for intoxicating liquor, but since the instructions don't include "Class A" or "Class B", I assume the intent is not to also list "Class C", correct? I also note that reference to Class "B" permits is not included. Do you want the draft to refer to Class "A" licenses and Class "B" licenses and permits? *yes*

Thanks. Aaron

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

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

From: Gary, Aaron
Sent: Friday, May 27, 2005 11:53 AM
To: Pleva, Brian
Subject: RE: LRBb0225 and LRB-3112: beer wholesalers

Thanks Brian.

On item 2., I think it makes sense to have something in s. 125.28 too - the placement under current law just in s.

125.30 is a little odd since it applies to both in-state and out-of-state.

I also forgot to ask about a couple of other things:

4. did you want to keep the current law "golf course" wholesaler/retail exception under s. 125.33 (2m) - I assume so but the provision is kind of hidden and it is somewhat similar to provisions being eliminated. yes
5. a brewer can hold an intoxicating liquor wholesaler's permit to wholesale wine only. see s. 125.54 (1) and 125.69 (1) (c). Do you want to retain this authorization? yes

Thanks. Aaron

Aaron R. Gary
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aaron.gary@legis.state.wi.us

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

From: Pleva, Brian
Sent: Friday, May 27, 2005 11:31 AM
To: Gary, Aaron
Subject: RE: LRBb0225 and LRB-3112: beer wholesalers

Aaron,

1. We'd like your last option: Both licenses will remain valid only for the duration of the license period and then the licensee may renew only one.

2. With regards to the very first question, yes, but not a *brewer's* warehouse (if it's necessary to clarify that).

With regards to the rest, the point you brought up is the very reason the "at rest" requirement is moved into 125.28 so that it's absolutely clear that it applies to beer shipped to distributors from both in- and out-of-state brewers. If both in- and out-of-state brewers have to ship to in-state distributors, and the beer has to "come to rest" in the distributors' warehouses, then the treatment is equal.

The current "at rest" provision is in the "out-of-state shippers" permit section. Although it seems to apply to both in- and out-of-state brewers, it's not 100% certain. With our change, there should be no uncertainty. However, if you believe our new way of handling this in 125.28 clearly applies to both in- and out-of-state brewers/shippers, then the "at-rest" provision currently in 125.30(1) can probably be removed--we just left it in there as a safeguard.

What do you think of putting identical "at rest" language in both the "brewer" section and the "out-of-state shipper" section, as an alternative?

3. We'd like 125.295 to spell out limited instances when a brewer may have a financial interest/relationship in a distributor's business, or in the case of small in- and out-of-state brewers (4,000 bbl or less) when they may distribute their own product.

We do have a kind of "reciprocity" in 125.28 so a distributor who has a warehouse in MN can distribute to territories both in MN and WI from that warehouse--an vice-versa. But, we don't see a real problem here.

Thanks, and let me know if you have any other questions!

From: Gary, Aaron
Sent: Friday, May 27, 2005 10:12 AM
To: Wornson, Bryon; Pleva, Brian
Cc: Russell, Faith
Subject: LRBb0225 and LRB-3112: beer wholesalers

Bryon and Brian,

As stated in the last e-mail, I have made a first run-through of the instructions and begun drafting, and have some preliminary questions.

1. The treatment of s. 125.25 (2) (b) and 125.26 (2) (b) 2. eliminates authority to simultaneously hold "grandfathered" wholesale and retail licenses. What do you want to happen on the effective date of the bill? Do you want one or both licenses to become void on the effective date of the bill? Should the licensee choose which license becomes void by being required to surrender the other license? Making one license immediately void could impose quite a hardship on those affected, as the options for getting rid of existing inventory, etc. might be limited at the moment the license becomes void. Do you want to provide that both licenses will remain valid only for the duration of the license period and then the licensee may renew only one?

2. With regard to changes to s. 125.28 (1), I assume that the warehouse premises can be the premises licensed under s. 125.28 or a warehouse for which a permit is issued under s. 125.19, correct? Also, current law already imposes a requirement very similar to the changes to s. 125.28 (1) in the instructions (current law requires beer shipped to a wholesaler in this state to be unloaded from the wholesaler's warehouse in this state, s. 125.30 (1)). The instructions also state that the goal is to bring Wisconsin law into clear compliance with *Granholm v. Heald*. The holding of *Granholm v. Heald* is that state law may not bar or create economic barriers for out-of-state wine producers who want to ship directly to consumers in a state when no similar bar or barriers exist for in-state wineries, because this is an unconstitutional discrimination against interstate commerce. (The court also specifically reiterated the legitimacy of the 3-tier system.) If one reads *Granholm* expansively to apply to beer wholesalers, one might argue that one of the most vulnerable provisions in Wisconsin law related to beer wholesalers is this existing requirement that beer be unloaded at an in-state warehouse. In striking down the NY law in *Granholm*, the Supreme Court condemned a provision of the NY law that required in-state warehouse/distribution facilities for purposes of wine distribution. Do you still want, as the instructions provide, to create new text in s. 125.28 (1) reiterating this in-state warehouse requirement?

3. The instructions include reciprocity provisions in created s. 125.295. In the direct-wine-sales context of the *Granholm* decision, the Supreme Court condemned these types of reciprocity laws (which, by the way, Wisconsin has for out-of-state wine shippers) as creating preferential trade zones among states that are at odds with free interstate commerce throughout the country. Do you want me to create the reciprocity provisions identified in the instructions?

Despite the detailed drafting instructions, there is actually a lot to work through in this draft, and I may have additional questions for you later.

Thanks for your assistance. Aaron

Aaron R. Gary
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aaron.gary@legis.state.wi.us

Gary, Aaron

From: Pleva, Brian
Sent: Tuesday, May 31, 2005 2:04 PM
To: Gary, Aaron
Subject: RE: LRBb0225 and LRB-3112: beer wholesalers

Aaron, in response to your #7 questions, 125.295 is meant to disallow brewery (in- or out-of-state) ownership/interest in a beer distributor's company, with some exceptions.

Specifically, "under this section" is there because a previous draft that was being tossed around put this in an existing section, rather than creating a new one. It should be written to reference 125.28, 125.29, or 125.30, as appropriate. We don't intend any new permit.

2(h) references wholesale licenses under 125.28. It should reference "local municipalities" rather than the "department." It is designed to clarify that a wholesale license is to be issued to the entity actually running the business, not to a brewer/shipper who might be a limited partner, etc.

From: Gary, Aaron
Sent: Friday, May 27, 2005 3:36 PM
To: Pleva, Brian
Subject: RE: LRBb0225 and LRB-3112: beer wholesalers

7. I find the text of created s. 125.295 in the drafting instructions to be quite confusing. In part (1), the language "may not issue a permit under this section" appears, but there is no text providing for issuance by the dept. of a new type of permit or what that permit would be for (or guidelines for issuance). Then in part (2) (h), there is reference to issuance by the department of a license. Again, no provision in the text specifies issuance of a license, what the license would authorize, or what criteria would guide issuance. Is the reference to license in part (2) (h) intended to be to a permit issued under s. 125.29 or 125.30 to a brewer or wholesaler? To the extent the reference is intended to be to a beer wholesaler license, that license is issued by the municipality, not the department, so this language also wouldn't work. I would appreciate any guidance you can provide in helping me understand this created statutory section.

Thanks. Aaron

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To: Pleva, Brian
Subject: RE: LRBb0225 and LRB-3112: beer wholesalers

6. With regard to section 125.28 (1), the instructions refer to a Class "C" license. There is no such license. There is a "Class C" license for intoxicating liquor, but since the instructions don't include "Class A" or "Class B", I assume the intent is not to also list "Class C", correct? I also note that reference to Class "B" permits is not included. Do you want the draft to refer to Class "A" licenses and Class "B" licenses and permits?

Thanks. Aaron

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Gary, Aaron

From: Pleva, Brian
Sent: Thursday, June 02, 2005 1:35 PM
To: Gary, Aaron
Subject: RE: More changes

That's great news, Aaron! Thanks for working so diligently on this!

Yes, please add to the wholesaler's license the ability to sell to employees.

From: Gary, Aaron
Sent: Thursday, June 02, 2005 12:21 PM
To: Pleva, Brian
Subject: RE: More changes

Brian,

I'll be finishing this up today and getting it into editing. I've had to rework quite a bit of the material to maintain internal consistency and consistency with other (unaffected) provisions of law. I imagine fine-tuning will need to be done once you receive the draft. As you say, the draft removes wholesaler authorization to hold a retail license. Under current law, a wholesaler's license only authorizes sales for consumption off the wholesaler's premises, so that doesn't need to be changed, but current law does not authorize a wholesaler to sell to employees (only to retailers and other wholesalers). Do you want me to add this authorization to the wholesale license?

I'll add the second and third bullet points below.

Aaron

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

From: Pleva, Brian
Sent: Thursday, June 02, 2005 11:45 AM
To: Gary, Aaron
Subject: More changes

Aaron, just a few more things:

- In our draft, we're eliminating a distributor's ability to carry a retail license (right now I guess about half have one--they were grandfathered in since '94). They use that license to sell both to their employees, like any business selling a product, and to sell retail to anyone who wants to buy. So, we're getting them out of the retail business, but I'd like to insert in 125.28 something that expressly and only allows a distributor to sell beer to their employees for consumption away from the licensed premises.
- In 125.295, please remove (2)(f). We think it's unnecessary because we have (2)(e), which does the same thing.
- In 125.295(2)(g), we'd like to insert the words, "or out-of-state shipper" after "brewer" throughout that subsection so it applies equally.

Thanks, and as always, let me know if you have any questions!

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

Gary, Aaron

From: Gary, Aaron
Sent: Monday, June 06, 2005 9:40 AM
To: Pleva, Brian
Subject: RE: Revision

Brian,

This isn't necessary; it's already covered in s. 125.31 (2) and (3) [existing stats and with changes included in the original instructions]. I have moved some of these provisions around a bit, and we can fine-tune if necessary when you receive the draft. Aaron

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

From: Pleva, Brian
Sent: Monday, June 06, 2005 9:28 AM
To: Gary, Aaron
Subject: Revision
Importance: High

Aaron, one last thing that we noticed. It's an oversight, and an important one.

We're taking the wholesale license from the brewers but have to make sure to give them authority to sell to wholesalers! That was our intent all along, but we overlooked that in the first draft. So, rather than tell you what and where words should be inserted, 125.29(3) as I first sent to you, should have read like this:

(3) Activities. A brewer may manufacture, possess and store fermented malt beverages on the brewery premises, sell fermented malt beverages to licensed wholesalers and transport fermented malt beverages between the brewery premises and any depot or warehouse maintained by the brewer for which the brewer has a wholesaler's license alcohol beverage warehouse permit issued under s. 125.28, 125.19, or between the brewery premises or any depot or warehouse maintained by the brewer and a wholesale premise licensed under s. 125.28.

You may have picked this up - but in case not, there it is.

Brian Pleva
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