

Seen

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

Gen

1 AN ACT ...; relating to: the 3-tier system for fermented malt beverages
2 production, distribution, and sale.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

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

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

1 **SECTION 2.** 125.04 (3) (e) 1. of the statutes is amended to read:

2 125.04 (3) (e) 1. Each application for a license, other than a manager's or
3 operator's license, shall be sworn to by the applicant. The applicant shall file the
4 application for a license with the municipal clerk of the intended place of sale, except
5 that an applicant for a license under s. 125.28 may file the application with the
6 municipal clerk where any warehouse described in s. 125.28 (1m) (a) is located.

History: 1981 c. 79, 235, 391; 1983 a. 27, 72, 74, 493, 494, 516; 1985 a. 302; 1987 a. 35, 301, 399; 1989 a. 31, 253; 1991 a. 39; 1993 a. 112, 259, 491; 1995 a. 23; 1995 a. 27 ss. 4117b, 4117c, 9154 (1); 1995 a. 225; 1997 a. 27; 2003 a. 250.

7 **SECTION 3.** 125.04 (3) (f) 1. of the statutes is amended to read:

8 125.04 (3) (f) 1. Except as provided in subds. 2. and 3. and sub. (3) (e) 1., all
9 applications for licenses to sell alcohol beverages shall be filed with the clerk of the
10 municipality in which the premises are located at least 15 days prior to the granting
11 of the license.

History: 1981 c. 79, 235, 391; 1983 a. 27, 72, 74, 493, 494, 516; 1985 a. 302; 1987 a. 35, 301, 399; 1989 a. 31, 253; 1991 a. 39; 1993 a. 112, 259, 491; 1995 a. 23; 1995 a. 27 ss. 4117b, 4117c, 9154 (1); 1995 a. 225; 1997 a. 27; 2003 a. 250.

12 **SECTION 4.** 125.04 (12) (a) of the statutes is amended to read:

13 125.04 (12) (a) *From place to place.* Every alcohol beverage license or permit
14 may be transferred to another place or premises within the same municipality. An
15 alcohol beverage warehouse permit under s. 125.19, a winery permit under s. 125.53,
16 or an intoxicating liquor wholesaler's permit under s. 125.54 may be transferred to
17 another premises within this state. ~~A Class "A" license and a wholesaler's license~~
18 ~~identified in s. 125.25 (2) (b) 2. may be transferred together as provided in s. 125.25~~
19 ~~(2) (b) 4. if the receiving municipality approves the transfer. Transfers shall be made~~
20 ~~by the issuing authority upon payment of a fee of \$10 to the issuing authority and,~~
21 ~~for transfers as provided in s. 125.25 (2) (b) 4., transfers shall be received and the~~
22 ~~validity of the transferred licenses recognized by the receiving municipality upon~~
23 ~~approval of the transfer by the receiving municipality and payment to the receiving~~

1 ~~municipality of an additional fee of \$10 for each transferred license.~~ No retail
2 licensee, retail permittee, intoxicating liquor wholesaler or holder of a warehouse or
3 winery permit is entitled to more than one transfer during the license or permit year.
4 This paragraph does not apply to a license issued under s. 125.51 (4) (v) or to a reserve
5 "Class B" license, as defined in s. 125.51 (4) (a).

History: 1981 c. 79, 235, 391; 1983 a. 27, 72, 74, 493, 494, 516; 1985 a. 302; 1987 a. 35, 301, 399; 1989 a. 31, 253; 1991 a. 39; 1993 a. 112, 259, 491; 1995 a. 23; 1995 a. 27 ss. 4117b, 4117c, 9154 (1); 1995 a. 225; 1997 a. 27; 2003 a. 250.

6 SECTION 5. 125.12 (2) (ag) 7. of the statutes is repealed.

7 SECTION 6. 125.25 (2) (b) 1. of the statutes is amended to read:

8 125.25 (2) (b) 1. ~~Beginning on May 5, 1994,~~ a Class "A" license may not be
9 issued to a person holding a wholesaler's license issued under s. 125.28 or to a person
10 who has a direct or indirect ownership interest in such a wholesaler or in a premises
11 operating under a wholesaler's license issued under s. 125.28.

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

12 SECTION 7. 125.25 (2) (b) 2. of the statutes is amended to read:

13 125.25 (2) (b) 2. ~~Notwithstanding subd. 1.,~~ a person who, as authorized under
14 this subdivision, 2003 stats., holds a Class "A" license and a wholesaler's license
15 issued under s. 125.28, both of which licenses were issued before May 5, 1994, may,
16 ~~subject to ss. 125.04 and 125.12, not renew and continue to hold both licenses after~~
17 the effective date of this subdivision [revisor inserts date].

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

18 SECTION 8. 125.25 (2) (b) 3. to 4. of the statutes are repealed.

19 SECTION 9. 125.25 (3) of the statutes is amended to read:

20 125.25 (3) Class "A" licenses shall particularly describe the premises for which
21 issued and are not transferable, except under ~~sub. (2) (b) 4. and~~ s. 125.04 (12). A Class
22 "A" license is subject to revocation for violation of any of the terms or provisions
23 thereof.

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

1 SECTION 10. 125.26 (2) (b) 2. a. of the statutes is amended to read:

2 125.26 (2) (b) 2. a. ~~Except as provided in s. 125.29, beginning on May 5, 1994,~~

3 A Class "B" license may not be issued to a person holding a wholesaler's license
4 issued under s. 125.28 or to a person who has a direct or indirect ownership interest
5 in such a wholesaler or in a premises operating under a wholesaler's license issued
6 under s. 125.28.

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

7 SECTION 11. 125.26 (2) (b) 2. b. of the statutes is amended to read:

8 125.26 (2) (b) 2. b. ~~Notwithstanding subd. 2. a., a~~ person who, as authorized
9 under this ^{subd. 2. b.} subdivision paragraph, 2003 stats., holds a Class "B" license and a
10 wholesaler's license issued under s. 125.28, both of which licenses were issued before
11 May 5, 1994, ~~may, subject to ss. 125.04 and 125.12, not renew and continue to hold~~
12 both licenses after the effective date of this ^{subd. 2. b.} subdivision paragraph ... [revisor inserts
13 date].

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

14 SECTION 12. 125.26 (2) (b) 2. c. of the statutes is repealed.

SECTION 13. 125.28 (1) of the statutes is ^{renumbered 125.28 (1) (a) and} amended to read:

15 125.28 (1) ^(a) ~~Every ~~law~~~~ Subject to par. (b), every municipal governing body may
16 issue licenses to wholesalers for that maintain any warehouse specified under sub.
17 (1m) (a) within the municipality authorizing the sale of fermented malt beverages
18 from premises within the municipality. A wholesaler's license authorizes sales of
19 fermented malt beverages only in original packages or containers to retailers or
20 wholesalers or to employees of the wholesaler holding the license, not to be consumed
21 in or about the wholesaler's premises where sold. ~~In the case of a foreign corporation~~
22 ~~or foreign limited liability company whose wholesale premises is located outside of~~
23 ~~this state.~~ (b) If a wholesaler does not maintain a warehouse specified under sub.
24

change component

1 (1m) (a) in this state but is licensed and maintains a warehouse in an adjoining state
2 that allows wholesalers licensed in this state to deliver fermented malt beverages to
3 retailers in the adjoining state without warehousing in that state, the wholesaler's
4 license shall be issued by the governing body of the municipality in which some part
5 of the wholesaler's business is conducted in this state. Notwithstanding s. 125.04 (5)
6 (a) 2. and (c) and (6), the municipal governing body may issue the wholesaler's license
7 to a wholesaler described in this paragraph who is a natural person and not a
8 resident of this state or that is a corporation or limited liability company and has not
9 appointed an agent in this state. (c) No additional license or permit is required for
10 the solicitation of orders for sale to or by licensed wholesalers.

11 SECTION 14. 125.28 (1m) of the statutes is created to read:

12 125.28 (1m) (a) Except as provided in par. (b), any person holding a
13 wholesaler's license under this section shall own or lease warehouse facilities on the
14 premises described in the wholesaler's license, or on any warehouse premises for
15 which the wholesaler also holds a permit issued under s. 125.19, that are capable of
16 warehousing fermented malt beverages. All shipments of fermented malt beverages
17 to the wholesaler, whether shipped to the wholesaler from inside this state or from
18 outside this state, shall be unloaded in and distributed from these warehouse
19 facilities.

20 (b) This subsection does not apply to a wholesaler issued a wholesaler's license
21 under sub. (1) (b).

22 SECTION 15. 125.28 (2) (b) (intro.), (2) (b) 1. (intro.) and d. and (2) (b) 2. of the
23 statutes are consolidated, renumbered 125.28 (2) (b) and amended to read:

24 125.28 (2) (b) Except as provided in par. (c) and s. ~~125.29~~, beginning on May 5,
25 1994, a wholesaler's license may not be issued to any of the following: ~~A~~ a person

1 holding ~~one or more of the following licenses or permits:~~ ^{d.d.} An an industrial fermented
 2 malt beverages permit issued under s. 125.275. ^{12.} ~~A or to a person who has a direct or~~
 3 indirect ownership interest in a premises operating under one or more of the licenses
 4 or permits listed in subd. 1. a. to d an industrial fermented malt beverages permit
 5 issued under s. 125.275.

6 **SECTION 16.** 125.28 (2) (b) 1. a. to c. of the statutes are repealed.

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

7 **SECTION 17.** 125.28 (2) (c) of the statutes is amended to read:

8 125.28 (2) (c) 1. A person who holds a wholesaler's license and a ~~license or~~
 9 permit specified in par. (b) 1., ~~all, both~~ of which licenses or permits were issued before
 10 May 5, 1994, may, subject to ss. 125.04 and 125.12, renew and continue to hold ~~all~~
 11 of the licenses or permits each license and permit.

12 2. ~~Except as provided in ss. 125.04 (12) (a) and 125.25 (2) (b) 4., if~~ If a person
 13 holding a wholesaler's license and a ~~license or permit~~ under subd. 1. fails to renew
 14 ~~a the~~ license or permit, is denied renewal of ~~a the~~ license or permit under s. 125.12
 15 or has ~~one of the licenses or permits~~ the license or permit suspended or revoked under
 16 s. 125.12, the person is subject to par. (b) with respect to holding ~~a license or permit~~
 17 ~~of that type~~ each license and permit after the failure or denial of renewal or the
 18 revocation or suspension of the license or permit.

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

19 **SECTION 18.** 125.28 (2) (d) of the statutes is created to read:

20 125.28 (2) (d) 1. A wholesaler's license may not be issued under this section to
 21 a person holding a Class "A" license or a Class "B" license or permit or to a person
 22 who has a direct or indirect ownership interest in such a retail licensee or permittee
 23 or in a premises operating under any of these licenses or permits.

1 2. A license may not be issued under this section to a wholesaler if any Class
2 “A” licensee or Class “B” licensee or permittee has any direct or indirect ownership
3 interest in the wholesaler.

4 3. A person holding a wholesaler’s license under this section may not hold a
5 Class “A” license or a Class “B” license or permit or have any direct or indirect
6 ownership interest in such a retail licensee or permittee or in a premises operating
7 under a Class “A” license or a Class “B” license or permit.

8 4. A person who, as authorized under s. 125.28 (2) (b) and (c), 2003 stats., holds
9 a wholesaler’s license and any license or permit specified in s. 125.28 (2) (b) 1. a. to
10 c., 2003 stats., all of which licenses or permits were issued before May 5, 1994, may
11 not renew all of the licenses or permits after the effective date of this subdivision
12 [revisor inserts date].

13 **SECTION 19.** 125.28 (3) of the statutes is amended to read:

14 125.28 (3) Wholesalers’ licenses shall particularly describe the premises for
15 which issued and are not transferable, except as provided in ~~ss. s.~~ s. 125.04 (12) and
16 ~~125.25 (2) (b) 4.~~ A wholesaler’s license is subject to revocation for violation of any of
17 the terms or provisions thereof.

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

18 **SECTION 20.** 125.29 (1), ~~(2)~~, and ~~(4)~~ of the statutes ^{is} are amended to read:

19 125.29 (1) PERMIT. No person may operate as a brewer unless that person
20 obtains a permit from the department. ~~Each wholesaler required to register under~~
21 ~~s. 139.09 shall obtain a permit under this subsection.~~ A permit under this section
22 may only be issued to a person who holds a valid certificate issued under s. 73.03 (50).

SECTION# 125.29 (2) of the statutes is
 renumbered 125.29(2) (a) and
 amended to read: ~~FF~~

1 125.29 ~~λ~~ (2) ~~LIMITATION~~ (a) Except as provided in s. 125.31, no person holding a Class

2 "B" license or permit issued under this chapter may register as a brewer be issued

3 a brewer's permit under this section.

4 SECTION# 125.29 (4) of the statutes is amended to read: ~~FF~~
 125.29 ~~λ~~ (4) MULTIPLE LICENSES. Notwithstanding ~~ss.~~ ^{s.} 125.26 (2) and 125.28 (2), a brewer

5 may hold ~~a~~ wholesaler's license issued under s. 125.28 and a Class "B" license as
 6 provided under s. 125.31.

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

7 SECTION 21. 125.29 (2) (b) of the statutes is created to read:

8 125.29 (2) (b) 1. Except as provided in s. 125.295, no person holding a
 9 wholesaler's license issued under s. 125.28 may be issued a brewer's permit under
 10 this section.

11 2. Except as provided in s. 125.295, a person holding a brewer's permit under
 12 this section may not hold a wholesaler's license under s. 125.28 or have any direct
 13 or indirect ownership interest in a wholesaler holding a license under s. 125.28.

14 3. Except as provided in s. 125.295, a permit may not be issued under this
 15 section to a brewer if any wholesaler licensed under s. 125.28 has any direct or
 16 indirect ownership interest in the brewer.

17 SECTION 22. 125.29 (3) of the statutes is renumbered 125.29 (3) (a) and
 18 amended to read:

19 125.29 (3) (a) A brewer may manufacture, possess, and store fermented malt
 20 beverages on the brewery premises and ~~(c)~~ ^(c) A brewer may transport fermented malt
 21 beverages between the brewery premises and any depot or warehouse maintained
 22 by the brewer ~~for which the brewer has a wholesaler's license issued under s. 125.28,~~
 23 or between the brewery premises or any depot or warehouse maintained by the
 24 brewer and either a wholesaler's premises licensed under s. 125.28 or warehouse

1 premises for which a fermented malt beverages wholesaler holds a permit issued
2 under s. 125.19.

3 **SECTION 23.** 125.30 (1) of the statutes is amended to read:

4 125.30 (1) The department shall issue out-of-state shippers' permits which
5 authorize the permittee to ship fermented malt beverages only to holders of a
6 wholesaler's license issued under s. 125.28. No person may receive fermented malt
7 beverages in this state which have been directly shipped from outside this state by
8 any person other than the holder of a permit issued under this section. All shipments
9 of fermented malt beverages to a wholesaler of fermented malt beverages in this
10 state, whether shipped to the wholesaler from inside this state or from outside this
11 state, ~~shall be unloaded in and distributed from the wholesaler's warehouse in this~~
12 state are subject to the provisions of s. 125.28 (1m).

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

13 **SECTION 24.** 125.30 (4) of the statutes is created to read:

14 125.30 (4) (a) 1. Except as provided in s. 125.295, no person holding a
15 wholesaler's license issued under s. 125.28 may be issued an out-of-state shipper's
16 permit under this section.

17 2. Except as provided in s. 125.295, a person holding an out-of-state shipper's
18 permit under this section may not hold a wholesaler's license under s. 125.28 or have
19 any direct or indirect ownership interest in a wholesaler holding a license under s.
20 125.28.

21 3. Except as provided in s. 125.295, a permit may not be issued under this
22 section to an out-of-state shipper if any wholesaler licensed under s. 125.28 has any
23 direct or indirect ownership interest in the out-of-state shipper.

1 (b) A permit may not be issued under this section to an out-of-state shipper
 2 if any Class "A" licensee or Class "B" licensee or permittee has any direct or indirect
 3 ownership interest in the out-of-state shipper.

4 SECTION 25. 125.295 of the statutes is created to read:

5 **125.295 Limited interests of brewers and out-of-state shippers in**
 6 **wholesalers. (1) In this section:**

- 7 (a) "Brewer" means a permittee under s. 125.29.
- 8 (b) "Out-of-state shipper" means a permittee under s. 125.30.
- 9 (c) "Wholesaler" means a licensee under s. 125.28.

10 (2) (a) Any brewer or out-of-state shipper may financially assist a wholesaler
 11 in any of the following ways:

12 1. By participating as a limited partner in a limited partnership in which the
 13 wholesaler is a general partner and the limited partnership agreement requires
 14 dissolution of the limited partnership not later than 10 years from the date of the
 15 limited partnership's formation.

16 2. By lending money or extending credit to a wholesaler secured by a security
 17 interest in the inventory and assets, other than any corporate stock, of the
 18 wholesaler, if the terms of the security agreement provide for its termination not
 19 later than 10 years from the date the security agreement is entered into.

20 (b) No limited partnership agreement or security agreement described in par.

21 (a) may be directly or indirectly renewed, extended, or recreated after the 10-year
 22 period specified in par. (a).

23 (c) If a brewer or out-of-state shipper receives a distribution of assets from a
 24 limited partnership described in par. (a) 1. upon dissolution of the limited
 25 partnership, or acquires an interest in a wholesaler's inventory or assets under the

*out of state
 order*

1 terms of a security agreement described in par. (a) 2., the brewer or out-of-state
2 shipper shall divest itself of the assets, or of the interest in inventory or assets, within
3 2 years of receiving or acquiring the assets or interest.

4 (d) 1. If a brewer or out-of-state shipper receives a distribution of assets from
5 a limited partnership described in par. (a) 1. and the dissolution of the limited
6 partnership occurs at a time or upon the happening of an event other than that
7 specified by the terms of the limited partnership agreement, then any wholesaler
8 that is a general partner of the limited partnership may not participate in any other
9 limited partnership described in par. (a) 1. for 20 years after the date of distribution
10 of the limited partnership assets.

11 2. If a brewer or out-of-state shipper acquires an interest in a wholesaler's
12 inventory or assets under the terms of a security agreement described in par. (a) 2.,
13 the wholesaler may not enter into another security agreement described in par. (a)
14 2. for 20 years after the date that the brewer or out-of-state shipper acquires the
15 interest.

16 (e) Nothing in this subsection authorizes a brewer or out-of-state shipper that
17 is a limited partner under par. (a) 1. or that holds a security interest under par. (a)
18 2., or any officer, director, stockholder, partner, member, manager, agent, employee,
19 subsidiary or affiliate corporation or limited liability company, or affiliate through
20 common ownership, management, or control of such a brewer or out-of-state
21 shipper, to hold a license under s. 125.28.

22 (3) If any brewer or out-of-state shipper lends money or extends credit to a
23 wholesaler and the wholesaler defaults under the terms by which the loan was made
24 or credit extended, the brewer or out-of-state shipper may acquire ownership of or
25 an interest in the business, including any corporate stock, or assets of the wholesaler

1 as a result of any judgment against the wholesaler, or of any written agreement
2 entered into with the wholesaler, arising from the default, but the ownership or other
3 interest may be maintained only for the purpose of facilitating an orderly transfer
4 of the business or assets to an owner not affiliated with the brewer or out-of-state
5 shipper. The brewer or out-of-state shipper shall divest itself of its ownership of or
6 interest in the business or assets of the wholesaler within 2 years of acquiring the
7 ownership or other interest.

8 (4) A brewer or out-of-state shipper that maintains an ownership interest in
9 a fermented malt beverage wholesaler on the effective date of this subsection
10 [revisor inserts date] may continue to maintain the interest after the effective date
11 of this subsection [revisor inserts date].

12 (5) A brewer or out-of-state shipper that manufactures less than 4,000 barrels
13 of fermented malt beverages annually may own or have an interest in a wholesaler
14 that sells only products manufactured by the brewer or out-of-state shipper.

15 **SECTION 26.** 125.31 (2) of the statutes is renumbered 125.29 (3) (b) and
16 amended to read:

17 125.29 (3) (b) A brewer may own, maintain or operate depots and warehouses
18 from which sales of fermented malt beverages, not for consumption in or about the
19 premises where sold, may be made in original packages to retailers and wholesalers.

20 ~~A separate wholesaler's license is required for each depot or warehouse owned,
21 maintained or operated.~~

22 History: 1981 c. 79; 1989 a. 253; 1991 a. 32; 1993 a. 112, 213, 215, 491; 1999 a. 163; 2001 a. 16.

23 **SECTION 27.** 125.31 (3) (intro.) and (a) of the statutes are consolidated,
renumbered 125.31 (3) (a) and amended to read:

1 125.31 (3) (a) A brewer may sell fermented malt beverages in the original
2 packages or containers, not to be consumed on the premises where sold: ~~To retailers~~^{AA (A) AA}
3 and, to wholesalers, if the brewer obtains a wholesaler's license; or.

4 SECTION 28. 125.31 (3) (b) of the statutes is amended to read:

5 125.31 (3) (b) To A brewer that holds a Class "A" or Class "B" license may sell
6 fermented malt beverages to persons other than licensees and permittees, if the
7 brewer obtains a Class "A" or Class "B" license in accordance with the terms of the
8 license.

History: 1981 c. 79; 1989 a. 253; 1991 a. 32; 1993 a. 112, 213, 215, 491; 1999 a. 163; 2001 a. 16.

9 SECTION 29. 125.33 (7) (c) and (11) of the statutes are repealed.

10 SECTION 30. Nonstatutory provisions.

11 (1) (a) A Class "A" license and wholesaler's license identified in section 125.25
12 (2) (b) 2. of the statutes, as affected by this act, both remain valid for the duration of
13 each license period in effect on the effective date of this subsection, but the holder of
14 these licenses may not renew both licenses. The holder of these licenses, upon
15 expiration of the applicable license periods, shall select no more than one of these
16 licenses for renewal.

change to
text
NS: par 17 →

17 (b) A Class "B" license and a wholesaler's license identified in section 125.26
18 (2) (b) 2. b. of the statutes, as affected by this act, both remain valid for the duration
19 of each license period in effect on the effective date of this subsection, but the holder
20 of these licenses may not renew both licenses. The holder of these licenses, upon
21 expiration of the applicable license periods, shall select no more than one of these
22 licenses for renewal.

change to
text
NS: par 23 →
24

23 (c) A Class "A" license, Class "B" license or permit, and wholesaler's license
24 identified in section 125.28 (2) (b) 1. a. to c. and (c) 1., 2003 stats., all remain valid

1 for the duration of each license period in effect on the effective date of this subsection,
2 but the holder of these licenses or permits may not renew both a wholesaler's license
3 and a license or permit described in 125.28 (2) (b) 1. a. to. c., 2003 stats.
4 Notwithstanding section 125.28 (2) (d) 3. of the statutes, as created by this act, a
5 person may hold a wholesaler's license and a Class "A" license or a Class "B" license
6 or permit as provided in this subsection.

7 (END)

D-Note

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

LRB-3112/P1dn
ARG.: *K.F.*

Date

ATTN: Brian Pleva and Bryon Wornson

Please review the attached draft carefully to ensure that it is consistent with your intent.

renumbering and
X With regard to the amendment of s. 125.28 (1), current law already prohibits any person from selling fermented malt beverages at wholesale unless the person has a wholesaler's license. See s. 125.04 (1). Current law further prohibits retailers from purchasing fermented malt beverages 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).

Under this draft, a beer wholesaler may not hold a retail license (although a beer wholesaler may hold an indirect interest in retail premises under s. 125.33 (2m)). Accordingly, the attached draft repeals s. 125.33 (7) (c) and (11), as well as s. 125.12 (2) (ag) 7.

I interpret current law to allow a brewer to hold any number of Class "A" licenses. See ss. 125.31 (3) (b) and 125.25. Current law also allows a brewer to hold Class "B" licenses, but with significant restrictions. See ss. 125.26, 125.29 (2), and 125.31. The drafting instructions, under s. 125.31, do not change the provisions in s. 125.31 related to a brewer's ability to sell beer at retail under a Class "A" or Class "B" license. Accordingly, the draft does not treat these provisions to restrict a brewer's retail authority. However, there may be some tension in the drafting instructions between s. 125.31 and the created provision in s. 125.295 (1), which I am uncertain how to interpret. The latter provision suggests that DOR may not issue a brewer's permit or out-of-state shipper's permit if a retailer has an ownership interest in the brewer or out-of-state shipper. To me, this would conflict with s. 125.31 if the brewer and Class "A" or Class "B" licensee are the same person or business entity. I have accordingly not included such a provision in s. 125.29 for brewers, but have included the provision in s. 125.30 for out-of-state shippers.

In treating s. 125.31 (3), I notice that existing law seems to be incorrect in limiting sales by a brewer under a Class "B" license to sales "in the original packages or containers, not to be consumed on the premises where sold." The attached draft corrects this error.

X In created s. 125.295 (5), I used the language "less than 4,000 barrels" rather than "4,000 barrels...or less" to track the language used for a small brewer under s. 125.31 (1) (a) 1.

Under current law, neither a Class "A" nor a Class "B" license may presently be issued to a person holding a beer wholesaler's license or to "a person who has a direct or indirect ownership interest in a premises operating under a [beer] wholesaler's license." See ss. 125.25 (2) (b) 1. and 125.26 (2) (b) 2. a. Given the definition of "premises" in s. 125.02 (14m), I believe the scope of the prohibition against a "direct or indirect ownership interest" is unclear, and could possibly be interpreted as covering merely an interest in real property. I have accordingly amended ss. 125.25 (2) (b) 1. and 125.26 (2) (b) 2. a. to clarify these provisions, and drafted created s. 125.28 (2) (d) 1. and 3. in a similar manner. I elected not to use language similar to that which currently applies in the context of intoxicating liquor (direct or indirect interest in any Class A license or establishment"; "direct or indirect interest in a wholesale permit or establishment" s. 125.69 (1)) because "establishment" is not a defined term in ch. 125 and it is unclear to me exactly what the term means.

To the extent this draft limits a person's ability to obtain a Class "B" license, it also limits the person's ability to obtain a "Class B" license. See s. 125.51 (3) (f).

I note that s. 125.275 (industrial fermented malt beverages permit) is not treated in the attached draft. The attached draft also does not treat s. 125.26 (3) because no treatment is necessary. The attached draft does not affect a brewer's ability to wholesale wine under ss. 125.54 and 125.69 (1) (c).

As discussed by e-mail, I had some difficulty deciphering the intent of created s. 125.295 and drafting the provision as a coherent whole. It seems that the cornerstone of created s. 125.295 (2) is the formation by a brewer or out-of-state shipper and a wholesaler of a limited partnership or the brewer or out-of-state shipper's taking of a security interest in the wholesaler's collateral. Accordingly, I have incorporated language in the draft consistent with ch. 179 (limited partnerships) and ch. 409 (secured transactions). I have also attempted to discern the potential scenarios that may arise from these arrangements, and it does not appear to me that any scenario would result in the brewer or out-of-state shipper owning the wholesaler or the wholesaler's license as opposed to the wholesaler's assets. Although the attached draft requires a brewer or out-of-state shipper to divest itself of a wholesaler's assets within a specified time period, the draft does not specifically address how the brewer or out-of-state shipper would divest itself of such assets. No treatment in the draft is necessary with regard to assets that are not alcohol beverages. However, with regard to assets that are alcohol beverages, it is not clear that s. 125.06 (8) would allow their sale without a license under any circumstances, and it certainly would not allow their sale under all circumstances covered in the draft. Do you want to provide a licensing exception like that in s. 125.06 (8) for the brewer or out-of-state shipper to dispose of the assets or allow a brewer or out-of-state shipper to hold a wholesaler's license for the time period necessary to divest the assets?

I As discussed by e-mail, to the extent the Supreme Court's decision in Granholm v. Heald is read expansively to apply to beer wholesalers, the "at rest" warehousing

(D)

*renumbered
and*

X provisions and "reciprocity" arrangement in amended s. 125.28 (1) and created s. 125.28 (1m) of the attached draft might be vulnerable to challenge. In striking down the New York law in Granholm, the Supreme Court condemned a provision of the New York law that required in-state warehouse/distribution facilities for purposes of wine distribution and criticized these types of reciprocity laws as creating preferential trade zones among states that are at odds with free interstate commerce throughout the country.

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-3112/P1dn
ARG:kjfjf

June 8, 2005

ATTN: Brian Pleva and Bryon Wornson

Please review the attached draft carefully to ensure that it is consistent with your intent.

With regard to the renumbering and amendment of s. 125.28 (1), current law already prohibits any person from selling fermented malt beverages at wholesale unless the person has a wholesaler's license. See s. 125.04 (1). Current law further prohibits retailers from purchasing fermented malt beverages 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).

Under this draft, a beer wholesaler may not hold a retail license (although a beer wholesaler may hold an indirect interest in retail premises under s. 125.33 (2m)). Accordingly, the attached draft repeals s. 125.33 (7) (c) and (11), as well as s. 125.12 (2) (ag) 7.

I interpret current law to allow a brewer to hold any number of Class "A" licenses. See ss. 125.25 and 125.31 (3) (b). Current law also allows a brewer to hold Class "B" licenses, but with significant restrictions. See ss. 125.26, 125.29 (2), and 125.31. The drafting instructions, under s. 125.31, do not change the provisions in s. 125.31 related to a brewer's ability to sell beer at retail under a Class "A" or Class "B" license. Accordingly, the draft does not treat these provisions to restrict a brewer's retail authority. However, there may be some tension in the drafting instructions between s. 125.31 and the created provision in s. 125.295 (2), which I am uncertain how to interpret. The latter provision suggests that DOR may not issue a brewer's permit or out-of-state shipper's permit if a retailer has an ownership interest in the brewer or out-of-state shipper. To me, this would conflict with s. 125.31 if the brewer and Class "A" or Class "B" licensee are the same person or business entity. I have accordingly not included such a provision in s. 125.29 for brewers, but have included the provision in s. 125.30 for out-of-state shippers.

In treating s. 125.31 (3), I notice that existing law seems to be incorrect in limiting sales by a brewer under a Class "B" license to sales "in the original packages or containers, not to be consumed on the premises where sold." The attached draft corrects this error.

In created s. 125.295 (5), I used the language "less than 4,000 barrels" rather than "4,000 barrels...or less" to track the language used for a small brewer under s. 125.31 (1) (a) 1.

Under current law, neither a Class "A" nor a Class "B" license may presently be issued to a person holding a beer wholesaler's license or to "a person who has a direct or indirect ownership interest in a premises operating under a [beer] wholesaler's license." See ss. 125.25 (2) (b) 1. and 125.26 (2) (b) 2. a. Given the definition of "premises" in s. 125.02 (14m), I believe the scope of the prohibition against a "direct or indirect ownership interest" is unclear, and could possibly be interpreted as covering merely an interest in real property. I have accordingly amended ss. 125.25 (2) (b) 1. and 125.26 (2) (b) 2. a. to clarify these provisions, and drafted created s. 125.28 (2) (d) 1. and 3. in a similar manner. I elected not to use language similar to that which currently applies in the context of intoxicating liquor ("direct or indirect interest in any 'Class A' license or *establishment*"; "direct or indirect interest in a wholesale permit or *establishment*," s. 125.69 (1)) because "establishment" is not a defined term in ch. 125 and it is unclear to me exactly what the term means.

To the extent this draft limits a person's ability to obtain a Class "B" license, it also limits the person's ability to obtain a "Class B" license. See s. 125.51 (3) (f).

I note that s. 125.275 (industrial fermented malt beverages permit) is not treated in the attached draft. The attached draft also does not treat s. 125.26 (3) because no treatment is necessary. The attached draft does not affect a brewer's ability to wholesale wine under ss. 125.54 and 125.69 (1) (c).

As discussed by e-mail, I had some difficulty deciphering the intent of created s. 125.295 and drafting the provision as a coherent whole. It seems that the cornerstone of created s. 125.295 (2) is the formation by a brewer or out-of-state shipper and a wholesaler of a limited partnership or the brewer or out-of-state shipper's taking of a security interest in the wholesaler's collateral. Accordingly, I have incorporated language in the draft consistent with ch. 179 (limited partnerships) and ch. 409 (secured transactions). I have also attempted to discern the potential scenarios that may arise from these arrangements, and it does not appear to me that any scenario would result in the brewer or out-of-state shipper owning the wholesaler or the wholesaler's license as opposed to the wholesaler's assets. Although the attached draft requires a brewer or out-of-state shipper to divest itself of a wholesaler's assets within a specified time period, the draft does not specifically address how the brewer or out-of-state shipper would divest itself of such assets. No treatment in the draft is necessary with regard to assets that are not alcohol beverages. However, with regard to assets that are alcohol beverages, it is not clear that s. 125.06 (8) would allow their sale without a license under any circumstances, and it certainly would not allow their sale under all circumstances covered in the draft. Do you want to provide a licensing exception like that in s. 125.06 (8) for the brewer or out-of-state shipper to dispose of the assets or allow a brewer or out-of-state shipper to hold a wholesaler's license for the time period necessary to divest the assets?

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provisions and "reciprocity" arrangement in renumbered and amended s. 125.28 (1) and created s. 125.28 (1m) of the attached draft might be vulnerable to challenge. In striking down the New York law in *Granholm*, the Supreme Court condemned a provision of the New York law that required in-state warehouse/distribution facilities for purposes of wine distribution and criticized these types of reciprocity laws as creating preferential trade zones among states that are at odds with free interstate commerce throughout the country.

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State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-3112/P1
ARG:kjf:jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 125.12 (2) (ag) 7., 125.25 (2) (b) 3. to 4., 125.26 (2) (b) 2. c., 125.28
2 (2) (b) 1. a. to c. and 125.33 (7) (c) and (11); **to renumber and amend** 125.28
3 (1), 125.29 (2), 125.29 (3) and 125.31 (2); **to consolidate, renumber and**
4 **amend** 125.28 (2) (b) (intro.), (2) (b) 1. (intro.) and d. and (2) (b) 2. and 125.31
5 (3) (intro.) and (a); **to amend** 125.01, 125.04 (3) (e) 1., 125.04 (3) (f) 1., 125.04
6 (12) (a), 125.25 (2) (b) 1., 125.25 (2) (b) 2., 125.25 (3), 125.26 (2) (b) 2. a., 125.26
7 (2) (b) 2. b., 125.28 (2) (c), 125.28 (3), 125.29 (1), 125.29 (4), 125.30 (1) and 125.31
8 (3) (b); and **to create** 125.28 (1m), 125.28 (2) (d), 125.29 (2) (b), 125.295 and
9 125.30 (4) of the statutes; **relating to:** the 3-tier system for fermented malt
10 beverages production, distribution, and sale.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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,~~
7 ~~distribution, and sale of alcohol beverages by and to its citizens, for the benefit of the~~
8 ~~public health and welfare and this state's economic stability.~~

9 **SECTION 2.** 125.04 (3) (e) 1. of the statutes is amended to read:

10 125.04 (3) (e) 1. Each application for a license, other than a manager's or
11 operator's license, shall be sworn to by the applicant. The applicant shall file the
12 application for a license with the municipal clerk of the intended place of sale, except
13 that an applicant for a license under s. 125.28 may file the application with the
14 municipal clerk where any warehouse described in s. 125.28 (1m) (a) is located.

15 **SECTION 3.** 125.04 (3) (f) 1. of the statutes is amended to read:

16 125.04 (3) (f) 1. Except as provided in subds. 2. and 3. and sub. (3) (e) 1., all
17 applications for licenses to sell alcohol beverages shall be filed with the clerk of the
18 municipality in which the premises are located at least 15 days prior to the granting
19 of the license.

20 **SECTION 4.** 125.04 (12) (a) of the statutes is amended to read:

21 125.04 (12) (a) *From place to place.* Every alcohol beverage license or permit
22 may be transferred to another place or premises within the same municipality. An
23 alcohol beverage warehouse permit under s. 125.19, a winery permit under s. 125.53,
24 or an intoxicating liquor wholesaler's permit under s. 125.54 may be transferred to
25 another premises within this state. ~~A Class "A" license and a wholesaler's license~~

1 identified in s. 125.25 (2) (b) 2. may be transferred together as provided in s. 125.25
2 (2) (b) 4. if the receiving municipality approves the transfer. Transfers shall be made
3 by the issuing authority upon payment of a fee of \$10 to the issuing authority and,
4 for transfers as provided in s. 125.25 (2) (b) 4., transfers shall be received and the
5 validity of the transferred licenses recognized by the receiving municipality upon
6 approval of the transfer by the receiving municipality and payment to the receiving
7 municipality of an additional fee of \$10 for each transferred license. No retail
8 licensee, retail permittee, intoxicating liquor wholesaler or holder of a warehouse or
9 winery permit is entitled to more than one transfer during the license or permit year.
10 This paragraph does not apply to a license issued under s. 125.51 (4) (v) or to a reserve
11 "Class B" license, as defined in s. 125.51 (4) (a).

12 SECTION 5. 125.12 (2) (ag) 7. of the statutes is repealed.

13 SECTION 6. 125.25 (2) (b) 1. of the statutes is amended to read:

14 125.25 (2) (b) 1. ~~Beginning on May 5, 1994, a~~ A Class "A" license may not be
15 issued to a person holding a wholesaler's license issued under s. 125.28 or to a person
16 who has a direct or indirect ownership interest in such a wholesaler or in a premises
17 operating under a wholesaler's license issued under s. 125.28.

18 SECTION 7. 125.25 (2) (b) 2. of the statutes is amended to read:

19 125.25 (2) (b) 2. ~~Notwithstanding subd. 1., a~~ A person who, as authorized under
20 this subdivision, 2003 stats., holds a Class "A" license and a wholesaler's license
21 issued under s. 125.28, both of which licenses were issued before May 5, 1994, may,
22 subject to ss. 125.04 and 125.12, not renew and continue to hold both licenses after
23 the effective date of this subdivision [revisor inserts date].

24 SECTION 8. 125.25 (2) (b) 3. to 4. of the statutes are repealed.

25 SECTION 9. 125.25 (3) of the statutes is amended to read:

1 125.25 (3) Class “A” licenses shall particularly describe the premises for which
2 issued and are not transferable, except under ~~sub. (2) (b) 4.~~ and s. 125.04 (12). A Class
3 “A” license is subject to revocation for violation of any of the terms or provisions
4 thereof.

5 **SECTION 10.** 125.26 (2) (b) 2. a. of the statutes is amended to read:

6 125.26 (2) (b) 2. a. ~~Except as provided in s. 125.29, beginning on May 5, 1994,~~
7 a- A Class “B” license may not be issued to a person holding a wholesaler’s license
8 issued under s. 125.28 or to a person who has a direct or indirect ownership interest
9 in such a wholesaler or in a premises operating under a wholesaler’s license issued
10 under s. 125.28.

11 **SECTION 11.** 125.26 (2) (b) 2. b. of the statutes is amended to read:

12 125.26 (2) (b) 2. b. ~~Notwithstanding subd. 2. a., a~~ A person who, as authorized
13 under this subd. 2. b., 2003 stats., holds a Class “B” license and a wholesaler’s license
14 issued under s. 125.28, both of which licenses were issued before May 5, 1994, may,
15 subject to ss. 125.04 and 125.12, not renew and continue to hold both licenses after
16 the effective date of this subd. 2. b. [revisor inserts date].

17 **SECTION 12.** 125.26 (2) (b) 2. c. of the statutes is repealed.

18 **SECTION 13.** 125.28 (1) of the statutes is renumbered 125.28 (1) (a) and
19 amended to read:

20 125.28 (1) (a) ~~Every~~ Subject to par. (b), every municipal governing body may
21 issue licenses to wholesalers ~~for~~ that maintain any warehouse specified under sub.
22 (1m) (a) within the municipality authorizing the sale of fermented malt beverages
23 ~~from premises within the municipality.~~ A wholesaler’s license authorizes sales of
24 fermented malt beverages only in original packages or containers to retailers or
25 wholesalers or to employees of the wholesaler holding the license, not to be consumed

1 in or about the wholesaler's premises where sold. In the case of a foreign corporation
2 or foreign limited liability company whose wholesale premises is located outside of
3 this state,

4 (b) If a wholesaler does not maintain a warehouse specified under sub. (1m) (a)
5 in this state but is licensed and maintains a warehouse in an adjoining state that
6 allows wholesalers licensed in this state to deliver fermented malt beverages to
7 retailers in the adjoining state without warehousing in that state, the wholesaler's
8 license shall be issued by the governing body of the municipality in which some part
9 of the wholesaler's business is conducted in this state. Notwithstanding s. 125.04 (5)
10 (a) 2. and (c) and (6), the municipal governing body may issue the wholesaler's license
11 to a wholesaler described in this paragraph who is a natural person and not a
12 resident of this state or that is a corporation or limited liability company and has not
13 appointed an agent in this state.

14 (c) No additional license or permit is required for the solicitation of orders for
15 sale to or by licensed wholesalers.

16 **SECTION 14.** 125.28 (1m) of the statutes is created to read:

17 125.28 (1m) (a) Except as provided in par. (b), any person holding a
18 wholesaler's license under this section shall own or lease warehouse facilities on the
19 premises described in the wholesaler's license, or on any warehouse premises for
20 which the wholesaler also holds a permit issued under s. 125.19, that are capable of
21 warehousing fermented malt beverages. All shipments of fermented malt beverages
22 to the wholesaler, whether shipped to the wholesaler from inside this state or from
23 outside this state, shall be unloaded in and distributed from these warehouse
24 facilities.

1 (b) This subsection does not apply to a wholesaler issued a wholesaler's license
2 under sub. (1) (b).

3 SECTION 15. 125.28 (2) (b) (intro.), (2) (b) 1. (intro.) and d. and (2) (b) 2. of the
4 statutes are consolidated, renumbered 125.28 (2) (b) and amended to read:

5 125.28 (2) (b) Except as provided in par. (c) and ~~s. 125.29~~, beginning on May 5,
6 1994, a wholesaler's license may not be issued to any of the following: ~~1. A~~ a person
7 holding ~~one or more of the following licenses or permits:~~ ~~d.~~ an industrial
8 fermented malt beverages permit issued under s. 125.275. ~~2. A~~ or to a person who
9 has a direct or indirect ownership interest in a premises operating under one or more
10 of the licenses or permits listed in subd. 1. a. to d an industrial fermented malt
11 beverages permit issued under s. 125.275.

12 SECTION 16. 125.28 (2) (b) 1. a. to c. of the statutes are repealed.

13 SECTION 17. 125.28 (2) (c) of the statutes is amended to read:

14 125.28 (2) (c) 1. A person who holds a wholesaler's license and a ~~license or~~
15 ~~permit specified in par. (b) 1., all, both~~ of which licenses or permits were issued before
16 May 5, 1994, may, subject to ss. 125.04 and 125.12, renew and continue to hold ~~all~~
17 ~~of the licenses or permits~~ each license and permit.

18 2. ~~Except as provided in ss. 125.04 (12) (a) and 125.25 (2) (b) 4., if~~ If a person
19 holding a wholesaler's license and a ~~license or~~ permit under subd. 1. fails to renew
20 ~~a~~ the license or permit, is denied renewal of ~~a~~ the license or permit under s. 125.12
21 or has ~~one of the licenses or permits~~ the license or permit suspended or revoked under
22 s. 125.12, the person is subject to par. (b) with respect to holding ~~a license or permit~~
23 ~~of that type~~ each license and permit after the failure or denial of renewal or the
24 revocation or suspension of the license or permit.

25 SECTION 18. 125.28 (2) (d) of the statutes is created to read:

1 125.28 (2) (d) 1. A wholesaler's license may not be issued under this section to
2 a person holding a Class "A" license or a Class "B" license or permit or to a person
3 who has a direct or indirect ownership interest in such a retail licensee or permittee
4 or in a premises operating under any of these licenses or permits.

5 2. A license may not be issued under this section to a wholesaler if any Class
6 "A" licensee or Class "B" licensee or permittee has any direct or indirect ownership
7 interest in the wholesaler.

8 3. A person holding a wholesaler's license under this section may not hold a
9 Class "A" license or a Class "B" license or permit or have any direct or indirect
10 ownership interest in such a retail licensee or permittee or in a premises operating
11 under a Class "A" license or a Class "B" license or permit.

12 4. A person who, as authorized under s. 125.28 (2) (b) and (c), 2003 stats., holds
13 a wholesaler's license and any license or permit specified in s. 125.28 (2) (b) 1. a. to
14 c., 2003 stats., all of which licenses or permits were issued before May 5, 1994, may
15 not renew all of the licenses or permits after the effective date of this subdivision
16 [revisor inserts date].

17 **SECTION 19.** 125.28 (3) of the statutes is amended to read:

18 125.28 (3) Wholesalers' licenses shall particularly describe the premises for
19 which issued and are not transferable, except as provided in ~~ss. s.~~ s. 125.04 (12) and
20 ~~125.25 (2) (b) 4.~~ A wholesaler's license is subject to revocation for violation of any of
21 the terms or provisions thereof.

22 **SECTION 20.** 125.29 (1) of the statutes is amended to read:

23 125.29 (1) PERMIT. No person may operate as a brewer unless that person
24 obtains a permit from the department. ~~Each wholesaler required to register under~~

1 ~~s. 139.09 shall obtain a permit under this subsection.~~ A permit under this section
2 may only be issued to a person who holds a valid certificate issued under s. 73.03 (50).

3 SECTION 21. 125.29 (2) of the statutes is renumbered 125.29 (2) (a) and
4 amended to read:

5 125.29 (2) (a) Except as provided in s. 125.31, no person holding a Class "B"
6 license or permit issued under this chapter may ~~register as a brewer~~ be issued a
7 brewer's permit under this section.

8 SECTION 22. 125.29 (2) (b) of the statutes is created to read:

9 125.29 (2) (b) 1. Except as provided in s. 125.295, no person holding a
10 wholesaler's license issued under s. 125.28 may be issued a brewer's permit under
11 this section.

12 2. Except as provided in s. 125.295, a person holding a brewer's permit under
13 this section may not hold a wholesaler's license under s. 125.28 or have any direct
14 or indirect ownership interest in a wholesaler holding a license under s. 125.28.

15 3. Except as provided in s. 125.295, a permit may not be issued under this
16 section to a brewer if any wholesaler licensed under s. 125.28 has any direct or
17 indirect ownership interest in the brewer.

18 SECTION 23. 125.29 (3) of the statutes is renumbered 125.29 (3) (a) and
19 amended to read:

20 125.29 (3) (a) A brewer may manufacture, possess, and store fermented malt
21 beverages on the brewery premises ~~and,~~

22 (c) A brewer may transport fermented malt beverages between the brewery
23 premises and any depot or warehouse maintained by the brewer ~~for which the brewer~~
24 ~~has a wholesaler's license issued under s. 125.28,~~ or between the brewery premises
25 or any depot or warehouse maintained by the brewer and either a wholesaler's

1 premises licensed under s. 125.28 or warehouse premises for which a fermented malt
2 beverages wholesaler holds a permit issued under s. 125.19.

3 SECTION 24. 125.29 (4) of the statutes is amended to read:

4 125.29 (4) MULTIPLE LICENSES. Notwithstanding ~~ss. s.~~ s. 125.26 (2) and ~~125.28 (2),~~
5 a brewer may hold ~~a wholesaler's license issued under s. 125.28 and~~ a Class "B"
6 license as provided under s. 125.31.

7 SECTION 25. 125.295 of the statutes is created to read:

8 **125.295 Limited interests of brewers and out-of-state shippers in**
9 **wholesalers. (1) In this section:**

10 (a) "Brewer" means a permittee under s. 125.29.

11 (b) "Out-of-state shipper" means a permittee under s. 125.30.

12 (c) "Wholesaler" means a licensee under s. 125.28.

13 (2) (a) Any brewer or out-of-state shipper may financially assist a wholesaler
14 in any of the following ways:

15 1. By participating as a limited partner in a limited partnership in which the
16 wholesaler is a general partner and the limited partnership agreement requires
17 dissolution of the limited partnership not later than 10 years from the date of the
18 limited partnership's formation.

19 2. By lending money or extending credit to a wholesaler secured by a security
20 interest in the inventory and assets, other than any corporate stock, of the
21 wholesaler, if the terms of the security agreement provide for its termination not
22 later than 10 years from the date the security agreement is entered into.

23 (b) No limited partnership agreement or security agreement described in par.

24 (a) may be directly or indirectly renewed, extended, or recreated after the 10-year
25 period specified in par. (a).

1 (c) If a brewer or out-of-state shipper receives a distribution of assets from a
2 limited partnership described in par. (a) 1. upon dissolution of the limited
3 partnership, or acquires an interest in a wholesaler's inventory or assets under the
4 terms of a security agreement described in par. (a) 2., the brewer or out-of-state
5 shipper shall divest itself of the assets, or of the interest in inventory or assets, within
6 2 years of receiving or acquiring the assets or interest.

7 (d) 1. If a brewer or out-of-state shipper receives a distribution of assets from
8 a limited partnership described in par. (a) 1. and the dissolution of the limited
9 partnership occurs at a time or upon the happening of an event other than that
10 specified by the terms of the limited partnership agreement, then any wholesaler
11 that is a general partner of the limited partnership may not participate in any other
12 limited partnership described in par. (a) 1. for 20 years after the date of distribution
13 of the limited partnership assets.

14 2. If a brewer or out-of-state shipper acquires an interest in a wholesaler's
15 inventory or assets under the terms of a security agreement described in par. (a) 2.,
16 the wholesaler may not enter into another security agreement described in par. (a)
17 2. for 20 years after the date that the brewer or out-of-state shipper acquires the
18 interest.

19 (e) Nothing in this subsection authorizes a brewer or out-of-state shipper that
20 is a limited partner under par. (a) 1. or that holds a security interest under par. (a)
21 2., or any officer, director, stockholder, partner, member, manager, agent, employee,
22 subsidiary or affiliate corporation or limited liability company, or affiliate through
23 common ownership, management, or control of such a brewer or out-of-state
24 shipper, to hold a license under s. 125.28.

1 (3) If any brewer or out-of-state shipper lends money or extends credit to a
2 wholesaler and the wholesaler defaults under the terms by which the loan was made
3 or credit extended, the brewer or out-of-state shipper may acquire ownership of or
4 an interest in the business, including any corporate stock, or assets of the wholesaler
5 as a result of any judgment against the wholesaler, or of any written agreement
6 entered into with the wholesaler, arising from the default, but the ownership or other
7 interest may be maintained only for the purpose of facilitating an orderly transfer
8 of the business or assets to an owner not affiliated with the brewer or out-of-state
9 shipper. The brewer or out-of-state shipper shall divest itself of its ownership of or
10 interest in the business or assets of the wholesaler within 2 years of acquiring the
11 ownership or other interest.

12 (4) A brewer or out-of-state shipper that maintains an ownership interest in
13 a fermented malt beverage wholesaler on the effective date of this subsection
14 [revisor inserts date] may continue to maintain the interest after the effective date
15 of this subsection [revisor inserts date].

16 (5) A brewer or out-of-state shipper that manufactures less than 4,000 barrels
17 of fermented malt beverages annually may own or have an interest in a wholesaler
18 that sells only products manufactured by the brewer or out-of-state shipper.

19 **SECTION 26.** 125.30 (1) of the statutes is amended to read:

20 125.30 (1) The department shall issue out-of-state shippers' permits which
21 authorize the permittee to ship fermented malt beverages only to holders of a
22 wholesaler's license issued under s. 125.28. No person may receive fermented malt
23 beverages in this state which have been directly shipped from outside this state by
24 any person other than the holder of a permit issued under this section. All shipments
25 of fermented malt beverages to a wholesaler of fermented malt beverages in this

1 state, whether shipped to the wholesaler from inside this state or from outside this
2 state, ~~shall be unloaded in and distributed from the wholesaler's warehouse in this~~
3 ~~state~~ are subject to the provisions of s. 125.28 (1m).

4 **SECTION 27.** 125.30 (4) of the statutes is created to read:

5 125.30 (4) (a) 1. Except as provided in s. 125.295, no person holding a
6 wholesaler's license issued under s. 125.28 may be issued an out-of-state shipper's
7 permit under this section.

8 2. Except as provided in s. 125.295, a person holding an out-of-state shipper's
9 permit under this section may not hold a wholesaler's license under s. 125.28 or have
10 any direct or indirect ownership interest in a wholesaler holding a license under s.
11 125.28.

12 3. Except as provided in s. 125.295, a permit may not be issued under this
13 section to an out-of-state shipper if any wholesaler licensed under s. 125.28 has any
14 direct or indirect ownership interest in the out-of-state shipper.

15 (b) A permit may not be issued under this section to an out-of-state shipper
16 if any Class "A" licensee or Class "B" licensee or permittee has any direct or indirect
17 ownership interest in the out-of-state shipper.

18 **SECTION 28.** 125.31 (2) of the statutes is renumbered 125.29 (3) (b) and
19 amended to read:

20 125.29 (3) (b) A brewer may own, maintain or operate depots and warehouses
21 from which sales of fermented malt beverages, not for consumption in or about the
22 premises where sold, may be made in original packages to ~~retailers and~~ wholesalers.
23 ~~A separate wholesaler's license is required for each depot or warehouse owned,~~
24 ~~maintained or operated.~~

1 **SECTION 29.** 125.31 (3) (intro.) and (a) of the statutes are consolidated,
2 renumbered 125.31 (3) (a) and amended to read:

3 125.31 (3) (a) A brewer may sell fermented malt beverages in the original
4 packages or containers, not to be consumed on the premises where sold: ~~(a) To~~
5 ~~retailers and, to~~ wholesalers, ~~if the brewer obtains a wholesaler's license; or,~~

6 **SECTION 30.** 125.31 (3) (b) of the statutes is amended to read:

7 125.31 (3) (b) To A brewer that holds a Class "A" or Class "B" license may sell
8 fermented malt beverages to persons other than licensees and permittees, if the
9 brewer obtains a Class "A" or Class "B" license in accordance with the terms of the
10 license.

11 **SECTION 31.** 125.33 (7) (c) and (11) of the statutes are repealed.

12 **SECTION 32. Nonstatutory provisions.**

13 (1) (a) A Class "A" license and wholesaler's license identified in section 125.25
14 (2) (b) 2. of the statutes, as affected by this act, both remain valid for the duration of
15 each license period in effect on the effective date of this subsection, but the holder of
16 these licenses may not renew both licenses. The holder of these licenses, upon
17 expiration of the applicable license periods, shall select no more than one of these
18 licenses for renewal.

19 (b) A Class "B" license and a wholesaler's license identified in section 125.26
20 (2) (b) 2. b. of the statutes, as affected by this act, both remain valid for the duration
21 of each license period in effect on the effective date of this subsection, but the holder
22 of these licenses may not renew both licenses. The holder of these licenses, upon
23 expiration of the applicable license periods, shall select no more than one of these
24 licenses for renewal.

1 (c) A Class "A" license, Class "B" license or permit, and wholesaler's license
2 identified in section 125.28 (2) (b) 1. a. to c. and (c) 1., 2003 stats., all remain valid
3 for the duration of each license period in effect on the effective date of this subsection,
4 but the holder of these licenses or permits may not renew both a wholesaler's license
5 and a license or permit described in 125.28 (2) (b) 1. a. to. c., 2003 stats.
6 Notwithstanding section 125.28 (2) (d) 3. of the statutes, as created by this act, a
7 person may hold a wholesaler's license and a Class "A" license or a Class "B" license
8 or permit as provided in this subsection.

9

(END)