

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1983/P1dn
ARG:wlj:jf

February 28, 2007

ATTN: Terry Tuschen

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

There are many provisions in ch. 125 that apply to brewers. The attached draft generally treats a brewpub as a distinct type of brewer, therefore, many general provisions related to brewers also apply to brewpubs. However, brewpubs and brewers are distinguished for purposes of ss. 125.29, 125.31, and 125.34. While the attached draft undertakes to provide brewpubs with similar authorization to that of brewers under ss. 125.29 and 125.31, there are important differences between these provisions and created s. 125.295 in this draft. Perhaps the most confusing provision in the draft is s. 125.34. Because of the definitions in s. 125.34 (1), a brewpub is *not* a brewer and is *not* a wholesaler for purposes of that provision. As this bill is drafted, portions of s. 125.34 are not applicable to brewpubs. Where provisions are applicable, I have inserted language to make them applicable. I also note that I did not amend s. 125.34 (6) (c) to include brewer shipments from out of state to a brewpub location in this state.

I have not treated s. 125.06 (1) related to brewer taste samples. This provision may be somewhat incongruous with the way most brewpubs operate due to the provision's liquor license restriction. Do you want this provision amended?

Section 125.33 (7) contemplates sales to retailers by licensed wholesalers, as does s. 125.33 (6). I have not amended these provisions to apply with respect to the 1,000 barrels of beer that a brewpub can sell to unaffiliated retailers. Do you want this provision amended?

I note that ss. 125.33 (10) and 125.34, read together, could potentially have an impact on a brewer that is currently not doing its own wholesaling under a wholesaler's license and that wishes to convert to a brewpub permit upon enactment of this bill.

Under current law, a "small brewer" cannot take advantage of the Class "B" exception under s. 125.31 (1) (a) 3. or the Class "B" exception under s. 125.31 (1) (a) 4. This bill allows brewpubs a Class "B" exception similar to s. 125.31 (1) (a) 3. Accordingly, I have not amended s. 125.31 (1) (a) 4. to allow brewpubs to take advantage of that exception

as well. In this respect, the draft would approximately maintain current law as to the exception under s. 125.31 (1) (a) 4.

Under current law, a brewer may hold an intoxicating liquor wholesale permit (as well as a "Class B" liquor license) authorizing the wholesale sale of wine only. This bill does not change current law in this respect and allows brewpubs to wholesale wine. Is this consistent with your intent?

Under current law, a retailer generally must purchase alcohol beverages from a licensed wholesaler. See ss. 125.33 (9) and 125.34 (5). Because a brewpub cannot hold a wholesaler's license, the brewpub will be required, under current law, to obtain the beer not manufactured by the brewpub from an independent wholesaler. Accordingly, no specific treatment of this issue in the draft is necessary. However, the draft allows a brewpub to hold a liquor wholesale permit for wine. The draft therefore includes language in created s. 125.295 (4) (c) requiring the brewpub to purchase its liquor from an independent liquor wholesaler, not through its own liquor wholesale permit. Is this consistent with your intent? If you determine that you do not want the brewpub to be able to hold a liquor wholesaler's permit, this language can be removed.

The attached draft includes a short delayed effective date. I know that you would like the provisions of the bill to be implemented quickly, but DOR will need time to implement the statutory changes before it can begin issuing brewpub permits. Is this delayed effective date okay?

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.

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