

RESEARCH APPENDIX - Draft Transfer/Copy Request Form

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

(Request Made By: ARG) (Date: 2/20/07)



Please transfer the drafting file for

2005 LRB to the drafting file

for 2007 LRB

The final version of the 2005 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2005 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

For research purposes, because the 2005 draft was incorporated into a 2007 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the 2007 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

---OR---

Please copy the drafting file for

2007 LRB 0044 1 P1 (include the version) and place it in the

drafting file for 2007 LRB 1983

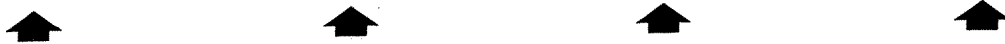
For research purposes, because the original 2007 draft was incorporated into another 2007 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the new 2007 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

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

RESEARCH APPENDIX - Draft Transfer/Copy Request Form

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

(Request Made By: ARG) (Date: 2 / 20 / 07)



Please transfer the drafting file for

2005 LRB Done to the drafting file

for 2007 LRB MB

☛ The final version of the 2005 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2005 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

☛ For research purposes, because the 2005 draft was incorporated into a 2007 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the 2007 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

-- OR --

Please copy the drafting file for

2007 LRB 1168 / P1 (include the version) and place it in the

drafting file for 2007 LRB 1983

☛ For research purposes, because the original 2007 draft was incorporated into another 2007 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the new 2007 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

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Wanted by 2/28

in 2/20

Wlj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

LPS: "brew pub"
should be "brewpub"
(one word).

Gen

- 1
- 2
- 3

AN ACT ...; **relating to:** creating a brew pub permit authorizing the manufacture and sale at wholesale of fermented malt beverages, and authorizing other brew pub interests and operations.

Analysis by the Legislative Reference Bureau

Under current law, alcohol beverages are generally distributed to consumers under a three-tier distribution system: the manufacturer may sell only to a wholesaler or rectifier; the wholesaler or rectifier may sell only to a wholesaler or to a retailer; the retailer may sell only to the consumer. With specific exceptions, no person may sell outside the three-tier system, and no person may sell alcohol beverages at retail unless the person possesses a license or permit authorizing the sale on the premises where sold.

Under current law, a brewer of fermented malt beverages (beer) must hold a permit issued by the Department of Revenue (DOR). A brewer's permit authorizes the brewer to manufacture, possess, and store beer on the brewery premises. A beer wholesaler's license, issued by a municipality, authorizes the license holder to sell to retailers or wholesalers beer in original packages that may not be consumed on or about the wholesaler's premises. A brewer may hold a wholesaler's license and may own, maintain, and operate a warehouse for which the brewer holds a wholesaler's license. The brewer may transport beer between the brewery premises and the brewer's warehouse. The brewer may sell beer at wholesale to beer retailers and beer wholesalers if the brewer holds a wholesaler's license. With various limitations discussed below, the brewer may sell beer at retail if the brewer holds a retailer's license. A brewer may also hold a limited intoxicating liquor wholesaler's permit, for wine only.

Under current law, a brewer may hold a Class "A" retail license, which authorizes the retail sale of beer in original packages for consumption off the licensed premises, but, with exceptions, may not hold a Class "B" license, which authorizes the retail sale of beer for consumption on or off the premises where sold. One exception allows a brewer to maintain and operate, and hold a Class "B" license for, one retail premises on brewery premises and one retail premises on property owned by the brewer or its subsidiary or affiliate. Under another exception, in addition to these two Class "B" licenses, a brewer may possess a Class "B" license for not more than four restaurants in which the sale of alcohol beverages accounts for less than 50 percent of gross receipts if the brewer is a "small brewer" (generally one that manufactures less than 4,000 barrels of beer annually), the restaurant also sells other brewers' beer, and the brewer's own beer is purchased by the restaurant from an independent wholesaler. A brewer may hold both a wholesaler's license and Class "B" license but, with an exception for grandfathered licenses, may not hold both a wholesaler's license and a Class "A" license. A "Class B" license authorizes the retail sale of intoxicating liquor for consumption on or off the licensed premises, which authorization is subject to certain limitations, some of which depend on whether the issuing municipality has adopted an ordinance related to "Class B" licenses. A "Class C" license authorizes the retail sale of wine by the glass or in an opened original container for consumption on the licensed premises and may only be issued for a restaurant. Because a "Class B" license may only be issued to the holder of a Class "B" license, a brewer is limited in the number of "Class B" licenses it may hold.

Also under current law, beer may not be sold, transported, or delivered to a Class "A" licensee or Class "B" licensee unless the beer is first unloaded at and distributed from a licensed beer wholesaler's warehouse, which generally must be at a location that is physically separate from any retail premises or brewery premises. However, there are a number of exceptions to this prohibition, including exceptions that apply to certain brewers that hold wholesale and retail licenses or that manufacture 50,000 barrels of beer or less annually. Also under current law, deliveries of beer to retailers may be made only by licensed wholesalers and must be made to retailers only at their retail premises. No retailer may transport beer from one retail premises to another retail premises to sell it unless both retail premises are operated by a brewer. Current law also requires, with limited exceptions, that beer wholesalers enter into written agreements with brewers supplying beer brands that grant to the wholesalers distribution rights within exclusive designated sales territories in order for the beer to be distributed, and further imposes requirements on the termination of these agreements. A brewer, in providing beer to its own retail premises, is not subject to restrictions on the sale, transportation, and delivery of beer generally applicable to wholesalers and retailers.

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

This bill creates a brew pub permit issued by DOR. A brewer is eligible to obtain a brew pub permit if all of the following apply:

a
brewer
operates

77

- ✓ 1. The brewer manufactures not more than 10,000 barrels of beer each year.
- ✓ 2. The brewer's entire beer manufacturing process occurs on the brew pub premises.
- ✓ 3. The brewer operates a restaurant on the brew pub premises in which the sale of alcohol beverages accounts for less than 50 percent of the restaurant's gross receipts.
- ✓ 4. The brewer holds a Class "B" license for the restaurant and offers for sale in the restaurant, in addition to its own beer, beer manufactured by other brewers.
- ✓ 5. The brewer holds a business tax registration certificate issued by DOR.
- ✓ 6. The brewer does not hold or have an interest in a Class "A" license, a beer wholesaler's license, or a brewer's permit, and does not hold or have an interest in a Class "B", "Class B", or "Class C" license other than one for the brew pub premises.

If an applicant for a brew pub permit has no current operations, the applicant can certify that the applicant will comply with these requirements prior to or upon commencing operations under the brew pub permit. If an applicant for a brew pub permit holds a brewer's permit, wholesale license, or any other prohibited license or permit at the time of the application, the applicant ~~may~~ certify that the applicant will surrender any such license or permit upon issuance of the brew pub permit. can

A brew pub permit authorizes a brewer to do all of the following:

- ✓ 1. Manufacture beer on the brew pub premises, up to 10,000 barrels each year for all brew pub premises, if the entire manufacturing process occurs on these premises.
- ✓ 2. Bottle on brew pub premises beer that has been manufactured on these premises, and possess and store on brew pub premises any beer.
- ✓ 3. Own, maintain, and operate warehouses for which alcohol beverages warehouse permits have been issued, and possess and store any beer on these warehouse premises.
- ✓ 4. Transport beer that has been manufactured on the brew pub premises between these premises and any other brew pub premises, brew pub warehouse, or brew pub Class "B" premises, and transport other beer only to or from the brew pub's warehouse.
- ✓ 5. Sell at wholesale, ship, transport, and deliver to wholesalers, from the brew pub premises, beer manufactured on these premises or on other brew pub premises.
- ✓ 6. Sell at wholesale, ship, transport, and deliver to retailers, from the brew pub premises, beer manufactured on these premises or on other brew pub premises, but only up to 1,000 barrels of beer each year, not including beer provided to the brew pub's own retail premises.
- ✓ 7. Sell alcohol beverages at retail on the brew pub premises in accordance with the terms of any Class "B", "Class B", or "Class C" license held by the brew pub.

A brew pub may not hold more than six permits for brew pub locations. A brew pub may only hold Class "B", "Class B", and "Class C" licenses for restaurants on brew pub premises. A brew pub may hold a limited intoxicating liquor wholesaler's permit, for wine only.

Like the holder of a brewer's permit, a brew pub, in providing beer to its own retail premises, is not subject to restrictions on the sale, transportation, and delivery

of beer generally applicable to wholesalers and retailers. However, a brew pub does not hold a wholesaler's license and may maintain wholesale operations, including the sale, transportation, and delivery to retailers if otherwise authorized, from its brew pub premises. To distribute its beer through licensed beer wholesalers, a brew pub must enter into written agreements with the wholesalers for each brew pub brand distributed providing exclusive designated sales territories to the wholesalers for these brands.

The bill also repeals the authorization for a small brewer to possess a Class "B" license for not more than four restaurants in which the sale of alcohol beverages accounts for less than 50 percent of the restaurant's gross receipts.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 125.02 (2m) (intro.) of the statutes is created to read:

125.02 (2m) (intro.) "Brewer group" means a brewer, including all premises for which the brewer holds a permit issued under s. 125.29 or 125.295, together with all of the following:

SECTION 2. 125.10 (4) of the statutes is amended to read:

125.10 (4) REGULATION OF CLOSED RETAIL PREMISES. A municipality may not prohibit the permittee, licensee, employees, salespersons, employees of wholesalers licensed under s. 125.28 (1) or 125.54 (1), employees of permittees under s. 125.295 with respect to the permittee's own retail premises, or service personnel from being present on premises operated under a Class "A", "Class A" or "Class C" license or under a Class "B" or "Class B" license or permit during hours when the premises are not open for business if those persons are performing job-related activities.

History: 1981 c. 79, 202; 1983 a. 74 ss. 19, 32; 1985 a. 28 ss. 5, 9; 1987 a. 168; 1989 a. 31, 253; 1991 a. 39; 1993 a. 208.

SECTION 3. 125.25 (2) (b) 5. of the statutes is created to read:

125.25 (2) (b) 5. A Class "A" license may not be issued to a person holding a brew pub permit issued under s. 125.295 or to a person who has a direct or indirect

1 ownership interest in a premises operating under a brew pub permit issued under
2 s. 125.295.

3 SECTION 4. 125.26 (2) (b) 1. of the statutes is amended to read:

4 125.26 (2) (b) 1. Except as provided in s. ss. 125.295 and 125.31, Class "B"
5 licenses may not be issued to brewers.

6 History: 1981 c. 79; 1985 a. 302; 1987 a. 249, 399; 1989 a. 253; 1991 a. 269; 1993 a. 112, 378; 1995 a. 282; 1999 a. 9; 1999 a. 150 s. 672; 2005 a. 22, 103.

7 SECTION 5. 125.28 (2) (b) 1. e. of the statutes is created to read:

8 125.28 (2) (b) 1. e. A brew pub permit issued under s. 125.295.

9 SECTION 6. 125.28 (2) (b) 2. of the statutes is amended to read:

10 125.28 (2) (b) 2. A person who has a direct or indirect ownership interest in a
11 premises operating under one or more of the licenses or permits listed in subd. 1. a.

12 to ~~e.~~

13 History: 1981 c. 79; 1989 a. 31, 253; 1993 a. 112, 259, 378, 491; 1995 a. 225; 1999 a. 163; 2003 a. 250; 2005 a. 103, 115.

14 SECTION 7. 125.29 (5) of the statutes is created to read:

15 125.29 (5) BREW PUBS. Subsections (1) to (4) do not apply to any brewer holding
16 a brew pub permit issued under s. 125.295 or to any premises operated under a brew
17 pub permit issued under s. 125.295. No person holding a brew pub permit under s.
18 125.295 may register as a brewer under this section.

19 SECTION 8. 125.295 of the statutes is created to read:

20 125.295 Brew pub permits. (1) In this section:

21 (a) "Brew pub" means any brewer operating under a brew pub permit issued
22 under this section.

23 (b) "Brew pub premises" means any premises covered by a permit issued under
24 this section.

(2) The department shall issue brew pub permits to eligible applicants
authorizing all of the following:

1 (a) The manufacture of fermented malt beverages on the brew pub premises
2 if the entire manufacturing process occurs on these premises and not more than
3 10,000 barrels of fermented malt beverages are manufactured in a calendar year by
4 the permittee's brewer group.

5 (b) The bottling on brew pub premises of fermented malt beverages that have
6 been manufactured on these premises.

7 (c) The possession and storage of any fermented malt beverages on brew pub
8 premises.

9 (d) The ownership, maintenance, and operation of warehouses for each of which
10 an alcohol beverages warehouse permit has been issued under s. 125.19 and the
11 possession and storage of any fermented malt beverages on these warehouse
12 premises.

13 (e) 1. The transportation of fermented malt beverages that have been
14 manufactured on the brew pub premises between these premises and any other brew
15 pub premises, warehouse premises, or Class "B" premises of the brew pub. A brew
16 pub may transport beer not manufactured by the brew pub to or from a warehouse
17 premises of the brew pub but not to another brew pub premises or Class "B" premises
18 of the brew pub.

19 2. This paragraph does not authorize a brew pub to transport any fermented
20 malt beverages to any location unless the brew pub manufactured the fermented
21 malt beverages on one of its brew pub premises or the brew pub received delivery of
22 the fermented malt beverages from a licensed wholesaler at the brew pub's Class "B"
23 premises.

24 (f) Subject to s. 125.34 (3) and (4), the sale at wholesale, shipment,
25 transportation, and delivery, in original unopened packages or containers, to

1 wholesalers, from the brew pub premises, of fermented malt beverages that have
2 been manufactured on these premises or on other brew pub premises of the brew pub.

3 (g) The sale at wholesale, shipment, transportation, and delivery, in original
4 unopened packages or containers, to retailers, from the brew pub premises, of
5 fermented malt beverages that have been manufactured on these premises or on
6 other brew pub premises of the brew pub. A brew pub's brewer group may not sell,
7 ship, transport, or deliver more than a total of 1,000 barrels of fermented malt
8 beverages in any calendar year to retailers under this paragraph. Fermented malt
9 beverages provided by a brew pub to any retail premises for which the brew pub holds
10 the retail license shall not be included in any calculation of the 1,000 barrel
11 limitation under this paragraph. Deliveries and shipments of fermented malt
12 beverages by a brew pub under this paragraph shall be made to retailers only at their
13 retail premises.

14 (h) The sale of alcohol beverages at retail on the brew pub premises in
15 accordance with the terms of any retail license specified in subs. (3) (a) 4. and (4) (b)
16 and (c).

17 (i) Notwithstanding s. 125.33 (1), the ownership, maintenance, and operation
18 of places for the sale of fermented malt beverages at the state fair park or on any
19 county fairgrounds located in this state if the fermented malt beverages have been
20 manufactured by the brew pub.

21 (3) (a) An applicant is eligible for a brew pub permit only if all of the following
22 apply:

23 1. The applicant's brewer group manufactures a total of not more than 10,000
24 barrels of fermented malt beverages in a calendar year.

1 2. The applicant's entire process for manufacturing fermented malt beverages
2 under the permit occurs on the premises for which the permit is issued.

3 3. The applicant operates a restaurant on the premises for which the permit
4 is issued, for which a restaurant permit is issued under s. 254.64 and in which the
5 sale of alcohol beverages accounts for less than 50 percent of the gross receipts of all
6 of the food and beverages served in the restaurant on a calendar year basis.

7 4. The applicant holds a Class "B" license for the restaurant identified in subd.
8 3. and, on these Class "B" premises, offers for sale, in addition to fermented malt
9 beverages manufactured by the applicant, fermented malt beverages manufactured
10 by a brewer other than the applicant and its brewer group.

11 5. The applicant holds a valid certificate issued under s. 73.03 (50).

12 6. Neither the applicant nor the applicant's brewer group holds, or has a direct
13 or indirect ownership interest in a premises operating under, any of the following:

14 a. A Class "A" license issued under s. 125.25.

15 b. Except as provided in subd. 4. and subs. (2) (h) and (4) (b), a Class "B" license
16 issued under s. 125.26.

17 c. A wholesaler's license issued under s. 125.28.

18 d. A brewer's permit issued under s. 125.29.

19 e. Except as provided in subs. (2) (h) and (4) (c), a "Class B" license or permit
20 or "Class C" license issued under s. 125.51.

21 (b) If an applicant under par. (a) has no current operations, the applicant may
22 certify that the applicant has applied for or will apply for a Class "B" license or
23 restaurant permit or will comply with any other requirement under par. (a), prior to
24 or upon commencing operations authorized under this section. If a Class "B" license
25 or restaurant permit is not subsequently issued to the applicant, or if the applicant

1 otherwise fails to comply with any requirement for eligibility under par. (a), the
2 department may revoke under s. 125.12 (5) the permit issued under this section.

3 (c) If an applicant under par. (a) holds any license or permit prohibited under
4 par. (a) 6. at the time of its application, the applicant may certify that the applicant
5 will surrender any such license or permit upon issuance of a permit under this
6 section. If the department issues a permit under this section and the applicant fails
7 to surrender any license or permit prohibited under par. (a) 6., the department may
8 revoke under s. 125.12 (5) the permit issued under this section. An applicant is not
9 required to surrender any Class "B" license issued under s. 125.31 (1) (a) 2. or under
10 s. 125.31 (1) (a) 3., 2005 stats., if the applicant's continued possession of the license
11 is consistent with subs. (2) (h), (3) (a) 4., and (4) (b) and (c).

12 (4) (a) No brewer group may hold more than 6 brew pub permits issued under
13 this section.

14 (b) A brew pub may not hold any Class "B" license other than one issued for a
15 restaurant on the brew pub premises. Notwithstanding s. 125.26 (2) (a), each
16 Class "B" license shall be issued for the brew pub's restaurant in the same name as
17 the permittee under this section. Notwithstanding s. 125.33 (1), a brew pub may own
18 the furniture, fixtures, fittings, furnishings, and equipment on the Class "B"
19 premises and shall pay any license fee or tax required for the operation of the
20 premises.

21 (c) Subject to the requirements specified in s. 125.51 (3) and (3m), a brew pub
22 may also hold "Class B" licenses and "Class C" licenses, but only for restaurants on
23 brew pub premises. A brew pub shall purchase all intoxicating liquor from an
24 intoxicating liquor wholesaler that has no direct or indirect ownership interest in the
25 brew pub and in which the brew pub has no direct or indirect ownership interest.

1 (5) Except as provided in ss. 125.29, 125.31, and 125.34 and as otherwise
2 specifically provided in this chapter, all provisions of this chapter applying to
3 brewers apply to brewers holding brew pub permits issued under this section.

4 (6) The fee established by the department for a brew pub permit shall not
5 exceed the fee established by the department for a permit under s. 125.29.

6 **SECTION 9.** 125.31 (1) (a) 1. of the statutes is repealed.

7 **SECTION 10.** 125.31 (1) (a) 1. a. to e. of the statutes are renumbered 125.02 (2m)
8 (a) to (e).

9 **SECTION 11.** 125.31 (1) (a) 2. of the statutes is amended to read:

10 125.31 (1) (a) 2. Notwithstanding ss. 125.29 (2) and 125.33 (1), a brewer may
11 maintain and operate one place on brewery premises and one place on real estate
12 owned by the brewer or a subsidiary or affiliate corporation or limited liability
13 company for the sale of fermented malt beverages for which a Class "B" license is
14 required for each place, but, except as provided in subds. 3. and subd. 4., not more
15 than 2 such Class "B" licenses shall be issued to any brewer.

16 History: 1981 c. 79; 1989 a. 253; 1991 a. 32; 1993 a. 112, 213, 215, 491; 1999 a. 163; 2001 a. 16; 2005 a. 103.

16 **SECTION 12.** 125.31 (1) (a) 3. of the statutes is repealed.

17 **SECTION 13.** 125.31 (1) (a) 4. of the statutes is amended to read:

18 125.31 (1) (a) 4. Notwithstanding ss. 125.29 (2) and 125.33 (1), in addition to
19 places authorized under subd. 2., a brewer may possess or hold an indirect interest
20 in a Class "B" license for not more than 20 restaurants in each of which the sale of
21 alcohol beverages accounts for less than 60% of the restaurant's gross receipts if no
22 fermented malt beverages manufactured by the brewer are offered for sale in any of

1 these restaurants. ~~No brewer may possess Class "B" licenses under both this~~
 2 ~~subdivision and subd. 3.~~

3 **History:** 1981 c. 79; 1989 a. 253; 1991 a. 32; 1993 a. 112, 213, 215, 491; 1999 a. 163; 2001 a. 16; 2005 a. 103.

3 **SECTION 14.** 125.31 (4) of the statutes is created to read:

4 125.31 (4) This section does not apply to any brewer holding a brew pub permit
 5 issued under s. 125.295 or to any premises operated under a brew pub permit issued
 6 under s. 125.295.

7 **SECTION 15.** 125.33 (1) (a) of the statutes is amended to read:

8 125.33 (1) (a) Except as provided in this section and ~~s.~~ ss. 125.295 and 125.31,
 9 no brewer or wholesaler may furnish, give, lend, lease or sell any furniture, fixtures,
 10 fittings, equipment, money or other thing of value to any campus or Class "B"
 11 licensee or permittee, or to any person for the use, benefit or relief of any campus or
 12 Class "B" licensee or permittee, or guarantee the repayment of any loan or the
 13 fulfillment of any financial obligation of any campus or Class "B" licensee or
 14 permittee. Such actions may not be taken by the brewer or wholesaler directly or
 15 indirectly, or through a subsidiary or affiliate corporation or limited liability
 16 company, or by any officer, director, stockholder, partner or member thereof.

17 **SECTION 16.** 125.33 (9) of the statutes is amended to read:

18 125.33 (9) **CAMPUSES AND RETAILERS TO PURCHASE FROM WHOLESALERS.** ~~No~~ Except
 19 as provided in s. 125.295 (2) (g) and 125.34 (6) (b), no campus or retail licensee or
 20 permittee may purchase or possess fermented malt beverages purchased from any
 21 person other than a wholesaler holding a license under this chapter for the sale of
 22 fermented malt beverages. Any person who violates this subsection may be fined not
 23 more than \$10,000 or imprisoned for not more than 9 months or both.

History: 1981 c. 79, 202; 1983 a. 26, 67, 68, 182, 192, 538; 1985 a. 15, 135; 1987 a. 308; 1989 a. 31, 253; 1991 a. 39; 1993 a. 112, 301; 1995 a. 320; 1997 a. 132, 166; 2001 a. 16, 38, 105; 2003 a. 303; 2005 a. 103.

24 **SECTION 17.** 125.34 (1) (b) of the statutes is amended to read:

1 125.34 (1) (b) "Brewer" means a permittee under s. 125.29 but,
2 notwithstanding s. 125.02 (2), does not include a permittee under s. 125.295.

3 History: 2005 a. 103, 115.

3 **SECTION 18.** 125.34 (1) (bm) of the statutes is created to read:

4 125.34 (1) (bm) "Brew pub" means a permittee under s. 125.295.

5 **SECTION 19.** 125.34 (1) (c) of the statutes is amended to read:

6 125.34 (1) (c) "Designated sales territory" means the geographical area
7 identified in a written agreement between a wholesaler and a brewer, brew pub, or
8 out-of-state shipper under which the wholesaler is authorized to distribute one or
9 more brands of fermented malt beverages supplied by the brewer, brew pub, or
10 out-of-state shipper.

11 History: 2005 a. 103, 115.

11 **SECTION 20.** 125.34 (2) (a) of the statutes is amended to read:

12 125.34 (2) (a) No Except as provided in sub. (6) (b) and s. 125.295 (2) (e) and
13 (g), no fermented malt beverages may be sold, transported, or delivered to a retailer
14 unless, prior to such sale, transport, or delivery, the fermented malt beverages are
15 first unloaded at and distributed from a wholesaler's warehouse premises covered
16 by both a wholesaler's license issued under s. 125.28 and an alcohol beverage
17 warehouse permit issued under s. 125.19, which premises shall be in this state and
18 shall be a physically separate location from any retail premises or brewery premises.
19 This paragraph does not apply to a wholesaler issued a wholesaler's license under
20 s. 125.28 (1) (b) with respect to fermented malt beverages transported and delivered
21 from a warehouse in an adjoining state unless the wholesaler's warehouse in the
22 adjoining state is located on premises in the adjoining state used for the manufacture
23 of fermented malt beverages.

24 History: 2005 a. 103, 115.

24 **SECTION 21.** 125.34 (2) (bg) of the statutes is amended to read:

1 125.34 (2) (bg) Notwithstanding par. (a), a brewer that, together with the
2 ~~fermented malt beverages manufactured during the same year by all producers~~
3 ~~identified in s. 125.31 (1) (a) 1. a. to e.~~ its brewer group, manufactures not more than
4 50,000 barrels of fermented malt beverages in a calendar year in any location may
5 be issued a wholesaler's license for wholesale premises located on brewery premises.

6 History: 2005 a. 103, 115.

6 **SECTION 22.** 125.34 (2) (bm) of the statutes is amended to read:

7 125.34 (2) (bm) Notwithstanding par. (a), a brewer that, together with the
8 ~~fermented malt beverages manufactured during the same year by all producers~~
9 ~~identified in s. 125.31 (1) (a) 1. a. to e.~~ its brewer group, manufactures more than
10 50,000 barrels of fermented malt beverages in a calendar year in any location may
11 be issued a wholesaler's license for wholesale premises located on brewery premises
12 but may not sell or ship more than a total of 1,000 barrels of fermented malt
13 beverages in any calendar year to retailers from these wholesale premises.
14 Fermented malt beverages provided by a brewer to any retail premises for which the
15 brewer holds the retail license shall not be included in any calculation of the 1,000
16 barrel limitation under this paragraph.

17 History: 2005 a. 103, 115.

17 **SECTION 23.** 125.34 (3) (a) 1. of the statutes is amended to read:

18 125.34 (3) (a) 1. Subject to subd. 3., a wholesaler may not sell, transport, or
19 deliver any brand of fermented malt beverages unless the wholesaler has entered
20 into a written agreement with the brewer, brew pub, or out-of-state shipper
21 supplying the brand that grants to the wholesaler distribution rights for the brand
22 and identifies the designated sales territory for which such distribution rights are

1 granted, including the precise geographical area comprising the designated sales
2 territory.

3 History: 2005 a. 103, 115.

3 **SECTION 24.** 125.34 (3) (a) 2. of the statutes is amended to read:

4 125.34 (3) (a) 2. A brewer, brew pub, or out-of-state shipper may not, in any
5 agreement under this paragraph, grant to more than one wholesaler distribution
6 rights for the same brand in the same designated sales territory or in any part of the
7 same designated sales territory.

8 History: 2005 a. 103, 115.

8 **SECTION 25.** 125.34 (4) (a) of the statutes is amended to read:

9 125.34 (4) (a) Any retailer located outside the wholesaler's designated sales
10 territory for the brand. This paragraph does not apply if another wholesaler that has
11 been granted distribution rights for the brand in the designated sales territory where
12 the sale, transportation, or delivery occurs is unable to service this designated sales
13 territory and the brewer, brew pub, or out-of-state shipper granting distribution
14 rights has, notwithstanding sub. (3) (a), given consent for the sale, transportation,
15 or delivery, which consent shall be limited to the time period that another wholesaler
16 is unable to service this designated sales territory. This paragraph does not apply if
17 the wholesaler is also a brewer and another wholesaler to whom this brewer has
18 granted distribution rights for the brand in the designated sales territory where the
19 sale, transportation, or delivery occurs has, notwithstanding sub. (3) (a), given
20 consent for the sale, transportation, or delivery or refused to service this territory.

21 History: 2005 a. 103, 115.

21 **SECTION 26.** 125.34 (5) of the statutes is amended to read:

22 125.34 (5) Deliveries Except as provided in sub. (6) (b) and s. 125.295 (2) (e) and
23 (g), deliveries of fermented malt beverages to retailers may be made only by
24 wholesalers and shall be made to retailers only at their retail premises. No retailer

1 may transport fermented malt beverages from one retail premises to another retail
2 premises for purposes of selling the fermented malt beverages at the other retail
3 premises unless both retail premises are operated by a brewer or brew pub holding
4 the retail licenses.

History: 2005 a. 103, 115.

5 **SECTION 27.** 125.34 (6) (a) of the statutes is amended to read:

6 125.34 (6) (a) Except as provided in pars. (b) and (c) and ss. 125.06 (1) and
7 125.31 (1) and (3), a brewer or out-of-state shipper may sell, transport, and deliver
8 fermented malt beverages only to a wholesaler, which may be the brewer or
9 out-of-state shipper itself if, in its activities as a wholesaler, it complies with the
10 requirements under subs. (2) to (5). Except as provided in par. (b) and ss. 125.06 (1)
11 and 125.295 (2) (e), (g), and (h), a brew pub may sell, transport, and deliver fermented
12 malt beverages only to a wholesaler.

History: 2005 a. 103, 115.

13 **SECTION 28.** 125.34 (6) (b) of the statutes is amended to read:

14 125.34 (6) (b) A brewer or out-of-state shipper that holds a Class "A" license
15 or Class "B" license, and a brew pub that holds a Class "B" license, may sell fermented
16 malt beverages to persons other than licensees and permittees in accordance with
17 the terms of the license, the provisions of s. ss. 125.295 and 125.31, and the applicable
18 provisions of this chapter relating to retailers. Subsections (2) to (5) do not apply with
19 respect to fermented malt beverages provided by a brewer or brew pub to any retail
20 premises for which the brewer or brew pub holds the retail license.

History: 2005 a. 103, 115.

21 **SECTION 29.** 125.54 (1) of the statutes is amended to read:

22 125.54 (1) AUTHORIZED ACTIVITIES. The department shall issue wholesalers'
23 permits authorizing the permittee to sell intoxicating liquor at wholesale from the
24 premises described in the permit. Except as provided under s. 125.69 (1) (b) 3., the

1 permittee may not sell intoxicating liquor for consumption on the premises. If a
 2 wholesale permit is issued to a brewery, including a permittee under s. 125.295, that
 3 holds a "Class B" license, the permit shall authorize the wholesale sale of wine only.
 4 Possession of a permit under this section does not authorize the permittee to sell
 5 tax-free intoxicating liquor and wine brought into this state under s. 139.03 (5).

History: 1981 c. 79; 1985 a. 5; 1989 a. 253; 1993 a. 112, 259, 491; 1995 a. 27; 2005 a. 25.

6 **SECTION 30.** 125.69 (1) (d) of the statutes is created to read:

7 125.69 (1) (d) Except as provided in s. 125.295 (4) (c), no brew pub permittee
 8 under s. 125.295 may hold any direct or indirect interest in any "Class B" license or
 9 permit or establishment or "Class C" license or establishment.

10 **SECTION 31. Effective date.**

11 (1) This act takes effect on the first day of the 3rd month beginning after
 12 publication.

13 (END)

J-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1983/P1dn
ARG:.....

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 brew pub as a distinct type of brewer and therefore many general provisions related to brewers also apply to brew pubs. However, brew pubs and brewers are distinguished for purposes of ss. 125.29, 125.31, and 125.34. While the attached draft undertakes to provide brew pubs 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 brew pub 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 brew pubs. 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 brew pub 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 brew pubs operate due to the provision's liquor license restriction. Do you want this provision amended?

Section 125.33 (7), ~~states~~ 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 brew pub 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 brew pub 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. ~~and also~~ the Class "B" exception under s. 125.31 (1) (a) 4. This bill allows brew pubs 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 brew pubs 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 brew pubs 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 brew pub cannot hold a wholesaler's license, the brew pub will be required, under current law, to obtain the beer not manufactured by the brew pub from an independent wholesaler. Accordingly, no specific treatment of this issue in the draft is necessary. However, the draft allows a brew pub to hold a liquor wholesale permit for wine. The draft therefore includes language in created s. 125.295 (4) (c) requiring the brew pub 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 brew pub 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 brew pub 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.

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

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.

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

Gary, Aaron

From: Tuschen, Terry
Sent: Wednesday, March 07, 2007 8:34 AM
To: Gary, Aaron
Cc: Tuschen, Terry; 'Michael Welsh'
Subject: FW: Brewpub Bill - comments to drafter
Attachments: 2007 First Draft -- Comments.doc

Hi Aaron, here are the comments and proposed changes to the Brewpub Bill draft. Let me or Mike know if you have any questions.

Thanks, Terry

From: Michael Welsh [mailto:mike.hovenconsulting@tds.net]
Sent: Tuesday, March 06, 2007 2:54 PM
To: Tuschen, Terry
Subject: Brewpub Bill - comments to drafter

Thanks, Terry!

Michael Welsh
Government Affairs Specialist
Hoven Consulting, Inc.
44 E. Mifflin St, Suite 600
Madison, WI 53703

Office: (608) 310-8833
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mike.hovenconsulting@tds.net

Comments/Answers/Questions on Brew Pub Draft - LRB-1983/P1dn

Global Comments

KEY GOAL – A key goal with this legislation is to create a “brew pub” entity that is completely separate and distinct in law from the “brewer” entity.

To the extent that the draft discusses “brew pub” as a “brewer who holds brew pub permit” we would like to eliminate such references – our goal is that a “brew pub” is in fact not a “brewer” and vice versa.

For example, the “brewer group” concept that describes commonly owned premises as a single entity – it would be better if there were one section for “brewer group” and one for “brew pub group.” Even though both encompass the same concept, in this way there is no overlap between the terms.

Drafter Note – Para 2

Taking the “global comment” into account, we would like to ensure that 125.34(6) DOES NOT apply to “brew pubs.”

Drafter note – Para 3

Amend 125.06(1)? Not necessary – no amend to this section.

Drafter Note – Para 4

Yes – we would like amended. In fact, we believe that all rules regarding the interaction between brewers/wholesalers and retailers should apply to the relationship between brew pubs and retailers (for purposes of the 1000 barrel self-distribution limit). This way, all entities acting in a wholesale or manufacturing capacity are treated equally with respect to interaction with retail.

Drafter Note – Para 5

Ok.

Drafter Note – Para 6

Brew pub hold intox. liquor wholesale permit? NO. We don't want to change current law with respect to “brewers” but do wish that “brew pubs” not be able to hold ANY wholesale license (beer, wine, liquor...).

Drafter Note – Para 7

Our intent is that “brew pub” purchase all alcohol other than the beer they actually brew from licensed wholesalers (beer, wine, liquor).

Draft – Page 6, Lines 12-13 – “Bottling”

We would like to rewrite this section authorizing “bottling.” “Bottling” in the industry connotes a brewer packaging beer in 12 oz. bottles with “permanent” caps for sale as 6-packs or 12-packs, etc. This is not a function of a “brew pub.”

Brew pubs more accurately offer large refillable “growlers” that are filled at a patron’s request (not pre-packaged) and capping with a screw cap and heat-activated plastic seal over the cap.

Perhaps simply the following would be sufficient: “(b) The packaging on brewpub premises, at the request of a consumer, of fermented malt beverages that have been manufactured on these premises in refillable containers with a volume greater than 24 ounces.”

In other words, if a one wishes to “bottle” (meaning package in 12 oz bottles for off-premise sales) then one is a brewer, not a brew pub.

Draft – Page 6, Lines 16-19 – “warehouse”

Our intent is that a “brew pub” be able to hold that permit, as well as applicable retail permits and a restaurant license – nothing else.

It is unnecessary for a brew pub to have a warehouse, therefore we do not wish to allow brew pubs to hold “alcohol beverage warehouse permits” issued under 125.19.

Draft – Page 6, Lines 22-25 and Page 7, Lines 1-5 – transporting beer/alcohol

Our intent is that a “brew pub” is allowed to transport its own beer among its own locations.

But, consistent with 125.34(5), we do not wish to allow a “brew pub” to move beer brewed by any other brewer, or wine/liquor among its retail locations – in this case, the “brew pub” must take delivery from appropriate wholesalers at the retail location where the product will be sold.

So, we would like to eliminate the 2nd sentence of (e)1. (page 6, line 22-25); and all of (e)2. (page 7, lines 1-5).

Draft – Page 7, line 20

For clarification (and consistency with 125.34(5)) we would like to add something like “from where the fermented malt beverages will be sold to consumers.”

Draft – Page 16, line 9

We understand the need for a slightly delayed effective date – to give DOR a bit of time to implement the changes – but we would like to change the effective date to the first day of the 1st month after publication.

Gary, Aaron

From: Tuschen, Terry
Sent: Monday, March 12, 2007 11:14 AM
To: Gary, Aaron
Cc: 'Michael Welsh'; Risser, Fred
Subject: RE: Brewpub Bill - comments to drafter

Hi Aaron, thank you for the comments. I'll get back to you on this.
Thanks.
Terry

From: Gary, Aaron
Sent: Monday, March 12, 2007 11:09 AM
To: Tuschen, Terry
Cc: 'Michael Welsh'; Risser, Fred
Subject: RE: Brewpub Bill - comments to drafter

Hi Terry,

1. Regarding the "global comment," except in s. 125.34, the term "brewer" is used in the statutes in a fairly generic sense, as one who brews. So to say that a brewpub, which is a type of brewer, is in fact NOT a brewer doesn't make much sense to me. Is this really what you want? If so, I can do it, but I'll need you to consider most of the provisions that currently treat brewers and tell me which ones you want to apply to brewpubs. I am attaching a Word document containing a list of provisions, excluding ones that obviously wouldn't apply to brewpubs or that have been indicated in the comments to not apply to brewpubs. I am assuming the treatments of s. 125.34 in the /P1 draft are sufficient (so s. 125.34 provisions are not included in the attached Word document) but that related treatments outside s. 125.34 may be necessary (eg comment to "Drafter Note - Para 4"). Please tell me which of the provisions in the attached document you want to apply to brewpubs. Also, if you want to take the suggested approach that brewpubs are not brewers, I'll need to add a provision similar to s. 125.29 (1) that "no person may operate as a brewpub unless the person obtains a brewpub permit from the department," then, unless you want the definition of a brewpub to be a person holding a brewpub permit (similar to what is in the /P1 draft), I will need you to supply me with what you want as a definition of brewpub (which is not unduly narrow but is also consistent with the bill's requirements and leaves no licensing loopholes).

2. Regarding the "bottling" comment, I agree that a traditional brewpub is probably thought of as one that does not bottle. But keep in mind, in part this bill is taking away retail opportunities from small brewers unless the small brewer can qualify as a brewpub. Madison contains examples of differing business models for small brewers. The Great Dane is one business model; the Ale Asylum is another business model (a small brewer that bottles). Making this requested change means that the additional retail licenses under the bill are only available for the Great Dane business model (a traditional brewpub) and the retail licenses available under current law for the Ale Asylum business model are eliminated - of course the value of these retail licenses under current law is questionable, because the small brewer cannot sell its own beer without first passing it to a wholesaler and buying it back. Is this suggested "bottling" change what you want, Terry?

3. On the effective date change comment, we don't draft effective dates like the suggestion because it could make the effective date the next day, if the bill were published at the end of the month. If you want a delayed effective date of less than a month, please specify the number of days it should be delayed. Also, Terry, I would recommend talking to DOR about this - I understand the Great Dane is in a hurry, but this bill asks a lot of DOR to create a whole new permit system, and it may be unreasonable to ask them to be issuing permits in a matter of days. Of course, I'm in no position to give you a definitive answer on this and I would recommend discussing it with Sherrie Gates-Hendrix at DOR.

Aaron

Gary, Aaron

From: Gary, Aaron
Sent: Tuesday, March 13, 2007 8:56 AM
To: Tuschen, Terry
Cc: 'Michael Welsh'
Subject: RE: Brewpub Bill - comments to drafter

Terry,

I forgot one thing yesterday related to item 1. At our meeting, I believe we discussed that qualifying small brewers would have the option of continuing under the current permit system or obtaining one of these new brewpub permits. However, if the bill provides that a brewpub is not a type of brewer, and if the bill defines brewpub in a way other than one holding a brewpub permit, then anybody who qualifies as a brewpub would have to obtain the new permit and would not be able to continue on under the current permit system.

Aaron

From: Gary, Aaron
Sent: Monday, March 12, 2007 11:09 AM
To: Tuschen, Terry
Cc: 'Michael Welsh'; Risser, Fred
Subject: RE: Brewpub Bill - comments to drafter

Hi Terry,

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of DOR to create a whole new permit system, and it may be unreasonable to ask them to be issuing permits in a matter of days. Of course, I'm in no position to give you a definitive answer on this and I would recommend discussing it with Sherrie Gates-Hendrix at DOR.

Aaron

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

From: Tuschen, Terry
Sent: Wednesday, March 07, 2007 8:34 AM
To: Gary, Aaron
Cc: Tuschen, Terry; 'Michael Welsh'
Subject: FW: Brewpub Bill - comments to drafter

Hi Aaron, here are the comments and proposed changes to the Brewpub Bill draft. Let me or Mike know if you have any questions.
Thanks, Terry

From: Michael Welsh [<mailto:mike.hovenconsulting@tds.net>]
Sent: Tuesday, March 06, 2007 2:54 PM
To: Tuschen, Terry
Subject: Brewpub Bill - comments to drafter

Thanks, Terry!

Michael Welsh
Government Affairs Specialist
Hoven Consulting, Inc.
44 E. Mifflin St, Suite 600
Madison, WI 53703

Office: (608) 310-8833
Fax: (608) 310-8834
mike.hovenconsulting@tds.net

125.02(3)

(3) "Brewery premises" means all land and buildings used in the manufacture or sale of fermented malt beverages at a brewer's principal place of business.

125.02(21)

(21) "Wholesaler" means a person, other than a brewer, manufacturer or rectifier, who sells alcohol beverages to a licensed retailer or to another person who holds a permit or license to sell alcohol beverages at wholesale.

125.04(9)

(9) Separate license or permit required. Except as provided under ss. 125.27 (2) (a) and 125.51 (5) (c) 1., wholesalers, manufacturers, rectifiers, brewers and retailers shall have a separate permit or license covering each location or premises, except a licensed public warehouse, from which deliveries and sales of alcohol beverages are made or at which alcohol beverages are stored.

125.06(1)

(1) Brewers' premises. The furnishing, by brewers, of fermented malt beverages free of charge to customers, visitors and employees on the brewery premises if the fermented malt beverages are consumed on the brewery premises and are not furnished or consumed in or near any room or place where intoxicating liquor is sold.

125.07(3)(a)13.

13. An underage person who enters or remains in a banquet or hospitality room on brewery premises operated under a Class "B" or "Class B" license for the purpose of attending a brewery tour.

125.07(4)(bm)1.

1. A brewer.

125.32(5)

(5) Signs near taps and brands on tap; Class "B" premises. Every Class "B" licensee or permittee selling or offering for sale draught fermented malt beverages shall display a sign on or near each tap or faucet disclosing the brand of fermented malt beverage drawn from the tap or faucet and the name of its brewer. No Class "B" licensee or permittee may substitute any other brand of fermented malt beverage in place of the brand designated on the sign with the intent to defraud or deceive the customer.

125.32(7)(a)

(a) No fermented malt beverages may be sold, offered or exposed for sale, kept in possession with intent to sell, or served on any premises for which a license or permit for the sale of fermented malt beverages has been issued unless each barrel, keg, cask, bottle or other container bears a label or other identification with the name and address of the brewer. The possession of any fermented malt beverages which are not so identified on

any premises for which a license or permit for the sale of fermented malt beverages has been issued is prima facie evidence that the fermented malt beverages are possessed with intent to sell, offer for sale, display for sale or give away.

125.33

125.33 Restrictions on dealings between brewers, wholesalers and retailers.

125.33(1)(a)

(a) Except as provided in this section and s. 125.31, no brewer or wholesaler may furnish, give, lend, lease or sell any furniture, fixtures, fittings, equipment, money or other thing of value to any campus or Class "B" licensee or permittee, or to any person for the use, benefit or relief of any campus or Class "B" licensee or permittee, or guarantee the repayment of any loan or the fulfillment of any financial obligation of any campus or Class "B" licensee or permittee. Such actions may not be taken by the brewer or wholesaler directly or indirectly, or through a subsidiary or affiliate corporation or limited liability company, or by any officer, director, stockholder, partner or member thereof.

125.33(1)(b)

(b) No brewer or wholesaler may enter into any agreement whereby any campus or Class "B" licensee or permittee is required to purchase the fermented malt beverages of any brewer to the exclusion of those manufactured by other brewers. Such contracts may not be entered into by the brewer or wholesaler, directly or indirectly, or through a subsidiary or an affiliate corporation or limited liability company, or by any officer, director, stockholder, partner or member thereof.

125.33(2)

(2) (intro.) Exceptions. Notwithstanding the prohibitions in sub. (1), a brewer or wholesaler may:

125.33(2)(a)

(a) Give to any campus or Class "B" licensee or permittee, at any given time, for placement inside the premises, signs, clocks, or menu boards with an aggregate value of not more than \$2,500. If a gift of any item would cause the \$2,500 limit to be exceeded, the recipient shall pay the brewer or wholesaler the amount of the item's value in excess of \$2,500. Each recipient shall keep an invoice or credit memo containing the name of the donor and the number and value of items received under this paragraph. The value of an item is its cost to the donor. Each recipient shall make the records kept under this paragraph available to the department for inspection upon request.

125.33(2)(d)

(d) Sell to a campus or Class "B" licensee or permittee at fair market value equipment designed and intended to preserve and maintain the sanitary dispensing of fermented malt beverages or any services necessary to maintain this kind of equipment. A brewer or wholesaler shall charge the same price per unit of equipment to each campus or Class "B" licensee or permittee making the same or a similar purchase, and shall charge the same rate to each campus or Class "B" licensee or permittee purchasing maintenance services

under this subdivision. Each brewer or wholesaler shall keep records of each transaction under this subdivision and shall make the records available to the department upon request.

125.33(2)(i)

(i) Lease or lend furniture, fixtures, fittings and equipment to any person in possession of a Class "B" premises where the furniture, fixtures, fittings and equipment were installed on the Class "B" premises prior to May 24, 1941. Any brewer or wholesaler who repossesses any furniture, fixtures, fittings or equipment leased, lent or sold to any Class "B" licensee or permittee may sell them to any Class "B" licensee or permittee, for cash on delivery only, and shall deliver a bill of sale to the purchaser. Any application for a Class "B" license or permit after May 24, 1941, shall contain an affidavit by the applicant, setting forth the ownership of the fixtures in or attached to the premises and if the fixtures are not owned by the applicant, the manner, terms and conditions under which the fixtures are held.

125.33(2)(j)

(j) Contribute money or other items of value to, or purchase advertising from, an institution of higher education which is exempt under section 501 (c) (3) of the internal revenue code, as defined in s. 71.22 (4), if the contribution or purchase is for a purpose other than the use, benefit or relief of premises or operations for the sale of fermented malt beverages and is not contingent either upon the use of the product of the brewer or wholesaler by the institution or upon an agreement by the institution wholly or partly to exclude from sale the products of a competing brewer or wholesaler.

125.33(2)(k)

(k) Contribute money or other items of value, or purchase advertising from, a campus if the contribution or purchase is for a purpose other than the use, benefit or relief of premises or operations for the sale of fermented malt beverages and is not contingent either upon the use of the product of the brewer or wholesaler by the campus or upon an agreement by the campus partly or wholly to exclude from sale the products of a competing brewer or wholesaler.

125.33(2)(L)2.

2. Purchase advertising from a person who does not hold a license under this chapter and who conducts national or regional sweepstakes, contests, or promotions on the premises of Class "B" licensees or permittees that sell the brewer's or wholesaler's products. The person may promote an event or activity in connection with a sweepstakes, contest, or promotion, including promoting the location of the event or activity, if the Class "B" licensee or permittee on whose premises the event or activity will occur does not receive money for hosting the event or activity and, except as provided in subd. 4., if the advertising for the event or activity identifies at least 4 unaffiliated Class "B" licensees or permittees.

125.33(2)(L)3.

3. Conduct national or regional sweepstakes, contests, or promotions on the premises of Class "B" licensees or permittees that sell the brewer's or wholesaler's products. The brewer or wholesaler may promote an event or activity in connection with a sweepstakes, contest, or promotion, including promoting the location of the event or activity, if the Class "B" licensee or permittee on whose premises the event or activity will occur does not receive money for hosting the event or activity and, except as provided in subd. 4., if the advertising for the event or activity identifies at least 4 unaffiliated Class "B" licensees or permittees.

125.33(2)(L)4.

4. A brewer that manufactures less than 30,000 barrels of fermented malt beverages annually may purchase advertising under subd. 2, and may promote sweepstakes, contests, or promotions through advertising under subd. 3., if the advertising identifies at least one Class "B" licensee or permittee.

125.33(2)(n)2.

2. Notwithstanding subd. 1., no brewer or wholesaler may provide business entertainment to a Class "B" licensee or permittee under subd. 1. in one day that has a value exceeding \$500, and no brewer or wholesaler may provide business entertainment to a Class "B" licensee or permittee under subd. 1. on more than 8 days in any calendar year.

125.33(2)(p)1.

1. Have present not more than 3 individuals representing the brewer at a fermented malt beverages tasting event that lasts 2 days or less and at which taste samples of fermented malt beverages brewed or sold by at least 5 different brewers are offered for consumption by persons who either pay for the taste samples or pay a charge for admission to the event. Any individual representing a brewer shall confine his or her activities on the premises to ensuring the integrity of, providing information about and dispensing the brewer's fermented malt beverages.

125.33(2s)

(2s) Exception for retail trade association contributions. Notwithstanding the prohibitions in sub. (1), a brewer or wholesaler may contribute money or other things of value to a bona fide national, statewide, or local trade association that derives its principal income from membership dues of Class "B" licensees.

125.33(3)

(3) Exemption for certain real estate. The restrictions contained in sub. (1) do not apply to real estate owned in whole or part on May 24, 1941, by any brewer or wholesaler, directly or indirectly, or through or by a subsidiary or affiliate corporation, or by any officer, director, stockholder, partner or trustee for any of the foregoing, or upon which any of the foregoing held a valid lien on May 24, 1941, or to any real estate owned in whole or part by any of the foregoing upon which there is or may be a hotel of 100 or more rooms.

125.33(7)(d)

(d) Penalties. A retail licensee or permittee who violates this subsection is subject to the penalties under s. 125.11 except that he or she may not be imprisoned. No brewer or wholesaler may be subjected to any penalty as the result of the sale of fermented malt beverages to a campus or retail licensee or permittee when purchased by the campus or retail licensee or permittee in violation of this subsection.

125.33(7m)

(7m) Conditional purchases. No Class "A" or Class "B" licensee may condition the purchase of fermented malt beverages from a brewer or wholesaler upon the furnishing by the brewer or wholesaler of any thing of value, other than the products purchased, to the licensee or to any person for the use, benefit, or relief of the licensee.

125.33(8)

(8) Exclusive sales by wholesaler. A wholesaler may not sell or offer to sell a brand of fermented malt beverages exclusively to one Class "A" licensee or to a group of Class "A" licensees affiliated through common ownership, management or control, unless the brand of fermented malt beverages is produced by a brewer which produces less than 300,000 barrels of fermented malt beverages in a calendar year.

125.33(10)(a)1.

1. "Brand" means any word, name, group of letters, symbols, or combination thereof, including the name of the brewer if the brewer's name is also a significant part of the product name, adopted and used by a brewer to identify a specific fermented malt beverage product and to distinguish that product from other fermented malt beverages produced by that brewer or other brewers.

125.33(10)(a)2.

2. "Discontinued brand" means, with respect to a terminated wholesaler, any brand of fermented malt beverages for which a brewer, brewer's agent, or holder of an out-of-state shipper's permit has terminated, cancelled, or failed to renew an agreement, whether oral or written, with the wholesaler to supply that brand.

125.33(10)(a)3.

3. "Successor wholesaler" means any wholesaler who enters into an agreement, whether oral or written, to obtain a supply of a brand of fermented malt beverages from a brewer, brewer's agent, or holder of an out-of-state shipper's permit after the brewer, brewer's agent, or holder of an out-of-state shipper's permit has terminated, cancelled, or failed to renew an agreement, whether oral or written, with a terminated wholesaler to supply that same brand of fermented malt beverages.

125.33(10)(a)4.

4. "Terminated wholesaler" means a wholesaler with whom a brewer, brewer's agent, or holder of an out-of-state shipper's permit has terminated, cancelled, or failed to renew an agreement, whether oral or written, to supply a brand of fermented malt beverages to that wholesaler.

125.33(10)(b)

(b) Except as provided in par. (c) and subject to pars. (d) and (e), a successor wholesaler shall compensate a terminated wholesaler for the fair market value of the terminated wholesaler's distribution rights to any discontinued brand of fermented malt beverages assumed by the successor wholesaler for the same territory, less any amount paid to the terminated wholesaler by the brewer, brewer's agent, or holder of an out-of-state shipper's permit for the discontinued brand. If the terminated wholesaler's distribution rights to any discontinued brand of fermented malt beverages are divided among 2 or more successor wholesalers, each successor wholesaler shall compensate the terminated wholesaler for the fair market value of the distribution rights to any discontinued brand of fermented malt beverages assumed by that successor wholesaler for the applicable part of the same territory, less any amount paid to the terminated wholesaler by the brewer, brewer's agent, or holder of an out-of-state shipper's permit for the discontinued brand. A terminated wholesaler may not receive under this paragraph total compensation from the successor wholesaler and brewer, brewer's agent, or holder of an out-of-state shipper's permit that exceeds the fair market value of the terminated wholesaler's distribution rights specified under this paragraph.

125.33(10)(c)1.

1. The wholesaler or a principal of the wholesaler engaged in material fraudulent conduct or made substantial misrepresentations in its dealings with the brewer, brewer's agent, or holder of an out-of-state shipper's permit or with others regarding any brand of the brewer, brewer's agent, or holder of an out-of-state shipper's permit.

125.33(10)(c)3.

3. The wholesaler or a principal of the wholesaler knowingly distributed any brand of the brewer, brewer's agent, or holder of an out-of-state shipper's permit outside the territory authorized by the brewer, brewer's agent, or holder of an out-of-state shipper's permit for distribution of the brand.

125.33(11)(a)

(a) Subject to s. 125.34 (3), no wholesaler who holds a retail license issued under this chapter may sell a brand of fermented malt beverages to another retail licensee unless the wholesaler has an agreement for general wholesale distribution of that brand of fermented malt beverages with the brewer, brewer's agent or holder of an out-of-state shipper's permit supplying that brand.

125.33(11)(b)

(b) If a wholesaler who holds a retail license issued under this chapter violates par. (a), any other wholesaler aggrieved by such violation or the brewer may bring an action against such wholesaler in any court of competent jurisdiction for damages sustained by the aggrieved wholesaler or the brewer as a consequence of the violation, together with the actual costs of the action. Notwithstanding s. 814.04 (1), a wholesaler or the brewer who prevails in an action under this paragraph may recover reasonable actual attorney fees incurred in the action.

139.01(1)

(1) "Bottler" means any person other than a brewer who places fermented malt beverages in bottles or similar containers.

139.04(2)

(2) Furnishing by a brewer of fermented malt beverages to workmen employed in the brewery for consumption on the brewery premises without charge.

139.04(4)

(4) Sale or shipment of fermented malt beverages by a brewer to a bottler or of intoxicating liquor in bulk between manufacturers, rectifiers and wineries.

139.05(2)

(2) Each brewer and bottler in this state and each wholesaler of malt beverages within this state to whom malt beverages are shipped from outside this state shall on or before the fifteenth day of each month file with the secretary on forms prescribed by the secretary a verified return containing such information as may be required to compute and show the amount of occupational tax payable by the brewer, bottler or wholesaler or by the shipper for the next preceding calendar month on malt beverages.

139.05(7)(a)

(a) If any present or future law or regulation effective in any state prohibits a person from shipping into such state a fermented malt beverage produced outside thereof except upon condition that the person shipping such fermented malt beverage into such state first obtain a license therefor from such state and if such license or a renewal thereof may be refused for violation of any law of such state relating to fermented malt beverages, it is unlawful to ship into this state or to purchase or sell within this state any fermented malt beverage produced in such state, unless and until the brewer thereof is the holder of a valid subsisting license as provided in this subsection.

139.05(7)(b)

(b) Such license shall be issued by the secretary to persons who hold a valid certificate issued under s. 73.03 (50). The application for such license shall be verified and shall contain an agreement on the part of the brewer that the brewer shall observe all laws of this state relating to fermented malt beverages, and such other information and statements as the secretary may require. Any such brewer who has, directly or indirectly, violated any law of this state relating to fermented malt beverages shall not be entitled to such a license. The secretary may require the applicant to furnish a bond payable to the state in an amount not less than \$1,000 nor more than \$5,000 conditioned upon the faithful compliance by the applicant with the undertakings set forth in the application for the license.

139.05(7)(d)

(d) Any such brewer and any other person who ships or causes or permits to be shipped into this state any such fermented malt beverage, and any person who knowingly receives

within this state from outside this state any such fermented malt beverage, at a time when the brewer thereof is not the holder of a valid and subsisting license as herein provided, is guilty of a misdemeanor.

139.08(4)

(4) Inspection for enforcement. Duly authorized employees of the department of justice and the department of revenue and any sheriff, police officer, marshal or constable, within their respective jurisdictions, may at all reasonable hours enter any licensed premises, and examine the books, papers and records of any brewer, manufacturer, bottler, rectifier, wholesaler or retailer, for the purpose of inspecting the same and determining whether the tax and fee imposed by ss. 139.01 to 139.25 have been fully paid, and may inspect and examine, according to law, any premises where fermented malt beverages or intoxicating liquors are manufactured, sold, exposed for sale, possessed or stored, for the purpose of inspecting the same and determining whether the tax imposed by ss. 139.01 to 139.25 has been fully paid, and whether ss. 139.01 to 139.25 and ch. 125 are being complied with. Any refusal to permit such examination of such premises is sufficient grounds under s. 125.12 for revocation or suspension of any license or permit granted for the sale of any fermented malt beverages or intoxicating liquors and is punishable under s. 139.25 (10).

139.09

139.09 Registration. Every brewer, bottler, manufacturer, rectifier, wholesaler or retailer liable for payment of the occupational tax imposed in ss. 139.01 to 139.25 shall hold a valid certificate under s. 73.03 (50). The secretary shall assign the person a registration number.

139.11(2)

(2) Report. Each brewer, bottler, manufacturer, rectifier and wholesaler shall on or before the 15th day of each calendar month or the dates prescribed by the secretary file a verified report of all fermented malt beverages or intoxicating liquor manufactured, received, sold, delivered or shipped by him or her during the preceding calendar month, except that the department may allow wholesale, winery and out-of-state shipper permittees whose tax liability is less than \$500 per quarter to file on a quarterly basis. Quarterly reports shall be filed on or before the 15th of the next month following the close of the calendar quarter.

139.11(3)

(3) Secretary's powers. When the secretary finds that the records kept by any brewer, bottler, manufacturer, rectifier, wholesaler or retailer are in such condition that an unusual amount of time is required to determine therefrom the amount of tax due, the secretary may give notice of such fact to such person and may require the records to be kept in such form as the secretary prescribes. If such requirements are not complied with within 30 days after the date of the notice, the brewer, bottler, manufacturer, rectifier, wholesaler or retailer shall pay the expenses reasonably attributable to the determination of tax at the rate of \$30 per day for each auditor. The secretary shall render a bill therefor by registered mail to the person charged with payment at the conclusion of the audit,

which bill shall constitute notice of assessment and demand of payment thereof. The brewer, bottler, manufacturer, rectifier, wholesaler or retailer shall, within 10 days after the mailing of the bill, pay its amount, and such payment shall be credited to the appropriation made in s. 20.566 (1) (a).

139.11(4)

(4) Confidentiality. Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3., relating to confidentiality of income, franchise and gift tax returns, apply to any information obtained from any person on a fermented malt beverage or intoxicating liquor tax return, report, schedule, exhibit or other document or from an audit report relating to any of those documents, except that the department of revenue shall publish brewery production and sales statistics and shall publish or permit the publication of statistics on the total number of gallons of the types and brands of intoxicating liquor sold in this state.

139.18(1)

(1) The possession of any fermented malt beverages on any licensed premises, other than upon the premises of a brewer or bottler, shall be deemed prima facie evidence that such products are kept with intent to sell and that such products are subject to the tax herein imposed.

139.22

139.22 Confiscation. If a duly authorized employee of the department of revenue or the department of justice or any sheriff, police officer, marshal or constable, within his or her respective jurisdiction, discovers any fermented malt beverages upon any premises other than the premises of a brewer or bottler, or any intoxicating liquor upon any premises other than the premises of a manufacturer, rectifier, winery or wholesaler, and upon which the tax has not been paid or which was possessed, kept, stored, manufactured, sold, distributed or transported in violation of ss. 139.01 to 139.25 and ch. 125, the employee or any such officer may immediately seize the fermented malt beverages or intoxicating liquors. Any such fermented malt beverages or intoxicating liquors so seized shall be held by the department of revenue and disposed of under s. 125.14 (2) (e).

346.93(1)

(1) No underage person, as defined under s. 125.02 (20m), may knowingly possess, transport or have under his or her control any alcohol beverage in any motor vehicle unless the person is employed by a brewer, an alcohol beverage licensee, wholesaler, retailer, distributor, manufacturer or rectifier and is possessing, transporting or having such beverage in a motor vehicle under his or her control during his or her working hours and in the course of employment, as provided under s. 125.07 (4) (bm).