

Gary, Aaron

From: Tuschen, Terry
Sent: Thursday, March 15, 2007 9:31 AM
To: Gary, Aaron
Cc: Tuschen, Terry; 'Michael Welsh'
Subject: FW: Brewpub bill - response to drafter
Attachments: Response to Drafter Questions 3-13-07.doc

Hi Aaron, here are the responses to your last round of questions. I really appreciate your hard work on this and let me know if there are other issues that pop up.

Thanks again, Terry

From: Michael Welsh [mailto:mike.hovenconsulting@tds.net]
Sent: Thursday, March 15, 2007 9:19 AM
To: Tuschen, Terry
Subject: Brewpub bill - response to drafter

Terry,

Please find attached our response to Aaron's questions on the brewpub bill. Could you please forward them to him?

Thanks,

Michael Welsh
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Response to Aaron's 3/12/07 Question #1

One complaint heard frequently from those regulated and those doing the regulating is that the statutes (after many years of amendment and addition and subtraction) are often confusing in terms of what is allowed of various license/permit holders and what is not.

Our goal is to clearly define in statute what is a "brewer," what is a "brew pub," and what is permitted and prohibited for each. That helps close potential opportunities for legal attack of our regulatory system which is a joint goal for this legislation.

Certainly both brew beer and therefore are generically "brewers" - but the statutes provide for a "brewer" permit and we're seeking to create a "brew pub" permit.

We believe that adding "brew pub" to the various sections where appropriate to grant a "brew pub" permit holder the same rights (or apply the same prohibitions) as a "brewer" permit holder is the clearest method to follow.

Response to follow up question of 3/13/07

Aaron's understanding is correct. We wish those now operating as "brew pubs" to be able to choose whether they wish to remain "brewers" or to become "brew pubs."

To our knowledge of those in the industry in various capacities, choosing will not impact anyone's current business - except the Great Dane.

Currently, all "brewer" permit holders can operate 2 retail locations. That will not change.

Currently, a "small brewer" beneath 4000 barrels production can have as many as 6 retail licenses. This section will become the "brew pub" permit with some new rules.

A business currently operating as a brew pub today holds a "brewer's permit." This bill will not change anything in that regard - they can continue under a "brewer's permit" and have 1 or 2 retail locations. If they wish to open a 3rd location, however, they are utilizing the clause current law calls "small brewer" - they are becoming more of what we understand to be a "brew pub, and will need the "brew pub" permit.

Again, however, the only business we are aware of that is actually affected today is the Great Dane who has a 3rd location in need of a license.

Aaron is correct that this may be taking away retail opportunities from those now operating as "small brewers." But it does so in a way that allows businesses to choose which path to follow - it is forcing only one (the proponent of the legislation). And it does so in a way that protects the future integrity of the entire regulatory system that allows smaller brewers to compete fairly.

Response to Aaron's 3/12/07 Question #2

With respect to their current business - the Ale Asylum now operates only 1 retail location. Under this legislation, should they remain a "brewer" so they can continue to bottle beer, they may expand to 1 additional retail location.

Under Wisconsin's regulatory system "brewers" are (with very limited exception) not retailers. Likewise, "wholesalers" are neither brewers nor retailers; and "retailers" are not wholesalers or brewers.

Brew pubs are the grand exception - presently under Wisconsin they are all three. Under this legislation, we are creating a limited hybrid that is very similar to what most states already have on the books, and codifies what is commonly understood as a brew pub - a retail-oriented business that happens to brew beer to be sold primarily on-premise in conjunction with a restaurant operation. (Their primary function is not to brew beer to be bottled and sold off-premise - that is the primary function of a true "brewer.")

Response to Aaron's 3/12/07 Question #3

We understand Aaron's take on the effective date. Please make the new effective date 30 days after publication.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1983/P2dn

ARG: f:....

WJ

ATTN: Terry Tuschen

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

No response was provided to my e-mail and attached Word document asking for direction as to which provisions should be treated to add "brewpub" to parallel the treatment of "brewers." Accordingly, I have generally treated them all, and erred on the side of inclusion rather than exclusion, except that I excluded ss. 139.04 (4) and 139.05 (2) and (7) (a), (b), and (d). Please let me know if you want any treatments removed from or added to the bill.

The attached draft amends the definition of wholesaler. Do you want me to include any change in the definition with regard to a brewer that holds a wholesale license?

The definition of "brewpub group" in created s. 125.02 (2p) of the bill is a little awkward because the federal law refers to "brewers" rather than "brewpubs." Nonetheless, "brewer" under federal law is used in the generic sense, rather than the limited definition under this bill, and should encompass a brewpub, so I believe the definition of "brewpub group" created in this bill still works.

In created s. 125.295 (2) (a) 4., I have not changed the word "brewer" to "brewer or brewpub." Accordingly, the brewpub could not satisfy this requirement by offering the beer of an unaffiliated brewpub. Please advise if you would like a change made.

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

Wanted by 3/21 - end of day

in 3/16
LPS: Note → WJ
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

Regen

1 AN ACT *to repeal* 125.31 (1) (a) 1. (intro.) and 125.31 (1) (a) 3.; *to renumber*
 2 125.31 (1) (a) 1. a. to e.; *to amend* 125.10 (4), 125.26 (2) (b) 1., 125.28 (2) (b) 2.,
 3 125.31 (1) (a) 2., 125.31 (1) (a) 4., 125.33 (1) (a), 125.33 (9), 125.34 (1) (b), 125.34
 4 (1) (c), 125.34 (2) (a), 125.34 (2) (bg), 125.34 (2) (bm), 125.34 (3) (a) 1., 125.34 (3)
 5 (a) 2., 125.34 (4) (a), 125.34 (5), 125.34 (6) (a), 125.34 (6) (b) and 125.54 (1); and
 6 *to create* 125.02 (2m) (intro.), 125.25 (2) (b) 5., 125.28 (2) (b) 1. e., 125.29 (5),
 7 125.295, 125.31 (4), 125.34 (1) (bm) and 125.69 (1) (d) of the statutes; **relating**
 8 **to:** creating a brewpub permit authorizing the manufacture and sale at
 9 wholesale of fermented malt beverages, and authorizing other brewpub
 10 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 be issued only for a restaurant. Because a "Class B" license may be issued only to the holder of a Class "B" license, a brewer is limited in the number of "Class B" licenses it may hold.

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 a brewer operates both retail premises. 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 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 brewpub permit issued by DOR. A brewer is eligible to obtain a brewpub permit if all of the following apply:

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 brewpub premises.
3. The brewer operates a restaurant on the brewpub 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 brewpub premises.

If an applicant for a brewpub 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 brewpub permit. If an applicant for a brewpub permit holds a brewer's permit, wholesale license, or any other prohibited license or permit at the time of the application, the applicant can certify that the applicant will surrender any such license or permit upon issuance of the brewpub permit.

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

1. Manufacture beer on the brewpub premises, up to 10,000 barrels each year for all brewpub premises, if the entire manufacturing process occurs on these premises.
2. Bottle on brewpub premises beer that has been manufactured on these premises, and possess and store on brewpub 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.

34 Transport beer that has been manufactured on the brewpub premises between these premises and any other brewpub premises, brewpub warehouse, or brewpub Class "B" premises, and transport other beer only to or from the brewpub's warehouse.

applicant

An applicant

applicant

or an alcohol beverage warehouse permit

brewpub

insert ANAL-A

7 40. Sell at wholesale, ship, transport, and deliver to wholesalers, from the brewpub premises, beer manufactured on these premises or on other brewpub premises.

7 50. Sell at wholesale, ship, transport, and deliver to retailers, from the brewpub premises, beer manufactured on these premises or on other brewpub premises, but only up to 1,000 barrels of beer each year, not including beer provided to the brewpub's own retail premises.

7 60. Sell alcohol beverages at retail on the brewpub premises in accordance with the terms of any Class "B," "Class B," or "Class C" license held by the brewpub.

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

Like the holder of a brewer's permit, a brewpub, 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 brewpub 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 brewpub premises. To distribute its beer through licensed beer wholesalers, a brewpub must enter into written agreements with the wholesalers for each brewpub brand distributed providing exclusive designated sales territories to the wholesalers for these brands.

insert
ANAL-B'

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:

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1 SECTION 1. 125.02 (2m) (intro.) of the statutes ^d ~~is~~ ^(zh) ^(zp) ^{and (zt)} ^{are} created to read:

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

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4-4

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

6 125.10 (4) REGULATION OF CLOSED RETAIL PREMISES. A municipality may not
7 prohibit the permittee, licensee, employees, salespersons, employees of wholesalers

1 licensed under s. 125.28 (1) or 125.54 (1); employees of permittees under s. 125.295
2 with respect to the permittee's own retail premises; or service personnel from being
3 present on premises operated under a Class "A", "Class A" or "Class C" license or
4 under a Class "B" or "Class B" license or permit during hours when the premises are
5 not open for business if those persons are performing job-related activities.

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

7 125.25 (2) (b) 5. A Class "A" license may not be issued to a person holding a
8 brewpub permit issued under s. 125.295 or to a person who has a direct or indirect
9 ownership interest in a premises operating under a brewpub permit issued under s.
10 125.295.

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

12 125.26 (2) (b) 1. Except as provided in s. ss. 125.295 and 125.31, Class "B"
13 licenses may not be issued to brewers. or brewpubs

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

15 125.28 (2) (b) 1. e. A brewpub permit issued under s. 125.295.

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

17 125.28 (2) (b) 2. A person who has a direct or indirect ownership interest in a
18 premises operating under one or more of the licenses or permits listed in subd. 1. a.
19 to d. e.

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

21 125.29 (5) BREWPUBS. Subsections (1) to (4) do not apply to any brewer holding
22 a brewpub permit issued under s. 125.295 or to any premises operated under a
23 brewpub permit issued under s. 125.295. No person holding a brewpub permit under
24 s. 125.295 may register as a brewer under this section.

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

1 **125.295 Brewpub permits. (1)** In this section:

2 (a) "Brewpub" means any brewer operating under a brewpub permit issued
3 under this section.

4 (b) "Brewpub premises" means any premises covered by a permit issued under
5 this section.

6 **(6)** ~~(2)~~ ^{NoFF} The department shall issue brewpub permits to eligible applicants
7 authorizing all of the following:

8 (a) The manufacture of fermented malt beverages on the brewpub premises if
9 the entire manufacturing process occurs on these premises and not more than 10,000
10 barrels of fermented malt beverages are manufactured in a calendar year by the
11 permittee's ~~brewer~~ ^{brewpub} group.

12 (b) The ~~bottling~~ ^{insert 6-12} on brewpub premises of fermented malt beverages that have
13 been manufactured on these premises.

14 (c) The possession and storage of any fermented malt beverages on brewpub
15 premises.

16 ~~(d) The ownership, maintenance, and operation of warehouses for each of which
17 an alcohol beverages warehouse permit has been issued under s. 125.19 and the
18 possession and storage of any fermented malt beverages on these warehouse
19 premises.~~

20 ~~(e)~~ ^g **(1)** The transportation of fermented malt beverages that have been
21 manufactured on the brewpub premises between these premises and any other
22 brewpub premises, ~~warehouse premises~~, or Class "B" premises of the brewpub. A
23 brewpub may transport beer not manufactured by the brewpub to or from a
24 warehouse premises of the brewpub but not to another brewpub premises or Class
25 "B" premises of the brewpub.

1 2. This paragraph does not authorize a brewpub to transport any fermented
2 malt beverages to any location unless the brewpub manufactured the fermented
3 malt beverages on one of its brewpub premises or the brewpub received delivery of
4 the fermented malt beverages from a licensed wholesaler at the brewpub's Class "B"
5 premises.

6 ^e(f) Subject to s. 125.34 (3) and (4), the sale at wholesale, shipment,
7 transportation, and delivery, in original unopened packages or containers, to
8 wholesalers, from the brewpub premises, of fermented malt beverages that have
9 been manufactured on these premises or on other brewpub premises of the brewpub.

10 ^f(g) The sale at wholesale, shipment, transportation, and delivery, in original
11 unopened packages or containers, to retailers, from the brewpub premises, of
12 fermented malt beverages that have been manufactured on these premises or on
13 other brewpub premises of the brewpub. A brewpub's ~~brewer~~^{brewpub} group may not sell,
14 ship, transport, or deliver more than a total of 1,000 barrels of fermented malt
15 beverages in any calendar year to retailers under this paragraph. Fermented malt
16 beverages provided by a brewpub to any retail premises for which the brewpub holds
17 the retail license shall not be included in any calculation of the 1,000 barrel
18 limitation under this paragraph. Deliveries and shipments of fermented malt
19 beverages by a brewpub under this paragraph shall be made to retailers only at their
20 retail premises.

21 ^g(h) The sale of alcohol beverages at retail on the brewpub premises in
22 accordance with the terms of any retail license specified in subs. ²(3) (a) 4. and ³(4) (b)
23 and (c).

24 ^h(i) Notwithstanding s. 125.33 (1), the ownership, maintenance, and operation
25 of places for the sale of fermented malt beverages at the state fair park or on any

Insert
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1 county fairgrounds located in this state if the fermented malt beverages have been
2 manufactured by the brewpub.

3 ² (3) (a) An applicant is eligible for a brewpub permit only if all of the following
4 apply:

5 1. The applicant's ~~brewer~~^{brewpub} group manufactures a total of not more than 10,000
6 barrels of fermented malt beverages in a calendar year.

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

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

13 4. The applicant holds a Class "B" license for the restaurant identified in subd.
14 3. and, on these Class "B" premises, offers for sale, in addition to fermented malt
15 beverages manufactured by the applicant, fermented malt beverages manufactured
16 by a brewer other than the applicant and its ~~brewer~~^{brewpub} group.

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

18 6. Neither the applicant nor the applicant's ~~brewer~~^{brewpub} group holds, or has a direct
19 or indirect ownership interest in a premises operating under, any of the following:

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

21 b. Except as provided in subd. 4. and subs. ¹(2) ²(h) and ³(4) (b), a Class "B" license
22 issued under s. 125.26.

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

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

msl
9-2

1 e. Except as provided in subs. ¹(~~2~~) ⁹(~~h~~) and ³(~~4~~) (c), a "Class B" license or permit
2 or "Class C" license issued under s. 125.51.

3 (b) If an applicant under par. (a) has no current operations, the applicant may
4 certify that the applicant has applied for or will apply for a Class "B" license or
5 restaurant permit or will comply with any other requirement under par. (a), prior to
6 or upon commencing operations authorized under this section. If a Class "B" license
7 or restaurant permit is not subsequently issued to the applicant, or if the applicant
8 otherwise fails to comply with any requirement for eligibility under par. (a), the
9 department may revoke under s. 125.12 (5) the permit issued under this section.

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

19 ³(~~4~~) (a) No ~~brewer~~ ^{brewpub} group may hold more than 6 brewpub permits issued under
20 this section.

21 (b) A brewpub may not hold any Class "B" license other than one issued for a
22 restaurant on the brewpub premises. Notwithstanding s. 125.26 (2) (a), each
23 Class "B" license shall be issued for the brewpub's restaurant in the same name as
24 the permittee under this section. Notwithstanding s. 125.33 (1), a brewpub may own
25 the furniture, fixtures, fittings, furnishings, and equipment on the Class "B"

1 premises and shall pay any license fee or tax required for the operation of the
2 premises.

3 (c) Subject to the requirements specified in s. 125.51 (3) and (3m), a brewpub
4 may also hold "Class B" licenses and "Class C" licenses, but only for restaurants on

5 brewpub premises. A brewpub shall purchase all intoxicating liquor from an
6 intoxicating liquor wholesaler that has no direct or indirect ownership interest in the
7 brewpub and in which the brewpub has no direct or indirect ownership interest.

8 (5) Except as provided in ss. 125.29, 125.31, and 125.34 and as otherwise
9 specifically provided in this chapter, all provisions of this chapter applying to
10 brewers apply to brewers holding brewpub permits issued under this section.

11 (6) The fee established by the department for a brewpub permit shall not
12 exceed the fee established by the department for a permit under s. 125.29.

13 SECTION 9. 125.31 (1) (a) 1. (intro.) of the statutes is repealed.

14 SECTION 10. 125.31 (1) (a) 1. a. to e. of the statutes are renumbered 125.02 ^{2d} (2~~nd~~)

15 (a) to (e).

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

17 125.31 (1) (a) 2. Notwithstanding ss. 125.29 (2) and 125.33 (1), a brewer may
18 maintain and operate one place on brewery premises and one place on real estate
19 owned by the brewer or a subsidiary or affiliate corporation or limited liability
20 company for the sale of fermented malt beverages for which a Class "B" license is
21 required for each place, but, except as provided in ~~subds. 3. and subd. 4.~~, not more
22 than 2 such Class "B" licenses shall be issued to any brewer.

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

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

1 125.31 (1) (a) 4. Notwithstanding ss. 125.29 (2) and 125.33 (1), in addition to
2 places authorized under subd. 2., a brewer may possess or hold an indirect interest
3 in a Class "B" license for not more than 20 restaurants in each of which the sale of
4 alcohol beverages accounts for less than 60% of the restaurant's gross receipts if no
5 fermented malt beverages manufactured by the brewer are offered for sale in any of
6 these restaurants. ~~No brewer may possess Class "B" licenses under both this~~
7 ~~subdivision and subd. 3.~~

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

9 125.31 (4) This section does not apply to any brewer holding a brewpub permit
10 issued under s. 125.295 or to any premises operated under a brewpub permit issued
11 under s. 125.295.

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

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

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

23 ~~125.33~~ (9) CAMPUSES AND RETAILERS TO PURCHASE FROM WHOLESALERS. No Except
24 as provided in ss. 125.295 (2) (g) and 125.34 (6) (b). no campus or retail licensee or
25 permittee may purchase or possess fermented malt beverages purchased from any

1 person other than a wholesaler holding a license under this chapter for the sale of
2 fermented malt beverages. Any person who violates this subsection may be fined not
3 more than \$10,000 or imprisoned for not more than 9 months or both.

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

5 125.34 (1) (b) "Brewer" means a permittee under s. 125.29 but,
6 notwithstanding s. 125.02 (2), does not include a permittee under s. 125.295.

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

8 125.34 (1) (bm) "Brewpub" means a permittee under s. 125.295.

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

10 **125.34 (1) (c)** "Designated sales territory" means the geographical area
11 identified in a written agreement between a wholesaler and a brewer, brewpub, or
12 out-of-state shipper under which the wholesaler is authorized to distribute one or
13 more brands of fermented malt beverages supplied by the brewer, brewpub, or
14 out-of-state shipper.

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

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

Insert
12-3

1 adjoining state is located on premises in the adjoining state used for the manufacture
2 of fermented malt beverages.

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

4 ~~125.34 (2)~~ (bg) Notwithstanding par. (a), a brewer that, together with the
5 ~~fermented malt beverages manufactured during the same year by all producers~~
6 ~~identified in s. 125.31 (1) (a) 1. a. to e. its brewer group,~~ manufactures not more than
7 50,000 barrels of fermented malt beverages in a calendar year in any location may
8 be issued a wholesaler's license for wholesale premises located on brewery premises.

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

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

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

21 ~~125.34 (3)~~ (a) 1. Subject to subd. 3., a wholesaler may not sell, transport, or
22 deliver any brand of fermented malt beverages unless the wholesaler has entered
23 into a written agreement with the brewer, brewpub, or out-of-state shipper
24 supplying the brand that grants to the wholesaler distribution rights for the brand
25 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 **SECTION 24.** 125.34 (3) (a) 2. of the statutes is amended to read:

4 **125.34 (3) (a)** 2. A brewer, brewpub, 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 **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, brewpub, 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 **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
25 may transport fermented malt beverages from one retail premises to another retail

1 premises for purposes of selling the fermented malt beverages at the other retail
2 premises unless both retail premises are operated by a brewer or brewpub holding
3 the retail licenses.

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

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

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

13 125.34 (6) (b) A brewer or out-of-state shipper that holds a Class "A" license
14 or Class "B" license, and a brewpub that holds a Class "B" license, may sell fermented
15 malt beverages to persons other than licensees and permittees in accordance with
16 the terms of the license, the provisions of s. ss. 125.295 and 125.31, and the applicable
17 provisions of this chapter relating to retailers. Subsections (2) to (5) do not apply with
18 respect to fermented malt beverages provided by a brewer or brewpub to any retail
19 premises for which the brewer or brewpub holds the retail license.

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

21 125.54 (1) AUTHORIZED ACTIVITIES. The department shall issue wholesalers'
22 permits authorizing the permittee to sell intoxicating liquor at wholesale from the
23 premises described in the permit. Except as provided under s. 125.69 (1) (b) 3., the
24 permittee may not sell intoxicating liquor for consumption on the premises. If a
25 wholesale permit is issued to a brewery, ^{strike} ~~including a permittee under s. 125.295,~~ ^{Brewer} that

1 holds a "Class B" license, the permit shall authorize the wholesale sale of wine only.
 2 Possession of a permit under this section does not authorize the permittee to sell
 3 tax-free intoxicating liquor and wine brought into this state under s. 139.03 (5).

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

5 125.69 (1) (d) Except as provided in s. 125.295 ³(4) (c), no brewpub ~~permittee~~
 6 ~~under s. 125.295~~ may hold any direct or indirect interest in any "Class B" license or
 7 permit or establishment or "Class C" license or establishment.

8 **SECTION 31. Effective date.**

9 (1) This act takes effect on the ~~first day of the 3rd month~~ ^{30th day} ~~beginning~~ after
 10 publication.

11 (END)

Insert
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STET

D-Note

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1983/P2ins
ARG:.....

INSERT ANAL-A:

Package in refillable containers exceeding 24 ounces in volume,

INSERT ANAL-B:

(no P) A brewpub is also subject to certain requirements generally applicable to wholesalers when selling its own beer to unaffiliated retailers.

INSERT 4-1:

SECTION 1 ~~125.02~~ (2) of the statutes is amended to read:

125.02 (2) "Brewer" means any person who manufactures fermented malt beverages for sale or transportation except that brewer does not include a permittee under s. 125.295.

History: 1981 c. 79, 202; 1983 a. 74; 1983 a. 189 s. 329 (6); 1983 a. 203 s. 47; 1985 a. 47, 302, 337; 1989 a. 253; 1991 a. 39; 1993 a. 27, 112; 1997 a. 27; 1999 a. 163.

INSERT 4-4:

(2h) "Brewpub" means a permittee under s. 125.295.

(2p) "Brewpub group" means a brewpub, including all premises for which the brewpub holds a permit issued under s. 125.295, together with all of the following:

(a) a All brewpubs that share membership with the brewpub in a controlled group of brewpubs, as determined under 26 USC 5051 (a) (2) (B).

(b) b All brewpubs considered with the brewpub as one taxpayer under 27 CFR 25.111b (b).

(c) c All franchisees, as defined in s. 553.03 (5), of the brewpub.

(d) d All franchisees, as defined in s. 553.03 (5), of the brewpub's franchisor, as defined in s. 553.03 (6).

(c) ~~g~~. The franchisor, as defined in s. 553.03 (6), of the brewpub.

(2t) "Brewpub premises" means any premises covered by a permit issued under s. 125.295.

~~SECTION 2~~ 125.02 (21) of the statutes is amended to read:

125.02 (21) "Wholesaler" means a person, other than a brewer, brewpub, 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.

History: 1981 c. 79, 202; 1983 a. 74; 1983 a. 189 s. 329 (6); 1983 a. 203 s. 47; 1985 a. 47, 302, 337; 1989 a. 253; 1991 a. 39; 1993 a. 27, 112; 1997 a. 27; 1999 a. 163.

~~SECTION 3~~ 125.04 (9) of the statutes is amended to read:

125.04 (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, brewpubs, 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.

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.

~~SECTION 4~~ 125.06 (1) of the statutes is amended to read:

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

History: 1981 c. 79, 202; 1983 a. 222, 360, 538; 1985 a. 337; 1987 a. 399; 1989 a. 253; 1991 a. 269; 1993 a. 226; 1995 a. 225; 2001 a. 16.

~~SECTION 5~~ 125.07 (3) (a) 13. and (4) (bm) 1. of the statutes are amended to read:

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

(4) (bm) 1. A brewer or brewpub.

History: 1981 c. 79, 202, 391; 1983 a. 74, 472, 538; 1985 a. 28, 29, 47, 120, 176, 221, 317, 337; 1987 a. 51, 354; 1989 a. 31, 121, 135, 253, 336, 359; 1991 a. 28, 39, 171, 269; 1993 a. 112, 472; 1995 a. 77, 334; 1997 a. 35, 84, 98, 100, 205, 337; 1999 a. 109; 2003 a. 246; 2005 a. 50.

INSERT 6-12:

(no P)

packaging in refillable containers exceeding 24 ounces in volume, at the request of a customer and

INSERT 7-20:

(no P)

Any retailer receiving such a delivery or shipment is subject to the prohibition under s. 125.34 (5) against further transporting the delivery or shipment to any other retail premises.

INSERT 9-2:

f. An alcohol beverage warehouse permit issued under s. 125.19.

INSERT 11-11:

~~SECTION 6~~ 125.32 (5) and (7) (a) of the statutes are amended to read:

125.32 (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 the brewer or brewpub that manufactured it. 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.

(7) (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 or brewpub that manufactured it. 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.

History: 1981 c. 79; 1983 a. 27, 74, 192, 452; 1985 a. 28, 33, 221, 317; 1987 a. 27, 121; 1989 a. 253; 1991 a. 28, 39, 315; 1993 a. 112; 1995 a. 320.

SECTION ~~7~~ 125.33 (title), (1), (2) (intro.), (a), (d), (j), (k), (L) 2., 3., and 4., (n) 2., and (p) 1., (2s), (6), (7) (a) 1. a. and b., (b), (c), and (d), (7m), (8), (9), (10) (a) 1. to 4., (b), and (c) 1. and 3. and (11) of the statutes are amended to read:

125.33 (title) Restrictions on dealings between brewers, brewpubs, wholesalers, and retailers.

~~125.33~~ (1) FURNISHING THINGS OF VALUE. (a) Except as provided in this section and s. ss. 125.295 and 125.31, no brewer, brewpub, 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, brewpub, 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.

(b) No brewer, brewpub, 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 or brewpub to the exclusion of those manufactured by other brewers or brewpubs. Such contracts may not be entered into by the brewer, brewpub, 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.

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

(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, brewpub, 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.

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

(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, brewpub, 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, brewpub, or wholesaler.

(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, brewpub, 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, brewpub, or wholesaler.

(L) 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, brewpub'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.

3. Conduct national or regional sweepstakes, contests, or promotions on the premises of Class "B" licensees or permittees that sell the brewer's, brewpub's, or wholesaler's products. The brewer, brewpub, 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.

4. A brewer that manufactures less than 30,000 barrels of fermented malt beverages annually, or a brewpub, 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.

(n) 2. Notwithstanding subd. 1., no brewer, brewpub, 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, brewpub, 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.

(p) 1. Have present not more than 3 individuals representing the brewer or brewpub 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 or brewpubs 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 or brewpub shall confine his or her activities on the premises

to ensuring the integrity of, providing information about, and dispensing the brewer's or brewpub's fermented malt beverages.

(2s) EXCEPTION FOR RETAIL TRADE ASSOCIATION CONTRIBUTIONS. Notwithstanding the prohibitions in sub. (1), a brewer, brewpub, 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.

(6) VOLUME DISCOUNTS TO RETAILERS. Wholesalers of fermented malt beverages, and brewpubs with respect to sales of fermented malt beverages authorized under s. 125.295 (1) (f), shall charge the same price to all campuses and retail licensees and permittees making purchases in similar quantities. Any discount offered on fermented malt beverages shall be delivered to the retailer in a single transaction and single delivery, and on a single invoice.

(7) (a) 1. a. Receive, purchase, or acquire fermented malt beverages from any licensee, or from any brewpub acting under authority of s. 125.295 (1) (f), except for cash or credit for a period of not more than 15 days.

1. b. Receive, purchase, or acquire fermented malt beverages from any licensee or permittee, or from any brewpub acting under authority of s. 125.295 (1) (f), if at the time of the receipt, purchase, or acquisition he or she is indebted to any licensee ~~or~~ permittee, or brewpub for fermented malt beverages received, purchased, acquired, or delivered more than 15 days earlier.

(b) *Restrictions on issuance of licenses and permits.* No Class "A" or Class "B" license or permit may be issued to a person having an indebtedness for fermented malt beverages outstanding for more than 15 days. In each application for a Class "A" or Class "B" license or permit, the applicant shall state whether he or she has

indebtedness for fermented malt beverages to any licensee ~~or~~, permittee, or brewpub which has been outstanding for more than 15 days.

(c) *Wholesalers and brewpubs holding retail licenses and permits.* For purposes of this subsection, a person holding both a fermented malt beverage wholesale license and a fermented malt beverage retail license is deemed a fermented malt beverage retailer. For purposes of this subsection, a brewpub, when acting under authority of a retail license with respect to fermented malt beverages not manufactured by the brewpub, is deemed a fermented malt beverages retailer. This paragraph does not affect any provision of this subsection with respect to a brewpub acting under authority of s. 125.295 (1) (f).

(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, brewpub, 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.

(7m) CONDITIONAL PURCHASES. No Class "A" or Class "B" licensee may condition the purchase of fermented malt beverages from a brewer, brewpub, or wholesaler upon the furnishing by the brewer, brewpub, 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.

(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~~

that produces less than 300,000 barrels of fermented malt beverages in a calendar year or by a brewpub.

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.

INSERT 12-3:

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

2. "Discontinued brand" means, with respect to a terminated wholesaler, any brand of fermented malt beverages for which a brewer, brewpub, brewer's agent, brewpub'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.

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, brewpub, brewer's agent, brewpub's agent, or holder of an out-of-state shipper's permit after the brewer, brewpub, brewer's agent, brewpub'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.

4. "Terminated wholesaler" means a wholesaler with whom a brewer, brewpub, brewer's agent, brewpub'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.

(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, brewpub, brewer's agent, brewpub'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, brewpub, brewer's agent, brewpub'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, brewpub, brewer's agent, brewpub'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.

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

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

(11) SOURCE OF FERMENTED MALT BEVERAGES. (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, brewpub, brewer's agent, brewpub's agent, or holder of an out-of-state shipper's permit supplying that brand.

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

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.

~~SECTION 8.~~ 125.34 (title), (1) (a) and (c), (2) (a), (bg), and (bm), (3) (a) 1. and 2., (4) (a) ^gand (5) of the statutes are amended to read:

125.34 (title) Distribution restrictions on wholesalers, brewers, brewpubs, and out-of-state shippers.

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

History: 2005 a. 103, 115.

INSERT 16-7:

~~SECTION 9.~~ 139.01 (1) and (2) of the statutes are amended to read:

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

(2) "Brewer" means any person who manufactures fermented malt beverages for sale or transportation except that brewer does not include a permittee under s. 125.295.

History: 1981 c. 79 s. 18; 1983 a. 189; 1993 a. 482; 1997 a. 27, 136.

~~SECTION 10.~~ 139.01 (2c) and (2e) of the statutes are created to read:

139.01 (2c) "Brewpub" means a permittee under s. 125.295.

(2e) "Brewpub premises" means any premises covered by a permit issued under s. 125.295.

~~SECTION 11.~~ 139.04 (2) of the statutes is amended to read:

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

History: 1973 c. 90; 1985 a. 29.

~~SECTION 12.~~ 139.08 (4) of the statutes is amended to read:

139.08 (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, brewpub, 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).

History: 1975 c. 39, 199; 1977 c. 289; 1981 c. 79 s. 18; 1981 c. 391; 1985 a. 120; 1985 a. 135 s. 83 (5); 1987 a. 399; 1989 a. 31.

~~SECTION 13.~~ 139.09 of the statutes is amended to read:

139.09 Registration. Every brewer, brewpub, 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.

History: 1995 a. 27; 1997 a. 27.

~~SECTION 14.~~ 139.11 (2), (3), and (4) of the statutes are amended to read:

139.11 (2) REPORT. Each brewer, brewpub, 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.

(3) SECRETARY'S POWERS. When the secretary finds that the records kept by any brewer, brewpub, bottler, manufacturer, rectifier, wholesaler, or retailer are in such condition ~~than~~ 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, brewpub, 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, brewpub, 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).

(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~~ brewer and brewpub 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.

History: 1981 c. 20; 1985 a. 120, 302; 1987 a. 312 ss. 10, 17; 1991 a. 39; 1993 a. 482; 1997 a. 27.

~~SECTION 15.~~ 139.18 (1) of the statutes is amended to read:

139.18 (1) The possession of any fermented malt beverages on any licensed premises, other than upon the premises of a brewer, brewpub, 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.

History: 1985 a. 120.

~~SECTION 16.~~ 139.22 of the statutes is amended to read:

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, brewpub, 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).

History: 1975 c. 39, 199; 1977 c. 29; 1981 c. 79 s. 18.

~~SECTION 17.~~ 346.93 (1) of the statutes is amended to read:

346.93 (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~~, brewpub, 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).

History: 1971 c. 213 s. 5; 1983 a. 74; 1985 a. 28; 1989 a. 105; 1999 a. 109.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1983/P2dn
ARG:wjjf

March 21, 2007

ATTN: Terry Tuschen

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

No response was provided to my e-mail and attached Word document asking for direction as to which provisions should be treated to add "brewpub" to parallel the treatment of "brewers." Accordingly, I have generally treated them all, and erred on the side of inclusion rather than exclusion, except that I excluded ss. 139.04 (4) and 139.05 (2) and (7) (a), (b), and (d). Please let me know if you want any treatments removed from or added to the bill.

The attached draft amends the definition of wholesaler. Do you want me to include any change in the definition with regard to a brewer that holds a wholesale license?

The definition of "brewpub group" in created s. 125.02 (2p) of the bill is a little awkward because the federal law refers to "brewers" rather than "brewpubs." Nonetheless, "brewer" under federal law is used in the generic sense, rather than the limited definition under this bill, and should encompass a brewpub, so I believe the definition of "brewpub group" created in this bill still works.

In created s. 125.295 (2) (a) 4., I have not changed the word "brewer" to "brewer or brewpub." Accordingly, the brewpub could not satisfy this requirement by offering the beer of an unaffiliated brewpub. Please advise if you would like a change made.

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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