

Gary, Aaron

From: Tuschen, Terry
Sent: Wednesday, June 06, 2007 2:38 PM
To: Knight, Eric; Gary, Aaron
Cc: Tuschen, Terry
Subject: RE: Brewpub bill update

Aaron, stand by on the final number....but the rest is correct.
Terry

From: Knight, Eric
Sent: Wednesday, June 06, 2007 2:26 PM
To: Tuschen, Terry; Gary, Aaron
Subject: RE: Brewpub bill update

I think so, let me check and make sure.

Eric Knight
Office of Rep. Scott Newcomer
608-266-3007
888-529-0033
Eric.Knight@legis.wi.gov

From: Tuschen, Terry
Sent: Wednesday, June 06, 2007 2:22 PM
To: Gary, Aaron
Cc: Knight, Eric; Tuschen, Terry
Subject: RE: Brewpub bill update

I believe that is exactly right. Eric?

From: Gary, Aaron
Sent: Wednesday, June 06, 2007 2:20 PM
To: Tuschen, Terry
Cc: Knight, Eric
Subject: RE: Brewpub bill update

Hi Terry,

Just to be clear, you want:

1. The severability provision (created s. 125.015).
2. The restaurant provision, which reads: "125.29 (6) Restaurants. No person issued a permit under this section after the effective date of this subsection [revisor inserts date] may hold a restaurant permit issued under s. 254.64."
3. Required brewpub food sales drop from 50% to 40%

Thanks. 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, June 06, 2007 2:00 PM
To: Gary, Aaron
Cc: Knight, Eric; Tuschen, Terry
Subject: Brewpub bill update

Greetings Aaron, I'm copying Eric from Rep. Newcomer's office on this....here's the updated language for the bill:

-keep the grandfather clause but without the "claw-back" provision you crafted. This will also go into effect on the effective date of the bill. No delay.

-reduce the brewpub food sales percentage requirement from 50-percent to 40-percent of gross receipts

Eric, did I miss anything?

Thanks, Terry

Terry Tuschen
Office of State Senator Fred Risser
220 South, State Capitol
Madison, WI 53702
608.266.1627
Terry.Tuschen@legis.state.wi.us

Gary, Aaron

From: Gary, Aaron
Sent: Thursday, May 31, 2007 3:34 PM
To: Tuschen, Terry
Subject: RE: Brewpub bill language

Terry,

The restaurant permit is a requirement, not optional, where there is a restaurant. So a brewpub (in the future) wouldn't have a choice. (nobody would have to change designation since it applies prospectively and since, prospectively, the brewpub couldn't obtain a brewer's permit there is no need to change designation)

But the language given me (which I haven't looked at closely yet but I know needs some reworking) is pretty broad and a pretty dramatic change to current law - it would apply across the board and not just to "brewpubs". Right now, if a brewer gets too big for a brewpub permit (makes over 10,000 barrels) or otherwise doesn't meet brewpub permit requirements (maybe food sales fall to less than 50% of revenues in the restaurant), it can still operate as a brewpub under a brewer's permit (as they are currently doing), but is limited to two locations. (Not sure if New Glarus or Capital Brewery have any restaurant facility or just how much they brew, but perhaps an operation like that is what we're talking about.) This change would prohibit this type of larger microbrewery (in the future) from having **any** restaurant where its beer is sold (such a brewery could only have a "bar"). I don't know how solidly Great Dane's food sales are above 50% or how many barrels it brews, but this change may not ultimately be to Great Dane's advantage; if it gives up its brewer's permits for brewpub permits then no longer qualifies for these brewpub permits, it's out of business under this change. Of course legislation evolves, but this change seems contrary to the pitch in our initial meeting and is certainly not a minor change.

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

From: Tuschen, Terry
Sent: Thursday, May 31, 2007 1:46 PM
To: Gary, Aaron
Cc: Tuschen, Terry
Subject: RE: Brewpub bill language

Aaron, also, with the going forward "making a choice" provision, is there any reason a business would be prevented from changing their designation?
 Thanks, Terry

From: Gary, Aaron
Sent: Thursday, May 31, 2007 1:38 PM
To: Tuschen, Terry
Subject: RE: Brewpub bill language

Hi Terry,

Since my job is to draft whatever the senator wants, I'll make these changes

06/06/2007

At the initial meeting, it was emphasized that a brewer would have the **choice** to proceed under existing brewer permit or opt under this new brewpub permit. I assume you realize that, backdoor, you're **taking that option away** for brewpubs

Also, I assume you realize that the severability provision you want applies beyond just the scope of this bill, but to every provision of ch. 125

I'll need the jacket back from you but, when received, can redraft as a /2.

Aaron

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

From: Tuschen, Terry
Sent: Thursday, May 31, 2007 1:17 PM
To: Gary, Aaron
Cc: Tuschen, Terry
Subject: FW: Brewpub bill language

Hi Aaron, I left a voice mail message about this. There are two new changes or additions that need to be added to the Brewpub bill. Suggested language is below.

I know LRB doesn't like to add severability clauses but Senator Risser would appreciate it if, in this instance, that be added.

I appreciate your help with this. Can the new draft be a /2 or will it have to have a new LRB#?

Thanks, Terry

From: Michael Welsh [mailto:mike.hovenconsulting@tds.net]
Sent: Thursday, May 31, 2007 12:40 PM
To: Tuschen, Terry
Subject: Brewpub bill language

Terry,

Class "B" retailer of beer are licensed by municipalities. In addition to a Class "B" license, some retailers may obtain a "restaurant" license from the municipal health department. Under the "going forward" provision. In the instances where an entity that brews beer desires to hold a Class "B" license and a restaurant license, that entity shall be considered a "brewpub" and must obtain a "brewpub" permit.

Suggested Language:

Except as provided in 125.31 (1) (a) 4., any brewer initially licensed after [the effective date of the bill] shall be prohibited from holding a restaurant or food and drink license issued by a municipality under s. 254.74.

Also, and I know we already had this conversation, but the beer distributors would like the severability clause

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included in the bill as follows:

125.001 Severability. If any provision or clause of this Chapter or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

Thanks again, Terry. if you have any questions, please let me know.

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

Gary, Aaron

From: Gary, Aaron
Sent: Friday, June 01, 2007 12:13 PM
To: Tuschen, Terry
Subject: RE: Language

Greetings again,

Here's the draft severability provision (basically identical):

125.015 Severability. If any provision or clause of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Here's the other provision, with comments below.

On p. 7, line 7 of LRB-1983/1, I would make s. 125.29 (5) on lines 7-8 become (5) (a). I would create a new (5) (b) as follows:

125.29 (5) (b) No person issued a permit under this section after the effective date of this paragraph [revisor inserts date] may hold a restaurant permit issued under s. 254.64.

Couple comments:

First, The language suggested was too circular: It requested that the provision be put in s. 125.295 and, to paraphrase, basically said that an applicant under this provision must apply for a permit under this provision - doesn't work b/c an applicant is already someone who is applying under that provision. Second, you can't require somebody to obtain a brewpub permit if they can't qualify for a brewpub permit, so language "must obtain a brewpub permit" doesn't work. Third, by definition, a brewpub has to hold a restaurant permit (p. 9, line 8). So this new provision really applies to a (generic) brewer that is *not* a brewpub - it is a limitation on other licenses/permits a brewer can hold, so it's a better fit in 125.29. Fourth, the provision I drafted above forecloses the brewer permit so it makes the brewpub permit the only option available for one who wants to commercially brew.

If this works, let me know and I'll add the analysis and get the "/2" out to you. Thanks. Aaron

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

From: Tuschen, Terry
Sent: Friday, June 01, 2007 9:47 AM
To: Gary, Aaron
Cc: Tuschen, Terry
Subject: RE: Language

06/06/2007

ok, I'll pass along your comments to the groups and let them know some work needs to be done.

From: Gary, Aaron
Sent: Friday, June 01, 2007 9:16 AM
To: Tuschen, Terry
Subject: RE: Language

Hi Terry,

Same issues as before. I'll draft it based upon this language, but some tinkering needs to be made. Since this is now a "/1", I'll send over by e-mail the exact language I propose to add sometime today for your review - that way if it's not perfect you can let me know and we wouldn't need to go to a "/3". Also, I assume at some point you'll be letting the assembly companion sponsor know that the "/1" isn't going to be the final version.

Aaron

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

From: Tuschen, Terry
Sent: Friday, June 01, 2007 9:00 AM
To: Gary, Aaron
Cc: Tuschen, Terry
Subject: FW: Language

Hi Aaron, for now, ignore the grandfather language I sent over before and use this instead. Severability stays the same. After taking a look, let me know if the same concerns you had previously apply to this language.

Thanks again, Terry

From: Eric Jensen [mailto:ericj@chorus.net]
Sent: Thursday, May 31, 2007 4:49 PM
To: Tuschen, Terry
Subject: Language

Hey Terry.

Here are the two provisions: severability, and "grandfather" (or whatever you want to call it). As far as we're concerned, these are written in a format in which they'd be fine if the drafters took 'em verbatim.

Severability - adding at the beginning of Ch. 125 makes its application to the whole chapter clear:

06/06/2007

125.001 Severability. If any provision or clause of this Chapter or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

Grandfather - should be added to the draft somewhere in the new sections:

Any applicant that does not have current operations under Ch. 125.29 as of [effective date] that wants to manufacture fermented malt beverages and hold a restaurant license under 254.64 must obtain a brewpub permit under 125.295.

Thanks for your help and attention on this.

Eric

Gary, Aaron

From: Gary, Aaron
Sent: Friday, June 01, 2007 3:35 PM
To: Tuschen, Terry
Subject: RE: Language

Question #2: No, they couldn't. This is the very problem I tried to point out in my second e-mail yesterday afternoon.

Fix: If you're only concerned about the facts of this situation, you could fix the problem for great dane by saying the provision doesn't apply to anyone who holds a brewer's permit on the bill's effective date, even if that permit is surrendered/lapses/canceled/etc. (I'd have to think a little more about exact language).

Aaron

From: Tuschen, Terry
Sent: Friday, June 01, 2007 2:57 PM
To: Gary, Aaron
Cc: Tuschen, Terry
Subject: FW: Language

Hi Aaron, ignore question #1. Can you comment on question #2 and if there is a problem, any recommended fix?

Thanks,

Terry

From: Michael Welsh [mailto:mike.hovenconsulting@tds.net]
Sent: Friday, June 01, 2007 2:46 PM
To: Tuschen, Terry
Subject: Re: Language

Terry,

The language proposed by Aaron has the desired affect the WBDA is looking for (i.e., the going forward provision). I have a few questions/concerns:

1. **Rep. Newcomer would like the two-year delay worked into the "going forward" provision. We should probably hold off on finalizing the /2 until that issue is resolved.**
2. **How would the "going forward" provision affect the Great Dane under the following scenario: The Great Dane obtains a brewpub permit for their three locations and after several years exceed 10,000 bbls per year. If they were to divest one of their locations, would they be able to obtain a brewers permit for their remaining two locations (with restaurants) and operate as a tradition brewer (which is allowed under current law)?**

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

From: Tuschen, Terry
To: Eric Jensen ; Michael Welsh
Cc: Tuschen, Terry

06/06/2007

Sent: Friday, June 01, 2007 12:35 PM
Subject: FW: Language

Hey Eric, Michael, Aaron put together some draft language. Take a look and let me know.
Thanks, Terry

From: Gary, Aaron
Sent: Friday, June 01, 2007 12:13 PM
To: Tuschen, Terry
Subject: RE: Language

Greetings again,

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Couple comments:

First, The language suggested was too circular: It requested that the provision be put in s. 125.295 and, to paraphrase, basically said that an applicant under this provision must apply for a permit under this provision - doesn't work b/c an applicant is already someone who is applying under that provision. Second, you can't require somebody to obtain a brewpub permit if they can't qualify for a brewpub permit, so language "must obtain a brewpub permit" doesn't work. Third, by definition, a brewpub has to hold a restaurant permit (p. 9, line 8). So this new provision really applies to a (generic) brewer that is *not* a brewpub - it is a limitation on other licenses/permits a brewer can hold, so it's a better fit in 125.29. Fourth, the provision I drafted above forecloses the brewer permit so it makes the brewpub permit the only option available for one who wants to commercially brew.

If this works, let me know and I'll add the analysis and get the "/2" out to you. Thanks. Aaron

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From: Tuschen, Terry
Sent: Friday, June 01, 2007 9:47 AM
To: Gary, Aaron
Cc: Tuschen, Terry
Subject: RE: Language

06/06/2007

ok, I'll pass along your comments to the groups and let them know some work needs to be done.

From: Gary, Aaron
Sent: Friday, June 01, 2007 9:16 AM
To: Tuschen, Terry
Subject: RE: Language

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Aaron

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Legislative Attorney
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From: Tuschen, Terry
Sent: Friday, June 01, 2007 9:00 AM
To: Gary, Aaron
Cc: Tuschen, Terry
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From: Eric Jensen [mailto:ericj@chorus.net]
Sent: Thursday, May 31, 2007 4:49 PM
To: Tuschen, Terry
Subject: Language

Hey Terry.

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Severability - adding at the beginning of Ch. 125 makes its application to the whole chapter

06/06/2007

clear:

125.001 Severability. If any provision or clause of this Chapter or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

Grandfather - should be added to the draft somewhere in the new sections:

Any applicant that does not have current operations under Ch. 125.29 as of [effective date] that wants to manufacture fermented malt beverages and hold a restaurant license under 254.64 must obtain a brewpub permit under 125.295.

Thanks for your help and attention on this.

Eric

Gary, Aaron

From: Tuschen, Terry
Sent: Tuesday, June 05, 2007 9:24 AM
To: 'Eric Jensen'
Cc: Gary, Aaron; Tuschen, Terry
Subject: RE: Grandfather Language

Eric, thanks for forwarding the Mike's comments. I'm fine with he and Aaron talking it through. Fred's primary and only issue is that the Great Dane not get inadvertently harmed.

Let me know what the plan is.

Terry

From: Eric Jensen [mailto:ericj@chorus.net]
Sent: Tuesday, June 05, 2007 9:01 AM
To: Tuschen, Terry
Subject: Grandfather Language

Terry:

Mike Wittenwyler (our counsel) sent me a response about Aaron's proposed language and placement for the Grandfather. He is fine with the language, but believes the placement where Aaron recommends results in saying no new brewpub permit holder can hold a restaurant license, rather than what we're trying to accomplish which is going forward if you brew beer and wish to also operate as Class B retailer and licensed Restaurant, you need to be a "brew pub" as opposed to a "brewer" (or in the reverse, going forward, a "brewer" cannot hold both Class B beer retail license and Restaurant license - the essence for legal purposes being that the localized nature of the restaurant that is a key component of being a "brew pub.")

Mike suggested perhaps a conference call involving he and Aaron would be simplest way to iron this out. Let me know, and we can try to set it up.

Eric Jensen

Executive Director
Wisconsin Beer Distributors Association
16 N. Carroll St., Suite 950
Madison, WI 53703
V: 608/255-6464
F: 608/255-6466



State of Wisconsin
2007 - 2008 LEGISLATURE

Wanted by
6/8 and
of day
if possible

LRB-1983/2

ARG:wj:rs

stay ↑
TMR

in 6/7

2007 BILL

Changes on p. 2, 3, 4, 7, 9 & insert

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** 125.02 (2), 125.02 (21), 125.04 (9), 125.07 (4)
3 (bm) 1., 125.10 (4), 125.26 (2) (b) 1., 125.28 (2) (b) 2., 125.31 (1) (a) 2., 125.31 (1)
4 (a) 4., 125.32 (5) and (7) (a), 125.33 (title), (1), (2) (intro.), (a), (d), (j), (k), (L) 2.,
5 3. and 4., (n) 2. and (p) 1., (2s), (6), (7) (a) 1. a. and b., (b), (c) and (d), (7m), (8),
6 (9), (10) (a) 1. to 4., (b) and (c) 1. and 3. and (11), 125.34 (title), (1) (a) and (c),
7 (2) (a), (bg) and (bm), (3) (a) 1. and 2., (4) (a) and (5), 125.54 (1), 139.01 (1) and
8 (2), 139.04 (2), 139.08 (4), 139.09, 139.11 (2), (3) and (4), 139.18 (1), 139.22 and
9 346.93 (1); and **to create** 125.02 (2d) (intro.), (2h), (2p) and (2t), 125.25 (2) (b)
10 5., 125.28 (2) (b) 1. e., 125.29 (5), 125.295, 125.69 (1) (d) and 139.01 (2c) and (2e)
11 of the statutes; **relating to:** creating a brewpub permit authorizing the

BILL*and limiting certain operations of
brewers*

1 manufacture and sale at wholesale of fermented malt beverages, ~~and~~
2 authorizing other brewpub 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 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

BILL

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.

This bill creates a brewpub permit issued by DOR. An applicant is eligible to obtain a brewpub permit if all of the following apply:

1. The applicant manufactures not more than 10,000 barrels of beer each year.
2. The applicant's entire beer manufacturing process occurs on the brewpub premises.
- 60 7 3. The applicant 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 applicant 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 applicant holds a business tax registration certificate issued by DOR.
6. The applicant does not hold or have an interest in a Class "A" license, a beer wholesaler's license, a brewer's permit, or an alcohol beverage, warehouse permit, and does not hold or have an interest in a Class "B," "Class B," or "Class C" license other than one for 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 brewpub 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.

BILL

2. Bottle on the brewpub premises beer that has been manufactured on these premises.

3. Package in refillable containers exceeding 24 ounces in volume, on brewpub premises, beer that has been manufactured on these premises, and possess and store on brewpub premises any beer.

4. Transport beer that has been manufactured on the brewpub premises between these premises and any other brewpub premises or brewpub Class "B" premises.

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

6. 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. 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.

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.

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. A brewpub is also subject to certain requirements generally applicable to wholesalers when selling its own beer to unaffiliated retailers.

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 (2) of the statutes is amended to read:

Handwritten notes in circles:
1. "insert ANAL-A" with an arrow pointing to the text about unaffiliated retailers.
2. "insert ANAL-B" with an arrow pointing to the text about the fiscal estimate.
3. "insert 4-1" with an arrow pointing to the word "enact" in the final section header.

BILL

1 125.02 (2) "Brewer" means any person who manufactures fermented malt
2 beverages for sale or transportation, except that "brewer" does not include a
3 permittee under s. 125.295.

4 **SECTION 2.** 125.02 (2d) (intro.), (2h), (2p) and (2t) of the statutes are created to
5 read:

6 125.02 (2d) (intro.) "Brewer group" means a brewer, including all premises for
7 which the brewer holds a permit issued under s. 125.29, together with all of the
8 following:

9 **(2h)** "Brewpub" means a permittee under s. 125.295.

10 **(2p)** "Brewpub group" means a brewpub, including all premises for which the
11 brewpub holds a permit issued under s. 125.295, together with all of the following:

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

14 (b) All brewpubs considered with the brewpub as one taxpayer under 27 CFR
15 25.111b (b).

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

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

19 (e) The franchisor, as defined in s. 553.03 (6), of the brewpub.

20 **(2t)** "Brewpub premises" means any premises covered by a permit issued under
21 s. 125.295.

22 **SECTION 3.** 125.02 (21) of the statutes is amended to read:

23 125.02 (21) "Wholesaler" means a person, other than a brewer, brewpub,
24 manufacturer, or rectifier, who sells alcohol beverages to a licensed retailer or to
25 another person who holds a permit or license to sell alcohol beverages at wholesale.

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1 **SECTION 4.** 125.04 (9) of the statutes is amended to read:

2 125.04 (9) SEPARATE LICENSE OR PERMIT REQUIRED. Except as provided under ss.
3 125.27 (2) (a) and 125.51 (5) (c) 1., wholesalers, manufacturers, rectifiers, brewers,
4 brewpubs, and retailers shall have a separate permit or license covering each
5 location or premises, except a licensed public warehouse, from which deliveries and
6 sales of alcohol beverages are made or at which alcohol beverages are stored.

7 **SECTION 5.** 125.07 (4) (bm) 1. of the statutes is amended to read:

8 125.07 (4) (bm) 1. A brewer or brewpub.

9 **SECTION 6.** 125.10 (4) of the statutes is amended to read:

10 125.10 (4) REGULATION OF CLOSED RETAIL PREMISES. A municipality may not
11 prohibit the permittee, licensee, employees, salespersons, employees of wholesalers
12 licensed under s. 125.28 (1) or 125.54 (1); employees of permittees under s. 125.295
13 with respect to the permittee's own retail premises; or service personnel from being
14 present on premises operated under a Class "A", "Class A" or "Class C" license or
15 under a Class "B" or "Class B" license or permit during hours when the premises are
16 not open for business if those persons are performing job-related activities.

17 **SECTION 7.** 125.25 (2) (b) 5. of the statutes is created to read:

18 125.25 (2) (b) 5. A Class "A" license may not be issued to a person holding a
19 brewpub permit issued under s. 125.295 or to a person who has a direct or indirect
20 ownership interest in a premises operating under a brewpub permit issued under s.
21 125.295.

22 **SECTION 8.** 125.26 (2) (b) 1. of the statutes is amended to read:

23 125.26 (2) (b) 1. Except as provided in ~~s.~~ ss. 125.295 and 125.31, Class "B"
24 licenses may not be issued to brewers or brewpubs.

25 **SECTION 9.** 125.28 (2) (b) 1. e. of the statutes is created to read:

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

2 **SECTION 10.** 125.28 (2) (b) 2. of the statutes is amended to read:

3 125.28 (2) (b) 2. A person who has a direct or indirect ownership interest in a
4 premises operating under one or more of the licenses or permits listed in subd. 1. a.
5 to d. e.

6 **SECTION 11.** 125.29 (5) ^{and (6)} of the statutes ^{are} ~~is~~ created to read:

7 125.29 (5) BREWPUBS. No person holding a brewpub permit under s. 125.295
8 may register as a brewer under this section.

9 **SECTION 12.** 125.295 of the statutes is created to read:

10 **125.295 Brewpub permits. (1)** The department shall issue brewpub permits
11 to eligible applicants authorizing all of the following:

12 (a) The manufacture of fermented malt beverages on the brewpub premises if
13 the entire manufacturing process occurs on these premises and not more than 10,000
14 barrels of fermented malt beverages are manufactured in a calendar year by the
15 permittee's brewpub group.

16 (b) The bottling on brewpub premises of fermented malt beverages that have
17 been manufactured on these premises.

18 (c) The packaging in refillable containers exceeding 24 ounces in volume, at the
19 request of a customer and on brewpub premises, of fermented malt beverages that
20 have been manufactured on these premises.

21 (d) The possession and storage of any fermented malt beverages on brewpub
22 premises.

23 (e) The transportation of fermented malt beverages that have been
24 manufactured on the brewpub premises between these premises and any other
25 brewpub premises or Class "B" premises of the brewpub group.

Handwritten note: "Ment 7-8" with an arrow pointing to line 8.

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

5 (g) The sale at wholesale, shipment, transportation, and delivery, in original
6 unopened packages or containers, to retailers, from the brewpub premises, of
7 fermented malt beverages that have been manufactured on these premises or on
8 other brewpub premises of the brewpub. A brewpub's brewpub group may not sell,
9 ship, transport, or deliver more than a total of 1,000 barrels of fermented malt
10 beverages in any calendar year to retailers under this paragraph. Fermented malt
11 beverages provided by a brewpub to any retail premises for which the brewpub group
12 holds a retail license shall not be included in any calculation of the 1,000 barrel
13 limitation under this paragraph. Deliveries and shipments of fermented malt
14 beverages by a brewpub under this paragraph shall be made to retailers only at their
15 retail premises. Any retailer receiving such a delivery or shipment is subject to the
16 prohibition under s. 125.34 (5) against further transporting the delivery or shipment
17 to any other retail premises.

18 (h) The sale of alcohol beverages at retail on the brewpub premises in
19 accordance with the terms of any retail license specified in subs. (2) (a) 4. and (3) (b)
20 and (c).

21 (i) Notwithstanding s. 125.33 (1), the ownership, maintenance, and operation
22 of places for the sale of fermented malt beverages at the state fair park or on any
23 county fairgrounds located in this state if the fermented malt beverages have been
24 manufactured by the brewpub.

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

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

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

7 3. The applicant operates a restaurant on the premises for which the permit
8 is issued, for which a restaurant permit is issued under s. 254.64 and in which the
9 sale of alcohol beverages accounts for less than ~~50~~⁶⁰ percent of the gross receipts of all
10 of the food and beverages served in the restaurant on a calendar year basis.

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

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

16 6. Neither the applicant nor the applicant's brewpub group holds, or has a
17 direct or indirect ownership interest in a premises operating under, any of the
18 following:

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

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

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

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

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

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

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

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

18 (3) (a) No brewpub group may hold more than 6 brewpub permits issued under
19 this section.

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

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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.

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

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

9 **SECTION 14.** 125.31 (1) (a) 1. a. to e. of the statutes are renumbered 125.02 (2d)
10 (a) to (e).

11 **SECTION 15.** 125.31 (1) (a) 2. of the statutes is amended to read:

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

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

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

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

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

3 **SECTION 18.** 125.32 (5) and (7) (a) of the statutes are amended to read:

4 125.32 (5) SIGNS NEAR TAPS AND BRANDS ON TAP; CLASS "B" PREMISES. Every Class
5 "B" licensee or permittee selling or offering for sale draught fermented malt
6 beverages shall display a sign on or near each tap or faucet disclosing the brand of
7 fermented malt beverage drawn from the tap or faucet and the name of ~~its~~ the brewer
8 or brewpub that manufactured it. No Class "B" licensee or permittee may substitute
9 any other brand of fermented malt beverage in place of the brand designated on the
10 sign with the intent to defraud or deceive the customer.

11 (7) (a) No fermented malt beverages may be sold, offered, or exposed for sale,
12 kept in possession with intent to sell, or served on any premises for which a license
13 or permit for the sale of fermented malt beverages has been issued unless each
14 barrel, keg, cask, bottle, or other container bears a label or other identification with
15 the name and address of the brewer or brewpub that manufactured it. The
16 possession of any fermented malt beverages which are not so identified on any
17 premises for which a license or permit for the sale of fermented malt beverages has
18 been issued is prima facie evidence that the fermented malt beverages are possessed
19 with intent to sell, offer for sale, display for sale, or give away.

20 **SECTION 19.** 125.33 (title), (1), (2) (intro.), (a), (d), (j), (k), (L) 2., 3. and 4., (n)
21 2. and (p) 1., (2s), (6), (7) (a) 1. a. and b., (b), (c) and (d), (7m), (8), (9), (10) (a) 1. to 4.,
22 (b) and (c) 1. and 3. and (11) of the statutes are amended to read:

23 **125.33 (title) Restrictions on dealings between brewers, brewpubs,**
24 **wholesalers, and retailers. (1) FURNISHING THINGS OF VALUE. (a) Except as**
25 **provided in this section and s. ss. 125.295 and 125.31, no brewer, brewpub, or**

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1 wholesaler may furnish, give, lend, lease, or sell any furniture, fixtures, fittings,
2 equipment, money, or other thing of value to any campus or Class "B" licensee or
3 permittee, or to any person for the use, benefit, or relief of any campus or Class "B"
4 licensee or permittee, or guarantee the repayment of any loan or the fulfillment of
5 any financial obligation of any campus or Class "B" licensee or permittee. Such
6 actions may not be taken by the brewer, brewpub, or wholesaler directly or indirectly,
7 or through a subsidiary or affiliate corporation or limited liability company, or by any
8 officer, director, stockholder, partner, or member thereof.

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

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

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

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1 shall make the records kept under this paragraph available to the department for
2 inspection upon request.

3 (d) Sell to a campus or Class "B" licensee or permittee at fair market value
4 equipment designed and intended to preserve and maintain the sanitary dispensing
5 of fermented malt beverages or any services necessary to maintain this kind of
6 equipment. A brewer, brewpub, or wholesaler shall charge the same price per unit
7 of equipment to each campus or Class "B" licensee or permittee making the same or
8 a similar purchase, and shall charge the same rate to each campus or Class "B"
9 licensee or permittee purchasing maintenance services under this subdivision. Each
10 brewer, brewpub, or wholesaler shall keep records of each transaction under this
11 subdivision and shall make the records available to the department upon request.

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

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

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

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

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

22 (n) 2. Notwithstanding subd. 1., no brewer, brewpub, or wholesaler may
23 provide business entertainment to a Class "B" licensee or permittee under subd. 1.
24 in one day that has a value exceeding \$500, and no brewer, brewpub, or wholesaler

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1 may provide business entertainment to a Class "B" licensee or permittee under subd.
2 1. on more than 8 days in any calendar year.

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

11 (2s) EXCEPTION FOR RETAIL TRADE ASSOCIATION CONTRIBUTIONS. Notwithstanding
12 the prohibitions in sub. (1), a brewer, brewpub, or wholesaler may contribute money
13 or other things of value to a bona fide national, statewide, or local trade association
14 that derives its principal income from membership dues of Class "B" licensees.

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

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

24 b. Receive, purchase, or acquire fermented malt beverages from any licensee
25 or permittee, or from any brewpub acting under authority of s. 125.295 (1) (g), if at

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1 the time of the receipt, purchase, or acquisition he or she is indebted to any licensee
2 ~~or~~, permittee, or brewpub for fermented malt beverages received, purchased,
3 acquired, or delivered more than 15 days earlier.

4 (b) *Restrictions on issuance of licenses and permits.* No Class "A" or Class "B"
5 license or permit may be issued to a person having an indebtedness for fermented
6 malt beverages outstanding for more than 15 days. In each application for a Class
7 "A" or Class "B" license or permit, the applicant shall state whether he or she has
8 indebtedness for fermented malt beverages to any licensee ~~or~~, permittee, or brewpub
9 which has been outstanding for more than 15 days.

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

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

24 **(7m) CONDITIONAL PURCHASES.** No Class "A" or Class "B" licensee may condition
25 the purchase of fermented malt beverages from a brewer, brewpub, or wholesaler

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1 upon the furnishing by the brewer, brewpub, or wholesaler of any thing of value,
2 other than the products purchased, to the licensee or to any person for the use,
3 benefit, or relief of the licensee.

4 (8) EXCLUSIVE SALES BY WHOLESALER. A wholesaler may not sell or offer to sell
5 a brand of fermented malt beverages exclusively to one Class "A" licensee or to a
6 group of Class "A" licensees affiliated through common ownership, management or
7 control, unless the brand of fermented malt beverages is produced by a brewer ~~which~~
8 that produces less than 300,000 barrels of fermented malt beverages in a calendar
9 year or by a brewpub.

10 (9) CAMPUSES AND RETAILERS TO PURCHASE FROM WHOLESALERS. ~~No~~ Except as
11 provided in s. 125.295 (1) (g), no campus or retail licensee or permittee may purchase
12 or possess fermented malt beverages purchased from any person other than a
13 wholesaler holding a license under this chapter for the sale of fermented malt
14 beverages. Any person who violates this subsection may be fined not more than
15 \$10,000 or imprisoned for not more than 9 months or both.

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

22 2. "Discontinued brand" means, with respect to a terminated wholesaler, any
23 brand of fermented malt beverages for which a brewer, brewpub, brewer's agent,
24 brewpub's agent, or holder of an out-of-state shipper's permit has terminated,

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1 cancelled, or failed to renew an agreement, whether oral or written, with the
2 wholesaler to supply that brand.

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

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

14 (b) Except as provided in par. (c) and subject to pars. (d) and (e), a successor
15 wholesaler shall compensate a terminated wholesaler for the fair market value of the
16 terminated wholesaler's distribution rights to any discontinued brand of fermented
17 malt beverages assumed by the successor wholesaler for the same territory, less any
18 amount paid to the terminated wholesaler by the brewer, brewpub, brewer's agent,
19 brewpub's agent, or holder of an out-of-state shipper's permit for the discontinued
20 brand. If the terminated wholesaler's distribution rights to any discontinued brand
21 of fermented malt beverages are divided among 2 or more successor wholesalers,
22 each successor wholesaler shall compensate the terminated wholesaler for the fair
23 market value of the distribution rights to any discontinued brand of fermented malt
24 beverages assumed by that successor wholesaler for the applicable part of the same
25 territory, less any amount paid to the terminated wholesaler by the brewer, brewpub,

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1 brewer's agent, brewpub's agent, or holder of an out-of-state shipper's permit for the
2 discontinued brand. A terminated wholesaler may not receive under this paragraph
3 total compensation from the successor wholesaler and brewer, brewpub, brewer's
4 agent, brewpub's agent, or holder of an out-of-state shipper's permit that exceeds
5 the fair market value of the terminated wholesaler's distribution rights specified
6 under this paragraph.

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

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

17 (11) SOURCE OF FERMENTED MALT BEVERAGES. (a) Subject to s. 125.34 (3), no
18 wholesaler who holds a retail license issued under this chapter may sell a brand of
19 fermented malt beverages to another retail licensee unless the wholesaler has an
20 agreement for general wholesale distribution of that brand of fermented malt
21 beverages with the brewer, brewpub, brewer's agent, brewpub's agent, or holder of
22 an out-of-state shipper's permit supplying that brand.

23 (b) If a wholesaler who holds a retail license issued under this chapter violates
24 par. (a), any other wholesaler aggrieved by such violation or the brewer or brewpub
25 may bring an action against such wholesaler in any court of competent jurisdiction

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1 for damages sustained by the aggrieved wholesaler or the brewer or brewpub as a
2 consequence of the violation, together with the actual costs of the action.
3 Notwithstanding s. 814.04 (1), a wholesaler or the brewer or brewpub who prevails
4 in an action under this paragraph may recover reasonable actual attorney fees
5 incurred in the action.

6 **SECTION 20.** 125.34 (title), (1) (a) and (c), (2) (a), (bg) and (bm), (3) (a) 1. and 2.,
7 (4) (a) and (5) of the statutes are amended to read:

8 **125.34 (title) Distribution restrictions on wholesalers, brewers,**
9 **brewpubs, and out-of-state shippers. (1) (a)** "Brand" means any word, name,
10 group of letters, symbol, or combination thereof, including the name of the brewer,
11 brewpub, or out-of-state shipper if the brewer's, brewpub's, or out-of-state
12 shipper's name is also a significant part of the product name, adopted and used by
13 a brewer, brewpub, or out-of-state shipper to identify a specific fermented malt
14 beverage product and to distinguish that product from other fermented malt
15 beverages produced by that brewer, brewpub, or out-of-state shipper or other
16 brewers, brewpubs, or out-of-state shippers.

17 (c) "Designated sales territory" means the geographical area identified in a
18 written agreement between a wholesaler and a brewer, brewpub, or out-of-state
19 shipper under which the wholesaler is authorized to distribute one or more brands
20 of fermented malt beverages supplied by the brewer, brewpub, or out-of-state
21 shipper.

22 **(2) (a)** ~~No~~ Except as provided in sub. (6) (b) and s. 125.295 (1) (e) and (g), no
23 fermented malt beverages may be sold, transported, or delivered to a retailer unless,
24 prior to such sale, transport, or delivery, the fermented malt beverages are first
25 unloaded at and distributed from a wholesaler's warehouse premises covered by both

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1 a wholesaler's license issued under s. 125.28 and an alcohol beverage warehouse
2 permit issued under s. 125.19, which premises shall be in this state and shall be a
3 physically separate location from any retail premises or brewery premises. This
4 paragraph does not apply to a wholesaler issued a wholesaler's license under s.
5 125.28 (1) (b) with respect to fermented malt beverages transported and delivered
6 from a warehouse in an adjoining state unless the wholesaler's warehouse in the
7 adjoining state is located on premises in the adjoining state used for the manufacture
8 of fermented malt beverages.

9 (bg) Notwithstanding par. (a), a brewer that, together with the fermented malt
10 beverages ~~manufactured during the same year by all producers identified in s.~~
11 ~~125.31 (1) (a) 1. a. to e. its brewer group,~~ manufactures not more than 50,000 barrels
12 of fermented malt beverages in a calendar year in any location may be issued a
13 wholesaler's license for wholesale premises located on brewery premises.

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

24 (3) (a) 1. Subject to subd. 3., a wholesaler may not sell, transport, or deliver any
25 brand of fermented malt beverages unless the wholesaler has entered into a written

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1 agreement with the brewer, brewpub, or out-of-state shipper supplying the brand
2 that grants to the wholesaler distribution rights for the brand and identifies the
3 designated sales territory for which such distribution rights are granted, including
4 the precise geographical area comprising the designated sales territory.

5 2. A brewer, brewpub, or out-of-state shipper may not, in any agreement under
6 this paragraph, grant to more than one wholesaler distribution rights for the same
7 brand in the same designated sales territory or in any part of the same designated
8 sales territory.

9 (4) (a) Any retailer located outside the wholesaler's designated sales territory
10 for the brand. This paragraph does not apply if another wholesaler that has been
11 granted distribution rights for the brand in the designated sales territory where the
12 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 (5) Deliveries Except as provided in sub. (6) (b) and s. 125.295 (1) (e) and (g),
22 deliveries of fermented malt beverages to retailers may be made only by wholesalers
23 and shall be made to retailers only at their retail premises. No retailer may transport
24 fermented malt beverages from one retail premises to another retail premises for

BILL**SECTION 20**

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

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

4 125.54 (1) AUTHORIZED ACTIVITIES. The department shall issue wholesalers'
5 permits authorizing the permittee to sell intoxicating liquor at wholesale from the
6 premises described in the permit. Except as provided under s. 125.69 (1) (b) 3., the
7 permittee may not sell intoxicating liquor for consumption on the premises. If a
8 wholesale permit is issued to a ~~brewery~~ brewer that holds a "Class B" license, the
9 permit shall authorize the wholesale sale of wine only. Possession of a permit under
10 this section does not authorize the permittee to sell tax-free intoxicating liquor and
11 wine brought into this state under s. 139.03 (5).

12 **SECTION 22.** 125.69 (1) (d) of the statutes is created to read:

13 125.69 (1) (d) Except as provided in s. 125.295 (3) (c), no brewpub may hold any
14 direct or indirect interest in any "Class B" license or permit or establishment or
15 "Class C" license or establishment.

16 **SECTION 23.** 139.01 (1) and (2) of the statutes are amended to read:

17 139.01 (1) "Bottler" means any person other than a brewer or brewpub who
18 places fermented malt beverages in bottles or similar containers.

19 (2) "Brewer" means any person who manufactures fermented malt beverages
20 for sale or transportation except that brewer does not include a permittee under s.
21 125.295.

22 **SECTION 24.** 139.01 (2c) and (2e) of the statutes are created to read:

23 139.01 (2c) "Brewpub" means a permittee under s. 125.295.

24 (2e) "Brewpub premises" means any premises covered by a permit issued
25 under s. 125.295.

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1 **SECTION 25.** 139.04 (2) of the statutes is amended to read:

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

5 **SECTION 26.** 139.08 (4) of the statutes is amended to read:

6 139.08 (4) INSPECTION FOR ENFORCEMENT. Duly authorized employees of the
7 department of justice and the department of revenue and any sheriff, police officer,
8 marshal, or constable, within their respective jurisdictions, may at all reasonable
9 hours enter any licensed premises, and examine the books, papers, and records of
10 any brewer, brewpub, manufacturer, bottler, rectifier, wholesaler, or retailer, for the
11 purpose of inspecting the same and determining whether the tax and fee imposed by
12 ss. 139.01 to 139.25 have been fully paid, and may inspect and examine, according
13 to law, any premises where fermented malt beverages or intoxicating liquors are
14 manufactured, sold, exposed for sale, possessed, or stored, for the purpose of
15 inspecting the same and determining whether the tax imposed by ss. 139.01 to
16 139.25 has been fully paid, and whether ss. 139.01 to 139.25 and ch. 125 are being
17 complied with. Any refusal to permit such examination of such premises is sufficient
18 grounds under s. 125.12 for revocation or suspension of any license or permit granted
19 for the sale of any fermented malt beverages or intoxicating liquors and is punishable
20 under s. 139.25 (10).

21 **SECTION 27.** 139.09 of the statutes is amended to read:

22 **139.09 Registration.** Every brewer, brewpub, bottler, manufacturer, rectifier,
23 wholesaler, or retailer liable for payment of the occupational tax imposed in ss.
24 139.01 to 139.25 shall hold a valid certificate under s. 73.03 (50). The secretary shall
25 assign the person a registration number.

BILL**SECTION 28**

1 **SECTION 28.** 139.11 (2), (3) and (4) of the statutes are amended to read:

2 139.11 (2) **REPORT.** Each brewer, brewpub, bottler, manufacturer, rectifier, and
3 wholesaler shall on or before the 15th day of each calendar month or the dates
4 prescribed by the secretary file a verified report of all fermented malt beverages or
5 intoxicating liquor manufactured, received, sold, delivered, or shipped by him or her
6 during the preceding calendar month, except that the department may allow
7 wholesale, winery, and out-of-state shipper permittees whose tax liability is less
8 than \$500 per quarter to file on a quarterly basis. Quarterly reports shall be filed
9 on or before the 15th of the next month following the close of the calendar quarter.

10 **(3) SECRETARY'S POWERS.** When the secretary finds that the records kept by any
11 brewer, brewpub, bottler, manufacturer, rectifier, wholesaler, or retailer are in such
12 condition ~~than~~ that an unusual amount of time is required to determine therefrom
13 the amount of tax due, the secretary may give notice of such fact to such person and
14 may require the records to be kept in such form as the secretary prescribes. If such
15 requirements are not complied with within 30 days after the date of the notice, the
16 brewer, brewpub, bottler, manufacturer, rectifier, wholesaler, or retailer shall pay
17 the expenses reasonably attributable to the determination of tax at the rate of \$30
18 per day for each auditor. The secretary shall render a bill therefor by registered mail
19 to the person charged with payment at the conclusion of the audit, which bill shall
20 constitute notice of assessment and demand of payment thereof. The brewer,
21 brewpub, bottler, manufacturer, rectifier, wholesaler, or retailer shall, within 10
22 days after the mailing of the bill, pay its amount, and such payment shall be credited
23 to the appropriation made in s. 20.566 (1) (a).

24 **(4) CONFIDENTIALITY.** Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3.,
25 relating to confidentiality of income, franchise, and gift tax returns, apply to any

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1 information obtained from any person on a fermented malt beverage or intoxicating
2 liquor tax return, report, schedule, exhibit, or other document or from an audit report
3 relating to any of those documents, except that the department of revenue shall
4 publish brewery brewer and brewpub production and sales statistics and shall
5 publish or permit the publication of statistics on the total number of gallons of the
6 types and brands of intoxicating liquor sold in this state.

7 **SECTION 29.** 139.18 (1) of the statutes is amended to read:

8 139.18 (1) The possession of any fermented malt beverages on any licensed
9 premises, other than upon the premises of a brewer, brewpub, or bottler, shall be
10 deemed prima facie evidence that such products are kept with intent to sell and that
11 such products are subject to the tax herein imposed.

12 **SECTION 30.** 139.22 of the statutes is amended to read:

13 **139.22 Confiscation.** If a duly authorized employee of the department of
14 revenue or the department of justice or any sheriff, police officer, marshal, or
15 constable, within his or her respective jurisdiction, discovers any fermented malt
16 beverages upon any premises other than the premises of a brewer, brewpub, or
17 bottler, or any intoxicating liquor upon any premises other than the premises of a
18 manufacturer, rectifier, winery, or wholesaler, and upon which the tax has not been
19 paid or which was possessed, kept, stored, manufactured, sold, distributed, or
20 transported in violation of ss. 139.01 to 139.25 and ch. 125, the employee or any such
21 officer may immediately seize the fermented malt beverages or intoxicating liquors.
22 Any such fermented malt beverages or intoxicating liquors so seized shall be held by
23 the department of revenue and disposed of under s. 125.14 (2) (e).

24 **SECTION 31.** 346.93 (1) of the statutes is amended to read:

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

LRB-1983/2ins
ARG:.....

INSERT ANAL-A:

Current law prohibits a person from operating a restaurant unless the person has been issued a restaurant permit. This bill prohibits a person issued a brewer's permit after the bill's effective date from holding a restaurant permit, thereby requiring a person who intends to begin manufacturing beer and operating a restaurant after this date to obtain a brewpub permit if the person is otherwise eligible for a brewpub permit.

INSERT ANAL-B:

Current law includes a global severability provision applicable to all statutes, which states that the provisions of the statutes and of any session law are severable. If any provision of the statutes or of a session law is invalid, or if the application of either to any person or circumstance is invalid, the invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

This bill includes another severability provision specifically applicable to chapter 125 of the statutes relating to alcohol beverages. The bill states that if any provision or clause of chapter 125 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

INSERT 4-1:

SECTION ~~1~~ 125.015 of the statutes is created to read:

125.015 Severability. If any provision or clause of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

INSERT 7-8:

(6) RESTAURANTS. No person issued a permit under this section after the effective date of this subsection [revisor inserts date] may hold a restaurant permit issued under s. 254.64.

3

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