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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**Contact:** Melissa Schmidt, Senior Staff Attorney

**2021 Assembly Bill 277**

**Assembly Substitute  
Amendment 1**

### BACKGROUND

Very generally, a retail license or permit authorizes a person to sell alcohol beverages to consumers (someone other than a manufacturer, wholesale distributor, or retailer of alcohol beverages). Retail licenses are issued by municipalities (cities, villages, and towns); retail permits are issued by the Department of Revenue (DOR), in limited circumstances. Retail licenses and permits are issued for a specific geographic area that is described in the retail application, referred to as the “licensed premises,” or “permitted premises.” Separate retail licenses or permits are needed to sell fermented malt beverages (beer) and intoxicating liquor (wine and distilled spirits, “liquor”).

Retailers are subject to numerous requirements that are found throughout ch. 125, Stats. (the Alcohol Beverages Chapter). For example, retailers are subject to requirements relating to the hours of operation and the selling of alcohol to underage or intoxicated persons. Other examples include restrictions that maintain the state’s three-tier system for regulating alcohol, such as the state’s tied-house laws and direct or indirect interest restrictions.

### 2021 ASSEMBLY BILL 277

2021 Assembly Bill 277 allows a person to make retail sales of alcohol beverages for consumption at the State Fair Park without holding an alcohol beverages retail license or permit, if the person is approved by the State Fair Park board by resolution to make such sales. Under the bill, the person must satisfy all of the eligibility criteria that any applicant must satisfy in order to obtain an alcohol beverages license or permit, except for the criteria related to residency.<sup>1</sup> Specifically, the bill provides that a person does not need to have been a resident of the state for at least 90 days prior to the date of application in order to be eligible to make retail sales of alcohol beverages for consumption at State Fair Park without a license.

The bill also prohibits a person holding a brewer’s permit or a brewpub permit from making retail sales of beer at the State Fair Park unless the State Fair Park board has, by resolution, approved the brewer or brewpub to make such sales. Current law authorizes brewers and brewpubs to own, maintain, and operate places for the sale of beer at State Fair Park, but does not specify whether the brewer or brewpub must be approved by the State Fair Park board to do so. [ss. 125.29 (3) (j) and 125.295 (1) (i), Stats.]

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<sup>1</sup> Eligibility requirements for any alcohol beverages license or permit issued to a natural person, corporation, or limited liability company relate to the applicant’s: (a) criminal background, subject to the Fair Employment Law; (b) in-state residency for at least 90-days prior to the date of application; (c) age of at least 21 years old (except for persons applying for an operator’s license); (d) proof of a seller’s permit issued by DOR; and (e) successful completion of the responsible beverages server training. [s. 125.04 (5) (a), (b), and (c), Stats.]

## **ASSEMBLY SUBSTITUTE AMENDMENT 1**

Assembly Substitute Amendment 1 replaces the provisions of the bill and instead provides that the State Fair Park board may issue a Class “B” beer or “Class B” liquor retail permit to a person authorizing the retail sale of beer or liquor, whichever is applicable, at the State Fair Park. The substitute amendment prohibits a municipality from issuing an alcohol beverages license anywhere within State Fair Park.

Except as otherwise provided in the substitute amendment, all sections of the Alcohol Beverages Chapter relating to “Class B” licenses apply to Class “B” permits, and in general all sections of the Alcohol Beverages Chapter relating to “Class B” licenses apply to Class “B” permits issued by the State Fair Park board.<sup>2</sup>

### **Definition of State Fair Park**

The substitute amendment defines the “State Fair Park” as “the property, buildings and other improvements under the management of the State Fair Park board located in the City of West Allis and the City of Milwaukee bounded by Interstate 94 to the north, S. 76th Street to Pierce Street to S. 77th Street to the east, W. Greenfield Ave. to the south and S. 84th Street to the west.” There is no definition of the State Fair Park either in the bill or under current law.

### **Beer and Liquor Retail Permits Issued by the State Fair Park Board**

#### **Eligibility Requirements**

Under the substitute amendment, the State Fair Park board may issue Class “B” beer retail permits and “Class B” liquor retail permits for locations at the State Fair Park to a person who holds a valid business tax registration certificate issued by DOR and satisfies all of the eligibility criteria that any applicant must satisfy in order to obtain an alcohol beverages license or permit, including the 90-day, in-state residency requirements. If the applicant is a corporation or limited liability corporation (LLC), then corporation or LLC must designate an agent that satisfies some of the eligibility requirements, including the 90-day, in-state residency requirement. Under the bill, the applicant was not required to satisfy the residency requirements.

#### **Application Form and Hearing on the Application**

The substitute amendment authorizes the State Fair Park board to either prepare and use its own retail permit application form for the issuance of Class “B” beer or “Class B” liquor retail permit, or use permit application forms prepared by DOR.

Also under the substitute amendment, when the State Fair Park board meets to consider a retail permit application, the board must issue its open meetings notice at least 15 days prior to the meeting.

#### **Authorized Sales Activity**

The substitute amendment provides that a Class “B” beer retail permit issued by the State Fair Park board authorizes the retail sale of beer on the premises covered by the permit, for consumption anywhere at the State Fair Park. A person holding a Class “B” beer retail permit issued by the State Fair

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<sup>2</sup> The substitute amendment provides that the following provisions applicable to alcohol retail licenses or permits do not apply to retail permits issued by the State Fair Park board: (a) the place of filing a license application; (b) the timing of filing and issuing a license; (c) publication and application of a license; (d) payment of the license fee; transfer of the license or permit; (e) preparation and distribution of an alcohol beverages law booklet; (f) municipal regulation of alcohol beverages; and (g) revocation, suspension, or refusal to reissue a license or permit.

Park also may sell beverages containing less than 0.5 percent of alcohol by volume (nonintoxicating beverages) without having to obtain a nonintoxicating beverages license issued by a municipality. A Class “B” beer retail permit does not authorize the sale of beer for consumption away from the State Fair Park.

Similarly, a “Class B” liquor retail permit issued by the State Fair Park authorizes the retail sale of liquor, by the glass and not in the original package or container, on the premises covered by the permit, for consumption anywhere at the State Fair Park. The “Class B” liquor retail permit also does not authorize the sale of liquor for consumption away from the State Fair Park unless the permit is issued to a person affiliated with a winery trade association. A “Class B” liquor retail permit that is issued a person affiliated with a winery trade association also authorizes the permittee to make retail sales, in original packages or containers, for consumption away from the State Fair Park, of wine manufactured by members of the winery trade association. The substitute amendment specifies that a “Class B” liquor retail permit issued by the State Fair Park board is not subject to a quota.<sup>3</sup>

Under the substitute amendment, the premises in either the Class “B” beer or “Class B” liquor retail permit issued by the State Fair Park board may be described as multiple locations at the State Fair Park.

Lastly, the substitute amendment provides that a person holding a Class “B” beer or a “Class B” liquor retail permit issued by the State Fair Park board is subject to any requirements or conditions imposed upon the person by the State Fair Park board in the permit or under a lease or vendor agreement. This agreement may require the person to remit to the State Fair Park board a percentage of gross sales of alcohol beverages as specified in the agreement.

### **Permit Expiration Date**

Under current law, an alcohol retail license is generally valid for one year and expires on June 30. A license issued by the City of Milwaukee is valid for one year and expires on the date that is specified in the license. A permit issued by DOR is valid for two years, expiring on the date of the business tax registration certificate. [s. 125.04 (11), Stats.] The substitute amendment provides that a Class “B” beer or a “Class B” liquor retail permit issued by the State Fair Park board is valid for one year and expires on June 30.

### **Permit Fees**

Under current law, DOR determines the fee for alcohol beverage permits, including Class “B” beer and “Class B” liquor retail permits. For example, the annual fee for a Class “B” beer retail permit issued by DOR to a sports club is \$100; the annual fee for a “Class B” liquor retail permit issued by DOR to a sports club is \$300.

The substitute amendment requires the State Fair Park board to establish an annual fee for a permit issued under this subsection in the amount of 50 percent of the annual fee for a permit issued a sports club. Permit fees must be credited to the appropriation for the State Fair Park.

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<sup>3</sup> Very generally, there is a quota on the number of “Class B” liquor retail licenses that a municipality may issue. This quota requirement does not apply to “Class B” liquor retail permits issued by DOR. [s. 125.51 (4) and (5), Stats.]

## **Enforcement Authority**

Current law sets forth the State Fair Park board's authority. Examples of its authority include the following:

- Managing the State Fair Park and supervising or conducting fairs, exhibits, or promotional events for agricultural, industrial, educational, and recreational purposes at the State Fair Park.
- Leasing or licensing the use of any property at the State Fair Park for other purposes when not needed for the purposes listed above.
- Charging reasonable rents and fees for use of or attendance at the premises.
- Exercising police supervision over the State Fair Park. Duly appointed agents or representatives may arrest, with or without warrant, any person within such park area, committing an offense against the laws of the state or the rules of the State Fair Park board.

[s. 42.01 (1) and (2), Stats.]

The substitute amendment provides that the enforcement powers that the State Fair Park board has under current law also apply with respect to a person to whom the board issues a Class "B" beer or a "Class B" liquor retail permit.

## **Exception to the Tied-House Law**

The state's tied-house law is one of the restrictions that maintains the state's three-tier regulatory system of alcohol beverages. In Wisconsin, a "tied-house" generally refers to a bar, pub, tavern, or restaurant that is licensed to sell beer and is owned or controlled by a beer manufacturer (brewer or brewpub). Under the state's tied-house law, a brewer, brewpub, or beer wholesaler is prohibited from furnishing, giving, lending, leasing, or selling anything of value to a Class "B" beer retailer.<sup>4</sup> There are numerous exceptions to this, however, such as giving to a Class "B" beer retailer signs, clocks, and menu boards with an aggregate value of not more than \$2,500 for placement inside of the retail premises. [s. 125.33 (1) (a), and (2), Stats.]

The substitute amendment provides an exception to Class "B" beer retail permittees that are authorized to sell beer at the State Fair Park. Specifically, the substitute amendment provides that it is not a violation the Alcohol Beverages Chapter for a brewer, brewpub, out-of-state beer shipper, or beer wholesaler to make a sponsorship payment or provide any other item of value to a vendor that has been issued a Class "B" beer retail permit by the State Fair Park board. If the vendor also holds a retail Class "B" license, the sponsorship exception is strictly applied only to the State Fair Park location.

In addition to this tied-house exception, the substitute amendment creates a similar provision related to liquor. The substitute amendment provides that it is not a violation of the Alcohol Beverages Chapter for a liquor manufacturer, rectifier, out-of-state liquor shipper, or liquor wholesaler to make a sponsorship payment or provide any other item of value to a vendor that has been issued a "Class B" liquor retail permit by the State Fair Park board. If the vendor also holds a retail "Class B" license, this subsection is strictly applied only to the State Fair Park location.

## **Procedure for Renewal, Suspension, Revocation, or Refusal to Renew Permits**

The substitute amendment requires the State Fair Park board to establish standards and procedures for the renewal of a Class "B" beer or a "Class B" liquor retail permit that is consistent with the provisions

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<sup>4</sup> Tied-houses are also regulated under federal law. Federal tied-house laws apply to both beer and liquor manufacturers and wholesalers. [27 U.S.C. s. 205 (b).]

that set forth the eligibility requirements, application forms, and open meetings notice on the permit application.

The substitute amendment also requires the State Fair Park board to establish standards and procedures for suspension, revocation, or refusal to renew a permit issued under this subsection. Under the substitute amendment, a suspension, revocation, or refusal to renew a permit by the State Fair Park board is subject to administrative review as a contested case, as provided under current law.

## **Brewer and Brewpub Retail Sales at the State Fair Park**

As previously mentioned, current law authorizes brewers and brewpubs to own, maintain, and operate places for the sale of beer at the State Fair Park, but does not specify whether the brewer or brewpub must be approved by the State Fair Park board to do so. [ss. 125.29 (3) (j) and 125.295 (1) (i), Stats.]

Under the bill, a person holding a brewer's or brewpub permit is prohibited from making retail sales of beer at the State Fair Park unless the State Fair Park board has **approved by resolution** the brewer or brewpub to make such sales.

The substitute amendment also prohibits a person holding a brewer's permit or a brewpub permit from making retail sales of beer at the State Fair Park without State Fair Park board approval. However, the substitute amendment does not require the approval to be made by a board resolution.

## **BILL HISTORY**

Assembly Substitute Amendment 1 was introduced by Representative Loudenbeck on May 4, 2021. On May 6, 2021, the Assembly Committee on State Affairs voted to recommend adoption of the substitute amendment, and passage of the bill, as amended, on votes of Ayes, 9; Noes, 0.

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