2021 ASSEMBLY BILL 70

February 18, 2021 - Introduced by Representatives TAUCHEN, DUCHOW, DOYLE, KURTZ, MILROY, L. MYERS, NEUBAUER, NOVAK, THIESFELDT, WITTKE, SHANKLAND and TRANEL, cosponsored by Senators STROEBEL, ROYS, L. TAYLOR and BALLWEG. Referred to Committee on State Affairs.

AN ACT to renumber and amend 125.25 (3), 125.26 (3), 125.272, 125.51 (2) (c),
125.51 (3) (d) and 125.51 (6); to amend 125.02 (20), 125.26 (2u), 125.26 (2w),
125.26 (2x), 125.51 (3) (bu), 125.51 (3) (bw) and 125.51 (3) (bx); and to create
125.10 (6), 125.272 (2) and 125.51 (6) (b) of the statutes; relating to: remote
orders for the sale of alcohol beverages to be picked up on retail licensed
premises.

Analysis by the Legislative Reference Bureau

This bill allows most alcohol beverage retailers to make online or telephone sales of alcohol beverages to be picked up by the customer at parking spaces that are part of the retail licensed premises. The bill also prohibits municipalities from imposing by ordinance additional restrictions on these sales.

Under current law, with limited exceptions, no person may sell alcohol beverages to a consumer unless the seller possesses a license or permit authorizing the sale. Class “A” and “Class A” licenses authorize the retail sale of, respectively, fermented malt beverages (beer) and intoxicating liquor in original packages for consumption off the licensed premises. Intoxicating liquor includes wine and distilled spirits. A Class “B” license authorizes the retail sale of beer for consumption on or off the premises. Except when issued to a winery, a “Class B” license authorizes the retail sale of intoxicating liquor for consumption on the licensed premises and, subject to certain restrictions, the retail sale of intoxicating liquor in original
packages for consumption off the licensed premises. Each of these retail licenses is issued by a municipality.

Under current law, a retail license authorizes only face-to-face sales of alcohol beverages to consumers on the licensed premises. The sale to the consumer on the licensed premises is governed by certain requirements, including that the purchaser be of legal drinking age and that the sale be made only during certain hours. The licensed premises on which the sale occurs must be particularly described in the retail license issued by the municipality, and each applicant for a retail license must identify in the application the premises where alcohol beverages will be sold.

This bill provides that, if a Class “A”, “Class A”, Class “B”, or “Class B” licensee receives a remote order for alcohol beverages that the consumer will pick up at a parking space that is part of the retailer’s licensed premises, the sale of alcohol beverages occurs at the time the consumer takes possession of the alcohol beverages at the parking space, regardless of when the consumer makes payment. The bill defines “remote order” as an order for the sale of alcohol beverages that is placed by telephone or Internet by a consumer who asserts at the time of placing the order that he or she is at least 21 years of age. A Class “B” or “Class B” licensee may sell alcohol beverages by remote order only for consumption off the licensed premises. The bill also specifies that licensed premises identified in the retail license may include parking spaces associated with a structure described as licensed premises, even if the parking spaces are not contiguous with the remainder of the licensed premises. The bill also prohibits municipalities from adopting ordinances that impose additional restrictions on alcohol beverage sales made by these retailers pursuant to remote orders.

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

SECTION 1. 125.02 (20) of the statutes is amended to read:

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125.02 (20) “Sell,” Subject to ss. 125.272 (2) (b) and (c) and 125.51 (6) (b) 2. and
3., “sell,” “sold,” “sale,” or “selling” means any transfer of alcohol beverages with
consideration or any transfer without consideration if knowingly made for purposes
of evading the law relating to the sale of alcohol beverages or any shift, device,
scheme or transaction for obtaining alcohol beverages, including the solicitation of
orders for, or the sale for future delivery of, alcohol beverages.
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125.10 (6) Remote orders of alcohol beverages. (a) Notwithstanding sub. (1), and subject to par. (b), a municipality may not prescribe additional regulations for, or impose additional restrictions relating to, sales of alcohol beverages made pursuant to remote order, as defined in s. 125.272 (2) (a), by Class “A”, “Class A”, Class “B”, or “Class B” licensees. An ordinance that is inconsistent with this paragraph may not be enforced.

(b) Paragraph (a) does not limit a municipality’s authority to adopt ordinances of general application that apply to all sales by a retail licensee, including ordinances adopted under ss. 125.32 (3) (d) and 125.68 (4) (b) and (c) 3.

Section 3. 125.25 (3) of the statutes is renumbered 125.25 (3) (a) and amended to read:

125.25 (3) (a) Class “A” licenses shall particularly describe the premises for which issued and. The premises for a Class “A” license may include, if described in the license application as provided in s. 125.04 (3) (a) 3., parking spaces associated with any structure described as licensed premises in the license application, even if the parking spaces are not contiguous with the remainder of the Class “A” licensed premises.

(b) Class “A” licenses are not transferable, except under s. 125.04 (12).

(c) A Class “A” license is subject to revocation for violation of any of the terms or provisions thereof.

Section 4. 125.26 (2u) of the statutes is amended to read:

125.26 (2u) Notwithstanding ss. 125.04 (3) (a) 3. and (9) and 125.09 (1), in addition to the authorization specified in sub. (1), a Class “B” license issued under this section to a caterer also authorizes the caterer to provide fermented malt beverages, including their retail sale, at the National Railroad Museum in Green
Bay during special events held at this museum. Notwithstanding sub. (1), a caterer may provide fermented malt beverages under this subsection at any location at the National Railroad Museum even though the National Railroad Museum is not part of the caterer’s licensed premises, as described under sub. (3) (a) in the caterer’s Class “B” license, and even if the National Railroad Museum is not located within the municipality that issued the caterer’s Class “B” license. A caterer that provides fermented malt beverages under this subsection is subject to s. 125.32 (2) as if the fermented malt beverages were provided on the caterer’s Class “B” licensed premises. This subsection does not authorize the National Railroad Museum to sell fermented malt beverages at retail or to procure or stock fermented malt beverages for purposes of retail sale. This subsection does not apply if, at any time, the National Railroad Museum holds a Class “B” license.

SECTION 5. 125.26 (2w) of the statutes is amended to read:

125.26 (2w) Notwithstanding ss. 125.04 (3) (a) 3. and (9) and 125.09 (1), in addition to the authorization specified in sub. (1), a Class “B” license issued under this section to a caterer also authorizes the caterer to provide fermented malt beverages, including their retail sale, at the Heritage Hill state park during special events held at this park. Notwithstanding sub. (1), a caterer may provide fermented malt beverages under this subsection at any location at the Heritage Hill state park even though the Heritage Hill state park is not part of the caterer’s licensed premises, as described under sub. (3) (a) in the caterer’s Class “B” license, and even if the Heritage Hill state park is not located within the municipality that issued the caterer’s Class “B” license. A caterer that provides fermented malt beverages under this subsection is subject to s. 125.32 (2) as if the fermented malt beverages were provided on the caterer’s Class “B” licensed premises. This subsection does not
authorize the Heritage Hill state park to sell fermented malt beverages at retail or
to procure or stock fermented malt beverages for purposes of retail sale. This
subsection does not apply if, at any time, the Heritage Hill state park holds a Class
“B” license.

SECTION 6. 125.26 (2x) of the statutes is amended to read:

125.26 (2x) Notwithstanding ss. 125.04 (3) (a) 3. and (9) and 125.09 (1), in
addition to the authorization specified in sub. (1), a Class “B” license issued under
this section also authorizes the licensee to provide fermented malt beverages,
including their retail sale, at specific locations within the Ozaukee County
fairgrounds for consumption at these locations during special events held at the
fairgrounds, if the Ozaukee County board adopts a resolution approving the licensee
and if the licensee’s Class “B” licensed premises are located in Ozaukee County.
Notwithstanding sub. (1), a licensee may provide fermented malt beverages under
this subsection at the Ozaukee County fairgrounds even though the Ozaukee County
fairgrounds are not part of the licensee’s licensed premises, as described under sub.
(3) (a) in the licensee’s Class “B” license, and even if the Ozaukee County fairgrounds
are not located within the municipality that issued the Class “B” license. A licensee
that provides fermented malt beverages under this subsection is subject to s. 125.32
(2) as if the fermented malt beverages were provided on the licensee’s Class “B”
licensed premises. Notwithstanding s. 125.34 (4) and (5), a wholesaler may deliver
fermented malt beverages to the Ozaukee County fairgrounds to a licensee approved
by the Ozaukee County board under this subsection and such an approved licensee
may transport fermented malt beverages from its licensed premises to the Ozaukee
County fairgrounds for purposes of selling the fermented malt beverages at the
Ozaukee County fairgrounds. This subsection does not authorize Ozaukee County
or any person operating or managing the Ozaukee County fairgrounds to sell
fermented malt beverages at retail or to procure or stock fermented malt beverages
for purposes of retail sale.

SECTION 7. 125.26 (3) of the statutes is renumbered 125.26 (3) (a) and amended
to read:

125.26 (3) (a) Class “B” licenses shall particularly describe the premises for
which issued and. The premises for a Class “B” license may include, if described in
the license application as provided in s. 125.04 (3) (a) 3., parking spaces associated
with any structure described as licensed premises in the license application, even if
the parking spaces are not contiguous with the remainder of the Class “B” licensed
premises.

(b) Class “B” licenses are not transferable, except as provided in s. 125.04 (12).

(c) A Class “B” license is subject to revocation for violation of any of the terms
or provisions thereof.

SECTION 8. 125.272 of the statutes is renumbered 125.272 (1) and amended to
read:

125.272 (1) Except as provided in ss. 125.26 (2m), (2s), and (2x) and 125.27 (4)
and except with respect to caterers, and subject to sub. (2), a retail license issued
under s. 125.25 or 125.26, and a retail permit issued under s. 125.27, authorizes only
face-to-face sales to consumers at the premises described in the retail license or
permit.

SECTION 9. 125.272 (2) of the statutes is created to read:

125.272 (2) (a) In this subsection, “remote order” means an order for the sale
of alcohol beverages that is placed by telephone or Internet by a consumer who
asserts at the time of placing the order that he or she has attained the legal drinking age.

(b) If a Class “A” licensee receives a remote order for fermented malt beverages that the consumer will pick up at a parking space that is part of the Class “A” licensed premises, the sale of fermented malt beverages occurs at the time the consumer takes possession of the fermented malt beverages at the parking space that is part of the Class “A” licensed premises, regardless of when the consumer makes payment for the fermented malt beverages.

(c) If a Class “B” licensee receives a remote order for fermented malt beverages that the consumer will pick up at a parking space that is part of the Class “B” licensed premises, the sale of fermented malt beverages occurs at the time the consumer takes possession of the fermented malt beverages at the parking space that is part of the Class “B” licensed premises, regardless of when the consumer makes payment for the fermented malt beverages. Notwithstanding s. 125.26 (1), a Class “B” licensee’s sale of fermented malt beverages made by remote order under this paragraph is authorized only for consumption off the licensed premises.

SECTION 10. 125.51 (2) (c) of the statutes is renumbered 125.51 (2) (c) 1. and amended to read:

125.51 (2) (c) 1. “Class A” licenses shall particularly describe the premises for which issued and. The premises for a “Class A” license may include, if described in the license application as provided in s. 125.04 (3) (a) 3., parking spaces associated with any structure described as licensed premises in the license application, even if the parking spaces are not contiguous with the remainder of the “Class A” licensed premises.

2. “Class A” licenses are not transferable, except as provided in s. 125.04 (12).
SECTION 11. 125.51 (3) (bu) of the statutes is amended to read:

125.51 (3) (bu) Notwithstanding ss. 125.04 (3) (a) 3. and (9) and 125.09 (1), in addition to the authorization specified in sub. (1) (a) and in sub. (3) (a) or (b), a “Class B” license issued under sub. (1) to a caterer also authorizes the caterer to provide intoxicating liquor, including its retail sale, at the National Railroad Museum in Green Bay during special events held at this museum. Notwithstanding subs. (1) (a) and (3) (a) and (b), a caterer may provide intoxicating liquor under this paragraph at any location at the National Railroad Museum even though the National Railroad Museum is not part of the caterer’s licensed premises, as described under par. (d) 1. in the caterer’s “Class B” license, and even if the National Railroad Museum is not located within the municipality that issued the caterer’s “Class B” license. A caterer that provides intoxicating liquor under this paragraph is subject to s. 125.68 (2) as if the intoxicating liquor were provided on the caterer’s “Class B” licensed premises. This paragraph does not authorize the National Railroad Museum to sell intoxicating liquor at retail or to procure or stock intoxicating liquor for purposes of retail sale. This paragraph does not apply if, at any time, the National Railroad Museum holds a “Class B” license.

SECTION 12. 125.51 (3) (bw) of the statutes is amended to read:

125.51 (3) (bw) Notwithstanding ss. 125.04 (3) (a) 3. and (9) and 125.09 (1), in addition to the authorization specified in par. (a) or (b) and in sub. (1) (a), a “Class B” license issued under sub. (1) to a caterer also authorizes the caterer to provide intoxicating liquor, including its retail sale, at the Heritage Hill state park during special events held at this park. Notwithstanding pars. (a) and (b) and sub. (1) (a), a caterer may provide intoxicating liquor under this paragraph at any location at the Heritage Hill state park even though the Heritage Hill state park is not part of the
caterer’s licensed premises, as described under par. (d) 1, in the caterer’s “Class B” license, and even if the Heritage Hill state park is not located within the municipality that issued the caterer’s “Class B” license. A caterer that provides intoxicating liquor under this paragraph is subject to s. 125.68 (2) as if the intoxicating liquor were provided on the caterer’s “Class B” licensed premises. This paragraph does not authorize the Heritage Hill state park to sell intoxicating liquor at retail or to procure or stock intoxicating liquor for purposes of retail sale. This paragraph does not apply if, at any time, the Heritage Hill state park holds a “Class B” license.

SECTION 13. 125.51 (3) (bx) of the statutes is amended to read:

125.51 (3) (bx) Notwithstanding ss. 125.04 (3) (a) 3. and (9) and 125.09 (1), in addition to the authorization specified in par. (a) or (b) and in sub. (1) (a), a “Class B” license issued under sub. (1) also authorizes the licensee to provide intoxicating liquor, including its retail sale, at specific locations within the Ozaukee County fairgrounds for consumption at these locations during special events held at the fairgrounds, if the Ozaukee County board adopts a resolution approving the licensee and if the licensee’s “Class B” licensed premises are located in Ozaukee County. Notwithstanding pars. (a) and (b) and sub. (1) (a), a licensee may provide intoxicating liquor under this paragraph at the Ozaukee County fairgrounds even though the Ozaukee County fairgrounds are not part of the licensee’s licensed premises, as described under par. (d) 1, in the licensee’s “Class B” license, and even if the Ozaukee County fairgrounds are not located within the municipality that issued the licensee’s “Class B” license. A licensee that provides intoxicating liquor under this paragraph is subject to s. 125.68 (2) as if the intoxicating liquor were provided on the licensee’s “Class B” licensed premises. This paragraph does not authorize Ozaukee County or any person operating or managing the Ozaukee County fairgrounds to sell
intoxicating liquor at retail or to procure or stock intoxicating liquor for purposes of
retail sale.

SECTION 14. 125.51 (3) (d) of the statutes is renumbered 125.51 (3) (d) 1. and
amended to read:

125.51 (3) (d) 1. “Class B” licenses shall particularly describe the premises for
which issued and. The premises for a “Class B” license may include, if described in
the license application as provided in s. 125.04 (3) (a) 3., parking spaces associated
with any structure described as licensed premises in the license application, even if
the parking spaces are not contiguous with the remainder of the “Class B” licensed
premises.

2. “Class B” licenses are not transferable, except as provided in s. 125.04 (12).

SECTION 15. 125.51 (6) of the statutes is renumbered 125.51 (6) (a) and
amended to read:

125.51 (6) (a) Except as provided in subs. (3) (bm), (bs), and (bx) and (5) (e) and
except with respect to caterers, and subject to par. (b), a retail license or permit issued
under this section authorizes only face-to-face sales to consumers at the premises
described in the retail license or permit.

SECTION 16. 125.51 (6) (b) of the statutes is created to read:

125.51 (6) (b) 1. In this paragraph, “remote order” has the meaning given in s.
125.272 (2) (a).

2. If a “Class A” licensee receives a remote order for intoxicating liquor that the
consumer will pick up at a parking space that is part of the “Class A” licensed
premises, the sale of intoxicating liquor occurs at the time the consumer takes
possession of the intoxicating liquor at the parking space that is part of the “Class
A” licensed premises, regardless of when the consumer makes payment for the intoxicating liquor.

3. If a “Class B” licensee receives a remote order for intoxicating liquor that the consumer will pick up at a parking space that is part of the “Class B” licensed premises, the sale of intoxicating liquor occurs at the time the consumer takes possession of the intoxicating liquor at the parking space that is part of the “Class B” licensed premises, regardless of when the consumer makes payment for the intoxicating liquor. Notwithstanding sub. (3) (a) to (b), a “Class B” licensee’s sale of intoxicating liquor made by remote order under this subdivision is authorized only for consumption off the licensed premises. This subdivision does not affect any restriction under sub. (3) (a) to (b) on a “Class B” licensee’s authorization to sell intoxicating liquor for consumption off the licensed premises.

(END)