



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0717/1
ARG:ahe

2019 BILL

1 **AN ACT to amend** 125.12 (5), 125.58 (4), 125.68 (10), 139.035 (1), 139.035 (3) and
2 139.11 (4) (b) 2.; and **to create** 125.535 (7), 125.537 and 139.035 (4) of the
3 statutes; **relating to:** shipment of wine to individuals in this state.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the *state* 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:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on Alcohol Beverages Enforcement.

Background

Direct Wine Shippers' Permits

Current law authorizes a person holding a direct wine shippers' permit, subject to various restrictions, to ship wine directly to an individual in this state who is of the legal drinking age, who acknowledges receipt of the wine shipped, and who is not intoxicated at the time of delivery. The annual fee for the permit may not exceed \$100. A direct wine shippers' permit may be issued to any person who manufactures and bottles wine on premises covered by any of the following:

BILL

- A manufacturer's or rectifier's permit issued by the Department of Revenue (DOR).
- A winery permit issued by DOR.
- A winery license, permit, or other authorization issued to the winery by any state from which the winery will ship wine into this state.
- A federal basic permit for a winery.

Containers of wine shipped to an individual in this state by a direct wine shippers' permittee must be clearly labeled to indicate that the package may not be delivered to an underage person or to an intoxicated person. No individual may resell, or use for a commercial purpose, wine that was shipped by a direct wine shippers' permittee. Also, no individual in this state may receive more than 108 liters of wine annually that was shipped by a direct wine shipper.

Occupational Tax and Tax Reports

Wine shipped directly to an individual in this state by a direct wine shipper must be sold with the occupational tax imposed upon it. A direct wine shippers' permittee must pay this tax quarterly to DOR and file an addendum at the same time with DOR that provides, at a minimum, the identity, quantity, and price of all wine shipped to individuals in this state during the previous quarter, along with the name, address, and birthdate of each person who purchased the wine as well as the name of the person of legal drinking age who acknowledged delivery of the wine.

DOR must keep all of the information reported by direct wine shippers confidential in the same manner as it keeps tax returns confidential. However, DOR may use aggregated or summary information for reports that it prepares. With the information that it receives, DOR must publish at least once each month reports that include: (1) statistics on the total number of liters of the types and brands of intoxicating liquor sold in this state; (2) a current and regularly updated list, made available on paper and on DOR's Internet website, of permit holders that includes detailed information on the name, address, contact person, and date of every direct wine shippers' permit issued by DOR; and (3) a report summarizing the identity, quantity, and price of all products sold under each direct wine shippers' permit.

The Bill

Third-Party Wine Fulfillment Provider Permit Eligibility and Authorized Activities

The bill creates a 3rd-party wine fulfillment provider permit that may be issued by DOR authorizing the permittee who provides wine fulfillment services to ship wine directly to an individual in this state who is of the legal drinking age, who acknowledges receipt of the wine shipped, and who is not intoxicated at the time of delivery. The fee for a 3rd-party wine fulfillment provider permit may be established by DOR by rule, but may not exceed the fee established for direct wine shippers (\$100). A 3rd-party wine fulfillment provider permit may be issued if all of the following apply:

- The person provides or will provide wine fulfillment services, including warehousing, transporting, packaging, order processing, or shipment of wine, on behalf of a direct wine shippers' permittee.
- The person is not eligible to be issued a direct wine shippers' permit.
- The person does not hold any other alcohol beverages license or permit issued in this state.
- The person is not a common carrier.
- The person holds a valid business tax registration certificate issued in this state.
- The person satisfies one of the following criteria: (1) is a resident of this state; (2) is a corporation or limited liability corporation (LLC) that has appointed an agent under ch. 125, stats. (the Alcohol Beverages Chapter), that is a resident of this state; (3) maintains a registered agent in this state under current law applicable to corporations

BILL

and LLCs in this state; or (4) has an agent appointed to accept service of process in this state and provided notice to DOR of the appointment.

To be eligible for a 3rd-party wine fulfillment provider permit, a natural person is not required to be a resident of this state or complete a responsible beverage server training course. Also, an agent appointed under the Alcohol Beverages Chapter by a corporation or LLC is not required to be a resident of this state in order to be eligible for a 3rd-party wine fulfillment provider permit.

Limitation on 3rd-Party Wine Fulfillment Provider Shipments

Similar to the requirements placed upon shipments made by direct wine shippers' permittee's, containers of wine shipped to an individual in this state by a 3rd-party wine fulfillment provider permittee must be clearly labeled to indicate that the package may not be delivered to an underage person or to an intoxicated person. Also, no individual may resell, or use for a commercial purpose, wine that was shipped by a 3rd-party wine fulfillment provider permittee.

3rd-Party Wine Fulfillment Provider Service of Process and Consent to Jurisdiction

Third-party wine fulfillment provider permittees located outside of the state must consent to jurisdiction in this state for any proceeding in this state to enforce the Alcohol Beverages Chapter or ch. 139, stats., related to the occupational tax of alcohol beverages.

Third-party wine fulfillment provider permittees must also accept service of process in this state for any proceeding in this state to enforce the Alcohol Beverages Chapter or ch. 139, stats. In order to accept service in this state, a permittee must do all of the following:

- Appoint and continually engage the services of an agent in this state to act as agent for the service of process on whom all processes, and any action or proceeding against it concerning or arising out of the enforcement of any provision of chs. 125 and 139, stats., may be served in any manner authorized by law and constitutes legal and valid service of process on the permittee.
- Provide to DOR, in the form and manner prescribed by DOR, the name, address, phone number, and proof of the appointment and availability of the agent.
- Provide notice to DOR 30 calendar days before termination of the authority of an agent appointed to accept service of process described above, and proof to DOR's satisfaction of the appointment of a new agent no less than 5 calendar days before the termination of an existing agent appointment.
- In the event an agent terminates an agency appointment, notify DOR of that termination within 5 calendar days and include proof to DOR's satisfaction of the appointment of a new agent.

If a 3rd-party wine fulfillment provider permittee located out-of-state fails to maintain an agent in this state after the permit is issued, the permittee is considered to have appointed the Department of Financial Institutions (DFI) as the permittee's agent and the permittee may be proceeded against in courts of this state by service of process upon DFI.

A 3rd-party wine fulfillment provider must also comply with requirements regarding the payment of occupational taxes, filing tax returns, providing records, submitting to DOR inspections and examinations, and paying expenses reasonably attributable to these inspections and examinations made by DOR at any premises of the permittee located outside of the state.

Direct Wine Shippers' Use of a 3rd-Party Wine Fulfillment Provider

A direct wine shippers' permittee may arrange with a 3rd-party to ship wine on its behalf if all of the following apply: (1) the 3rd-party holds a 3rd-party wine fulfillment provider permit issued by DOR; and (2) the direct wine shipper permittee provides notice to DOR, in the form and manner prescribed by DOR, of each 3rd-party authorized to act as the direct wine shippers' agent for purposes of shipping wine into this state. Using a

BILL

3rd-party agent for shipping does not relieve the direct wine shipper permittee from any requirement currently imposed upon direct wine shippers.

Occupational Tax and Tax Reports

Similar to wine shipped by a direct wine shipper, wine shipped directly to an individual in this state by a 3rd-party wine fulfillment provider must be sold with the occupational tax imposed upon it. This tax must be paid quarterly to DOR by the direct wine shippers' permittee. The direct wine shipper must also file an addendum at the same time with DOR that provides, at a minimum, the identity, quantity, and price of all wine shipped to individuals in this state during the previous quarter, along with the name, address, and birthdate of each person who purchased the wine as well as the name of the person of legal drinking age who acknowledged delivery of the wine.

In addition to this quarterly report, the 3rd-party wine fulfillment provider must submit a monthly report to DOR in the form and manner prescribed by DOR. The report must be submitted no later than the 15th day of the month and must include all of the following information from the preceding month:

- The name and address of the direct wine shippers' permittee on behalf of which the wine was shipped.
- The name and address of the individual to whom the wine was shipped and, if different, the name of the person of legal drinking age who acknowledged delivery of the wine.
- The date of the shipment.
- The identity and quantity of wine shipped.

DOR must also keep the information reported by 3rd-party wine fulfillment providers confidential in the same manner as it keeps tax returns confidential. DOR may use aggregated or summary information for reports that it prepares. In a current and regularly updated list made available on its Internet website, DOR must include detailed information about the name, address, contact person, and date of issuance of 3rd-party wine fulfillment providers, similar to the reports prepared for every manufacturer's and rectifier's permit, winery permit, and direct wine shippers' permit issued by DOR.

1 **SECTION 1.** 125.12 (5) of the statutes is amended to read:

2 125.12 (5) REVOCATIONS OR SUSPENSIONS OF, OR REFUSALS TO RENEW, PERMITS BY
3 THE DEPARTMENT. The department may, after notice and an opportunity for hearing,
4 revoke, suspend or refuse to renew any retail permit issued by it for the causes
5 provided in sub. (4) and any other permit issued by it under this chapter for any
6 violation of this chapter or ch. 139, except that, for a violation of sub. (4) (ag) 6. with
7 respect to a license issued under s. 125.51 (4) (v) or a violation of s. 125.535, 125.537,
8 or 139.035, the department shall revoke the license or permit. A revocation,
9 suspension or refusal to renew is a contested case under ch. 227.

10 **SECTION 2.** 125.535 (7) of the statutes is created to read:

BILL

1 125.535 (7) SHIPMENTS BY 3RD-PARTY WINE FULFILLMENT PROVIDERS. (a) A
2 permittee under this section may arrange with a 3rd-party to ship wine on the
3 permittee's behalf if all of the following apply:

4 1. The 3rd-party holds a permit under s. 125.537.

5 2. The permittee under this section has provided notice to the department, in
6 the form and manner prescribed by the department, of each 3rd-party authorized
7 to act as the permittee's agent for purposes of shipping wine into this state.

8 (b) The use by a permittee under this section of a 3rd-party agent for shipping
9 does not relieve the permittee from any requirement imposed under this section.

10 **SECTION 3.** 125.537 of the statutes is created to read:

11 **125.537 Third-party wine fulfillment provider permits. (1) AUTHORIZED**
12 **ACTIVITIES.** (a) Subject to pars. (b) and (c) and sub. (2), the department shall issue
13 3rd-party wine fulfillment provider permits authorizing the permittee to ship wine
14 directly to an individual in this state who is of the legal drinking age, who
15 acknowledges receipt of the wine shipped, and who is not intoxicated at the time of
16 delivery.

17 (b) A permit under this section authorizes the permittee to ship wine only on
18 behalf of a permittee under s. 125.535 that has identified the permittee under this
19 section as its shipping agent under s. 125.535 (7).

20 (c) A permit under this section authorizes the permittee to provide wine
21 fulfillment services only and does not authorize the permittee to sell wine.

22 **(2) PERSONS ELIGIBLE.** (a) A 3rd-party wine fulfillment provider permit may
23 be issued under this section to any person to which all of the following apply:

BILL**SECTION 3**

1 1. The person provides or will provide wine fulfillment services, including
2 warehousing, transporting, packaging, order processing, or shipment of wine, on
3 behalf of a permittee under s. 125.535.

4 2. The person does not hold any license or permit under this chapter other than
5 a permit under this section.

6 3. The person is not eligible to be issued a permit under s. 125.535.

7 4. The person is not a common carrier.

8 5. The person holds a valid business tax registration certificate issued under
9 s. 73.03 (50).

10 6. The person is a resident of this state, has appointed an agent under s. 125.04
11 (6) that is a resident of this state, maintains a registered agent in this state under
12 s. 180.0501, 180.1507, 183.0105, or 183.1007, or has appointed an agent in this state
13 and provided notice of the appointment under sub. (3) (a).

14 (b) Notwithstanding s. 125.04 (5) (a), natural persons obtaining 3rd-party wine
15 fulfillment provider permits are not required to be residents of this state.
16 Notwithstanding s. 125.04 (5) (a) 5., a person is not required to complete a
17 responsible beverage server training course to be eligible for a permit under this
18 section. Notwithstanding s. 125.04 (5) (a) 2. and (c), an agent appointed under s.
19 125.04 (6) by a corporation or limited liability company obtaining a 3rd-party wine
20 fulfillment provider permit is not required to be a resident of this state.

21 **(3) AGENT FOR SERVICE OF PROCESS; APPLICATION.** (a) 1. Unless the permittee or
22 agent of the permittee appointed under s. 125.04 (6) is a resident of this state, or
23 unless the permittee maintains a registered agent in this state under s. 180.0501,
24 180.1507, 183.0105, or 183.1007, a permittee under this section shall appoint and
25 continually engage the services of an agent in this state to act as agent for the service

BILL

1 of process on whom all processes, and any action or proceeding against it concerning
2 or arising out of the enforcement of any provision of this chapter or ch. 139, may be
3 served in any manner authorized by law. That service shall constitute legal and valid
4 service of process on the permittee. The permittee shall provide to the department,
5 in the form and manner prescribed by the department, the name, address, phone
6 number, and proof of the appointment and availability of the agent.

7 2. The permittee shall provide notice to the department 30 calendar days before
8 termination of the authority of an agent under subd. 1. and shall provide proof to the
9 satisfaction of the department of the appointment of a new agent no less than 5
10 calendar days before the termination of an existing agent appointment. In the event
11 an agent terminates an agency appointment, the permittee shall notify the
12 department of that termination within 5 calendar days and shall include proof to the
13 satisfaction of the department of the appointment of a new agent.

14 3. If a permittee fails to maintain an agent in this state after a permit is issued
15 under this section, the permittee is considered to have appointed the department of
16 financial institutions as the permittee's agent and the permittee may be proceeded
17 against in courts of this state by service of process upon the department of financial
18 institutions.

19 (b) The application for a permit under this section shall include a provision that
20 the permittee agrees to all of the following:

21 1. File reports, provide records, and allow inspections and examinations as
22 provided in s. 139.035 (4).

23 2. Pay the expenses reasonably attributable to inspections and examinations
24 made by the department at any premises of the permittee located outside this state.

BILL**SECTION 3**

1 3. Accept service of process and consent to jurisdiction in any proceeding in this
2 state to enforce the provisions of this chapter or ch. 139.

3 **(4) SHIPMENT REQUIREMENTS.** The requirements and restrictions under s.
4 125.535 (4), (5), and (6) apply to wine shipped by a permittee under this section to
5 the same extent as if the wine had been shipped directly by a permittee under s.
6 125.535.

7 **(5) ANNUAL PERMIT FEE.** The department may, by rule, establish an annual fee
8 for each permit issued under this section, but this fee may not exceed the fee
9 established by the department for a permit under s. 125.535.

10 **SECTION 4.** 125.58 (4) of the statutes is amended to read:

11 125.58 (4) A winery located outside of this state may directly ship wine into this
12 state as provided under s. 125.535, and may indirectly ship wine into this state as
13 provided under s. 125.537, and neither a permittee under s. 125.535 nor a permittee
14 under s. 125.537 is not required to hold an out-of-state shipper's permit under this
15 section.

16 **SECTION 5.** 125.68 (10) of the statutes is amended to read:

17 125.68 **(10) SHIPMENTS INTO STATE.** (a) Except as provided in s. ss. 125.535 and
18 125.537, no intoxicating liquor may be shipped into this state unless consigned to a
19 person holding a wholesaler's permit under s. 125.54 or, if shipped from a
20 manufacturer or rectifier in another state holding a permit under s. 125.58,
21 consigned to a person holding a manufacturer's or rectifier's permit under s. 125.52
22 or a winery permit under s. 125.53.

23 (b) Except as provided in s. ss. 125.535 and 125.537, no common carrier or other
24 person may transport into and deliver within this state any intoxicating liquor
25 unless it is consigned to a person holding a wholesaler's permit under s. 125.54 or,

BILL

1 if shipped from a manufacturer or rectifier in another state holding a permit under
2 s. 125.58, consigned to a person holding a manufacturer's or rectifier's permit under
3 s. 125.52 or a winery permit under s. 125.53. Any common carrier violating this
4 paragraph shall forfeit \$100 for each violation.

5 **SECTION 6.** 139.035 (1) of the statutes is amended to read:

6 139.035 (1) All wine shipped directly to an individual located in Wisconsin by
7 a person holding a direct wine shipper's permit under s. 125.535, including wine
8 shipped on behalf of such a permittee as authorized under s. 125.537, shall be sold
9 with the occupational tax imposed under s. 139.03 included in the selling price. As
10 directed by the department, the taxes imposed under s. 139.03 shall be paid by the
11 permittee under s. 125.535 to, and a quarterly return filed with, the department once
12 every quarter on or before the 15th day of the next month following the close of the
13 calendar quarter. In addition to filing a quarterly liquor tax return, each person
14 holding a direct wine shipper's permit under s. 125.535 shall be required to file an
15 addendum, on forms furnished by the department, that provides, at minimum, the
16 identity, quantity, and price of all wine shipped to individuals in this state during the
17 previous quarter, along with the name, address, and birthdate of each person who
18 purchased the wine as well as the name of the person of legal drinking age who
19 acknowledged delivery of the wine. Working with permittees under s. 125.535, the
20 department shall develop forms, in both paper and electronic format, for use by such
21 permittees in obtaining this information and complying with any other requirement
22 under this state's law in connection with the direct shipment of wine. The
23 department shall keep confidential, in the same manner required for tax returns
24 under s. 71.78 (1) and (5) to (8), reports submitted under this subsection, but the
25 department may use aggregated or summary information from such reports for

BILL**SECTION 6**

1 purposes of s. 139.11 (4) (b). The use by a permittee under s. 125.535 of a 3rd-party
2 agent authorized under s. 125.537 for shipping does not relieve the permittee under
3 s. 125.535 from any requirement imposed under this subsection.

4 **SECTION 7.** 139.035 (3) of the statutes is amended to read:

5 139.035 (3) No wine may be shipped directly to an individual in this state by
6 a person holding a direct wine shipper's permit under s. 125.535 or a 3rd-party wine
7 fulfillment provider permit under s. 125.537 unless the tax imposed under s. 77.52
8 or 77.53 is paid on the sale of such wine.

9 **SECTION 8.** 139.035 (4) of the statutes is created to read:

10 139.035 (4) (a) 1. No later than the 15th day of each month, each permittee
11 under s. 125.537 shall submit a verified report to the department, in the form and
12 manner prescribed by the department, that includes all of the following information
13 for each shipment of wine by the permittee during the preceding month:

14 a. The name and address of the permittee under s. 125.535 on behalf of which
15 the wine was shipped.

16 b. The name and address of the individual to whom the wine was shipped and,
17 if different, the name of the person of legal drinking age who acknowledged delivery
18 of the wine.

19 c. The date of the shipment.

20 d. The identity and quantity of wine shipped.

21 2. The department shall keep confidential, in the same manner required for tax
22 returns under s. 71.78 (1) and (5) to (8), reports submitted under subd. 1., but the
23 department may use aggregated or summary information from such reports for
24 purposes of s. 139.11 (4) (b).

BILL

1 3. Reports required under subd. 1. are in addition to any addendum required
2 under sub. (1). Upon request, a permittee under s. 125.537 shall provide to a
3 permittee under s. 125.535 all information necessary for the permittee under s.
4 125.535 to timely file the addendum required under sub. (1).

5 (b) Any failure of a person holding a permit under s. 125.537 to file the report
6 required under par. (a) 1. within 30 days of its due date constitutes grounds for
7 revocation of the permit under s. 125.12 (5). The provisions on timely filing under
8 s. 71.80 (18) apply to the report required under this subsection.

9 (c) Upon the department's request, a permittee under s. 125.537 shall provide
10 to the department at any location specified by the department complete and accurate
11 copies of records required to be maintained under s. 139.11 (1). In addition, duly
12 authorized employees of the department may, at all reasonable hours, enter the
13 premises of the permittee to inspect and examine the premises and the records of the
14 permittee for the purpose of determining whether the provisions of this chapter and
15 ch. 125 are being complied with. Any refusal to provide records or allow such
16 inspection and examination is sufficient grounds under s. 125.12 (5) for revocation
17 of the permit and is punishable under s. 139.25 (10).

18 **SECTION 9.** 139.11 (4) (b) 2. of the statutes is amended to read:

19 139.11 (4) (b) 2. A current and regularly updated list, made available on paper
20 and on the department's Internet website, of permit holders that minimally includes
21 detailed information on the name, address, contact person, and date of permit
22 issuance for every manufacturer's and rectifier's permit issued under s. 125.52,
23 winery permit issued under s. 125.53, direct wine shipper's permit issued under s.
24 125.535, 3rd-party wine fulfillment provider permit issued under s. 125.537,

BILL

SECTION 9

1 wholesaler's permit issued under s. 125.54, and out-of-state shipper's permit issued
2 under s. 125.58.

3 (END)