



2019 ASSEMBLY BILL 363

August 12, 2019 - Introduced by Representatives TAUCHEN, DUCHOW, JAGLER and KURTZ. Referred to Committee on State Affairs.

1 **AN ACT** *to renumber and amend* 125.272 and 125.51 (6); *to amend* 125.02 (20)
2 and 139.25 (9); and *to create* 125.07 (1) (b) 7., 125.07 (2) (c), 125.272 (2), 125.51
3 (6) (b) and 139.11 (1m) of the statutes; **relating to:** alcohol beverages delivery
4 and the face-to-face requirement for retail sales of alcohol beverages.

Analysis by the Legislative Reference Bureau

This bill allows certain alcohol beverages retailers to make online or telephone sales of alcohol beverages and deliver the alcohol beverages to the customer or to have the alcohol beverages delivered to the customer by an independent third-party delivery service.

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. A Class "B" license authorizes the retail sale of fermented malt beverages (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, which includes wine and distilled spirits, 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. Class "A" and "Class A" licenses authorize the retail sale of, respectively, beer and intoxicating liquor in original packages for consumption off the licensed premises. Each of these retail licenses is issued by a municipality.

Also under current law, a retail license authorizes only face-to-face sales of alcohol beverages to consumers at the licensed premises. After the sale is made on

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the licensed premises, if the alcohol beverages are sold for off-premises consumption, the retailer may deliver the alcohol beverages to a location designated by the consumer. The sale to the consumer on the licensed premises is governed by certain requirements, including that the purchaser be of legal drinking age, that the sale be made only during certain hours, and that the licensed premises be supervised by a person holding an operator's (bartender's) license.

This bill allows an alcohol beverages retailer to process and fill an online or telephone order for the sale and delivery of both food and alcohol beverages or alcohol beverages alone (remote order) if all of the following apply: 1) the retailer holds a Class "A" or "Class A" license or holds a Class "B" or "Class B" license issued for a grocery store or restaurant; 2) the products ordered are delivered to the customer by the retailer or by an independent delivery service that derives less than half its revenues from delivering alcohol beverages; 3) full payment for the order is made at the time the order is placed, although a delivery tip is permitted; 4) at the time the order is placed, the customer asserts that the customer is at least 21 years of age and not intoxicated; and 5) at the time of delivery and prior to transferring possession of the alcohol beverages to the customer, the delivery service examines the customer's identification, verifies visually and by using electronic scanning technology that the customer is at least 21 years of age, and creates a record of this age verification. Age verification records must be retained by the retailer for one year. An individual may not deliver alcohol beverages to a customer unless the individual is at least 21 years of age and has successfully completed a responsible beverage server training course or comparable course. Alcohol beverages may not be delivered to a person who is less than 21 years of age or visibly intoxicated. If alcohol beverages are delivered by a delivery service to an underage person, the delivery service is liable for the violation, and the retailer is not liable if the customer asserted when placing the order that he or she is at least age 21.

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

1 **SECTION 1.** 125.02 (20) of the statutes is amended to read:
2 125.02 (20) "~~Sell~~", Subject to ss. 125.272 (2) (g) 1. and 125.51 (6) (b) 7. a., "sell,
3 "~~sold~~," "sale," or "selling" means any transfer of alcohol beverages with
4 consideration or any transfer without consideration if knowingly made for purposes
5 of evading the law relating to the sale of alcohol beverages or any shift, device,
6 scheme or transaction for obtaining alcohol beverages, including the solicitation of
7 orders for, or the sale for future delivery of, alcohol beverages.

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1 **SECTION 2.** 125.07 (1) (b) 7. of the statutes is created to read:

2 125.07 (1) (b) 7. If a licensee processes and fills a remote order under s. 125.272
3 (2) or 125.51 (6) (b) in reliance on the customer's assertion that the customer has
4 attained the legal drinking age and delivery is made by a 3rd-party delivery service,
5 the licensee is not subject to any penalty under this paragraph and the only penalty
6 applicable if the alcohol beverages are delivered to an underage person is that
7 specified for the 3rd-party delivery service under ss. 125.272 (2) (h) 1. and 125.51 (6)
8 (b) 8. a.

9 **SECTION 3.** 125.07 (2) (c) of the statutes is created to read:

10 125.07 (2) (c) *Exception for certain delivered alcohol beverages.* If a licensee
11 processes and fills a remote order under s. 125.272 (2) or 125.51 (6) (b) in reliance on
12 the customer's assertion that the customer is not intoxicated, the licensee is not
13 subject to any penalty under par. (b) unless the licensee delivers the alcohol
14 beverages and violates s. 125.272 (2) (d) or 125.51 (6) (b) 4. at the time of delivery.

15 **SECTION 4.** 125.272 of the statutes is renumbered 125.272 (1) and amended to
16 read:

17 125.272 (1) Except as provided in sub. (2) and ss. 125.26 (2m), (2s), and (2x) and
18 125.27 (4) and except with respect to caterers, a retail license issued under s. 125.25
19 or 125.26, and a retail permit issued under s. 125.27, authorizes only face-to-face
20 sales to consumers at the premises described in the retail license or permit.

21 **SECTION 5.** 125.272 (2) of the statutes is created to read:

22 125.272 (2) (a) In this subsection:

23 1. "Record" has the meaning given in s. 137.11 (12).

24 2. "Remote order" means an order for the sale and delivery of both food and
25 alcohol beverages or alcohol beverages alone that is received by a retail licensee by

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1 means of the Internet, telephone, or any other method of communication under
2 which the customer is not physically located on the licensed premises.

3 (b) A retail licensee may process and fill a remote order if all of the following
4 apply:

5 1. The licensee holds a retail license issued under s. 125.25 or issued under s.
6 125.26 for a restaurant or grocery store.

7 2. The products ordered are delivered to the customer by the licensee or by a
8 3rd-party delivery service that is independent of the licensee and that derives less
9 than 50 percent of its annual revenues associated with food and beverage delivery
10 from the delivery of alcohol beverages.

11 3. Full payment for the order is made at the time the order is placed and no
12 payment, other than a tip, is made at the time of delivery.

13 4. At the time the order is placed, the customer asserts that the customer has
14 attained the legal drinking age and is not intoxicated.

15 5. At the time the products ordered are delivered, the individual delivering the
16 order complies with pars. (c), (d), and (e).

17 (c) An individual may not deliver alcohol beverages to a customer under this
18 subsection unless the individual making the delivery does all of the following at the
19 time of delivery:

20 1. Prior to transferring possession of the alcohol beverages to the customer,
21 confirms the customer receiving delivery is the person who placed the order.

22 2. Prior to transferring possession of the alcohol beverages to the customer,
23 performs an in-person examination of the customer's identification document
24 containing proof of age and verifies by visual examination and by using electronic

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1 scanning technology that the customer receiving delivery of the order has attained
2 the legal drinking age.

3 3. Creates a record of the age verification under subd. 2.

4 (d) An individual may not deliver alcohol beverages under this subsection to
5 a person who is visibly intoxicated.

6 (e) An individual may not deliver alcohol beverages to a customer under this
7 subsection unless all of the following apply:

8 1. The individual has attained the legal drinking age.

9 2. The individual has successfully completed a responsible beverage server
10 training course or comparable training course as described in s. 125.04 (5) (a) 5.

11 (f) A 3rd-party delivery service shall provide to the retail licensee on whose
12 behalf the delivery is made an original or duplicate of each age verification record
13 required under par. (c) 3.

14 (g) 1. If a licensee processes and fills a remote order under this subsection, the
15 sale of fermented malt beverages occurs at the time the consumer pays for the
16 fermented malt beverages, regardless of when the consumer takes possession of the
17 fermented malt beverages.

18 2. Notwithstanding s. 125.33 (9), if a 3rd-party delivery service is unable to
19 complete delivery of fermented malt beverages to a customer under this subsection,
20 the 3rd-party delivery service may return the fermented malt beverages to the
21 licensee from which the fermented malt beverages delivery originated and the
22 licensee may, in its discretion, cancel the sale of the fermented malt beverages and
23 credit the customer's account. Notwithstanding s. 125.33 (9), if a licensee is unable
24 to complete delivery of fermented malt beverages to a customer under this

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1 subsection, the licensee may, in its discretion, cancel the sale of the fermented malt
2 beverages and credit the customer's account.

3 (h) 1. Delivery of alcohol beverages under this subsection to an underage person
4 shall be considered a violation of s. 125.07 (1) (a) 1. if delivery is made by a 3rd-party
5 delivery service or s. 125.07 (1) (a) 2. if delivery is made by a licensee, as well as a
6 violation for purposes of s. 125.07 (1) (b) 1., subject to the same defenses that apply
7 or would apply to a licensee under s. 125.07 (6).

8 2. Delivery of alcohol beverages under this subsection to a visibly intoxicated
9 person shall be considered a violation of s. 125.07 (2) (a) 1. if delivery is made by a
10 3rd-party delivery service or s. 125.07 (2) (a) 2. if delivery is made by a licensee.

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

13 125.51 (6) (a) Except as provided in par. (b) and subs. (3) (bm), (bs), and (bx)
14 and (5) (e) and except with respect to caterers, a retail license or permit issued under
15 this section authorizes only face-to-face sales to consumers at the premises
16 described in the retail license or permit.

17 **SECTION 7.** 125.51 (6) (b) of the statutes is created to read:

18 125.51 (6) (b) 1. In this paragraph:

19 a. "Record" has the meaning given in s. 137.11 (12).

20 b. "Remote order" has the meaning given in s. 125.272 (2) (a) 2.

21 2. A retail licensee may process and fill a remote order if all of the following
22 apply:

23 a. The licensee holds a retail license issued under sub. (2) or issued under sub.
24 (3) for a restaurant or grocery store.

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1 b. The products ordered are delivered to the customer by the licensee or by a
2 3rd-party delivery service that is independent of the licensee and that derives less
3 than 50 percent of its annual revenues associated with food and beverage delivery
4 from the delivery of alcohol beverages.

5 c. Full payment for the order is made at the time the order is placed and no
6 payment, other than a tip, is made at the time of delivery.

7 d. At the time the order is placed, the customer asserts that the customer has
8 attained the legal drinking age and is not intoxicated.

9 e. At the time the products ordered are delivered, the individual delivering the
10 order complies with subds. 3., 4., and 5.

11 3. An individual may not deliver alcohol beverages to a customer under this
12 paragraph unless the individual making the delivery does all of the following at the
13 time of delivery:

14 a. Prior to transferring possession of the alcohol beverages to the customer,
15 confirms the customer receiving delivery is the person who placed the order.

16 b. Prior to transferring possession of the alcohol beverages to the customer,
17 performs an in-person examination of the customer's identification document
18 containing proof of age and verifies by visual examination and by using electronic
19 scanning technology that the customer receiving delivery of the order has attained
20 the legal drinking age.

21 c. Creates a record of the age verification under subd. 3. b.

22 4. An individual may not deliver alcohol beverages under this paragraph to a
23 person who is visibly intoxicated.

24 5. An individual may not deliver alcohol beverages to a customer under this
25 paragraph unless all of the following apply:

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1 a. The individual has attained the legal drinking age.

2 b. The individual has successfully completed a responsible beverage server
3 training course or comparable training course as described in s. 125.04 (5) (a) 5.

4 6. A 3rd-party delivery service shall provide to the retail licensee on whose
5 behalf the delivery is made an original or duplicate of each age verification record
6 required under subd. 3. c.

7 7. a. If a licensee processes and fills a remote order under this paragraph, the
8 sale of intoxicating liquor occurs at the time the consumer pays for the intoxicating
9 liquor, regardless of when the consumer takes possession of the intoxicating liquor.

10 b. Notwithstanding s. 125.69 (6), if a 3rd-party delivery service is unable to
11 complete delivery of intoxicating liquor to a customer under this paragraph, the
12 3rd-party delivery service may return the intoxicating liquor to the licensee from
13 which the intoxicating liquor delivery originated and the licensee may, in its
14 discretion, cancel the sale of the intoxicating liquor and credit the customer's
15 account. Notwithstanding s. 125.69 (6), if a licensee is unable to complete delivery
16 of intoxicating liquor to a customer under this paragraph, the licensee may, in its
17 discretion, cancel the sale of the intoxicating liquor and credit the customer's
18 account.

19 8. a. Delivery of alcohol beverages under this paragraph to an underage person
20 shall be considered a violation of s. 125.07 (1) (a) 1. if delivery is made by a 3rd-party
21 delivery service or s. 125.07 (1) (a) 2. if delivery is made by a licensee, as well as a
22 violation for purposes of s. 125.07 (1) (b) 1., subject to the same defenses that apply
23 or would apply to a licensee under s. 125.07 (6).

