



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2005 Wisconsin Act 103
[2005 Assembly Bill 787]

Sale and Distribution of Beer

2005 Wisconsin Act 103 relates to the sale and distribution of beer under the three-tier system under which alcohol beverages are generally distributed as follows: the manufacturer sells to a wholesaler; the wholesaler sells to a retailer or another wholesaler; and the retailer sells to the consumer.

Legislative Intent

The Act contains a legislative intent statement that ch. 125, Stats., relating to alcohol beverages, must be construed as an enactment of the Legislature's support for the three-tier system for alcohol beverages production, distribution, and sale that, through uniform statewide regulation, provides this state regulatory authority over the production, storage, distribution, transportation, sale, and consumption of alcohol beverages by and to its citizens, for the benefit of public health and welfare and this state's economic stability.

Sale, Transportation, and Delivery to Retailers

Under the act, beer may not be sold, transported, or delivered to a retailer unless, prior to the sale, transport, or delivery, the beer is first unloaded at and distributed from a wholesaler's warehouse premises covered by both a wholesaler's license and an alcohol beverage warehouse permit. The premises must be in this state and must be a physically separate location from any retail premises or brewery premises.

There are several exceptions to this provision:

- A brewer that, together with other brewers with which the brewer shares a membership in a controlled group of brewers (e.g., having a common parent corporation) or with all brewers considered with the brewer to be one taxpayer, manufactures not more than 50,000 barrels of beer in a calendar year in any location, may be issued a wholesaler's license for wholesale premises located on brewery premises.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

- A brewer that, together with other brewers, as described above, manufactures more than 50,000 barrels of beer in a calendar year in any location may be issued a wholesaler's license for a wholesale premises located on the brewery premises but may not sell or ship more than a total of 1,000 barrels of beer in any calendar year to retailers from these wholesale premises. Beer provided by a brewer to any retail premises for which the brewer holds the retail license are not included in any calculation of the 1,000 barrel limitation.
- A brewer may be issued a wholesaler's license for wholesale premises located on brewery premises if, from these wholesale premises, the brewer sells or ships beer only to other wholesalers. A brewer issued a wholesaler's license under this provision may, from the wholesale premises located on brewery premises, sell or ship any brand of beer to retailers located in a designated sales territory for the brand if the wholesaler to which the brewer has granted distribution rights in the designated sales territory is unable to service the designated sales territory for any reason, including a discontinuance of the wholesaler's distribution rights. A brewer may sell or ship beer to retailers under this provision for not more than 12 months after the wholesaler becomes unable to service the wholesaler's designated sales territory.

Wholesaler's Designated Sales Territory

Under the act, a wholesaler may not sell, transport, or deliver any brand of beer unless the wholesaler has entered into a written agreement with the brewer or out-of-state shipper supplying the brand that grants to the wholesaler distribution rights for the brand and identifies the designated sales territory for which the distribution rights are granted, including the precise geographical area comprising the designated sales territory. A brewer or out-of-state shipper may not, in any written agreement, grant to more than one wholesaler distribution rights for the same brand in the same designated sales territory or in any part of the same designated sales territory. If the wholesaler and the brewer or out-of-state shipper are the same person, instead of a written agreement, the wholesaler and brewer or out-of-state shipper must maintain in writing the information required in the written agreements, and are subject to the requirement that distribution rights for a territory may not be granted to more than one wholesaler.

The Act specifies that a wholesaler may not refuse to sell the brand of beer or refuse to offer reasonable service related to the sale of the brand of beer to any retailer within the wholesaler's designated sales territory.

Under the act, a wholesaler may not sell, transport, or deliver, or cause to be sold, transported, or delivered, any brand of beer to any retailer located outside the wholesaler's designated sales territory for the brand. This provision does not apply if another wholesaler that has been granted distribution rights for the brand in the designated sales territory where the sale, transportation, or delivery occurs is unable to service this designated sales territory and the brewer or out-of-state shipper granting distribution rights has given consent for the sale, transportation, or delivery. This provision also does not apply if the wholesaler is also a brewer and another wholesaler to whom the brewer has granted distribution rights for the brand in the designated sales territory where the sale, transportation, or delivery occurs has given consent for the sale, transportation, or delivery or refused to service this territory.

Also, a wholesaler may not sell, transport, or deliver, or cause to be sold, transported, or delivered, any brand of beer to any person, other than another wholesaler, that the wholesaler knows or should know will transport the product for resale in a designated sales territory for which another wholesaler has been granted distribution rights for the brand.

Deliveries to Retailers

Under the act, deliveries of beer to retailers may be made only by wholesalers and may be made to retailers only at their retail premises. A retailer may not transport beer from one retail premises to another retail premises for purposes of selling the beer at other retail premises, unless both retail premises are operated by a brewer holding the retail licenses.

Breweries' Authority to Sell, Transport, and Deliver Beer

Under the act, in general, a brewer or out-of-state shipper may sell, transport, and deliver beer only to a wholesaler, which may be the brewer or out-of-state shipper itself if, in its activities as a wholesaler, it complies with the provisions of the Act relating to wholesalers.

A brewer or out-of-state shipper that holds a license for the retail sale of beer may sell beer to persons other than persons holding alcohol licenses or permits in accordance with the terms of the license, the provisions of current law relating to brewers that hold multiple licenses or permits, and the applicable provisions of ch. 125, Stats., relating to retailers. The provisions of the Act relating to wholesalers do not apply with respect to beer provided by a brewer to any retail premises for which the brewer holds the retail license.

The Act provides that a brewer that holds an out-of-state shipper's permit for premises located in another state used for the manufacture of beer may ship beer from those premises to any brewery premises of the brewer in this state.

Effective Date: The Act takes effect on January 21, 2006 except that, with respect to any person holding a wholesaler's license immediately prior to the effective date of the Act, the Act first applies on August 1, 2006.

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