

GENERAL FUND TAXES -- SALES AND EXCISE TAXES

Three-Tiered Beer Laws

Motion:

Move to make the following changes to current law regarding wholesale distribution of fermented malt beverages (beer).

Convert Local Wholesaler's License to a Statewide Permit

Delete the current provision authorizing municipal governing bodies to issue licenses to wholesalers for the sale of beer from premises within the municipality. Instead, authorize the Department of Revenue (DOR) to issue permits to wholesalers for the sale of beer from premises within this state. Replace current statutory references to municipal wholesaler's licenses with references to DOR permits.

Provide that all persons holding unexpired municipal wholesaler's licenses prior to January 1, 2012, must be treated as wholesalers holding valid licenses until January 1, 2013, whereupon all municipal licenses must be void. Specify that, provided that a person does not hold a license or permit prohibited to be held by persons holding a wholesaler's permit, all persons holding unexpired municipal wholesaler's licenses must be issued a wholesaler's DOR at any time after January 1, 2012. Specify that the issuance of a permit by DOR invalidates any previous municipal license.

Wholesalers' Permits

Delete the current provision that prohibits the consumption of beer in or about the premises of a wholesaler.

Specify that if a wholesaler does not maintain any warehouse in this state, but is licensed and maintains a warehouse in an adjoining state that allows wholesalers with a wholesalers' permit in this state to deliver beer to retailers in the adjoining state without warehousing in that state and that further requires that all beer be first unloaded and physically at rest at, and distributed from, the warehouse of the licensed wholesaler in that state, the wholesaler's permit must be issued by the Department.

Specify that a wholesaler's permit may not be issued to a person who holds a brewers permit.

Eliminate the current grandfather provision that allows a person who holds a wholesaler's license to also hold a retail beer permit or license, an industrial beer permit, or a brewpub permit, provided all of the licenses or permits were issued before May 5, 1994.

Eliminate the current provision that allows a brewer to hold a wholesaler's license and a Class "B" license (for on- or off-premises sales of beer).

Specify that, while a wholesaler is prohibited from holding a retail license, a wholesaler is authorized under its permit to sell or give beer to its employees. Specify that beer may be consumed on a wholesaler's premises at events not open to the general public. Permit that any wholesaler issued a retail license prior to January 1, 2011, may continue to sell beer at retail as permitted under the retail license.

Eliminate the current fee for a municipal wholesaler's license, which may not exceed \$25 per year. Instead, require DOR to determine a beer wholesaler's permit fee in an amount sufficient to fund one special agent position dedicated to alcohol and tobacco enforcement at the Department, but specify that the fee may not exceed \$2,500 per year or fractional part thereof. Specify that all moneys received from the fee would be deposited in DOR's administration of liquor tax and alcohol beverages enforcement appropriation and credited toward funding the new position. Provide \$73,200 PR in 2011-12 and \$87,800 PR in 2012-13, and provide 1.0 PR position in each year, under this appropriation.

Specify that no wholesaler may hold any ownership interest in any brewer, except a wholesaler may maintain an ownership interest in a brewer if the wholesaler had the ownership interest as of the effective date of this provision.

Bona Fide Wholesalers

Require that the premises described in a wholesaler's permit be capable of warehousing beer. Specify that any beer sold by the wholesaler must be physically unloaded at the premises described in the permit, or at any warehouse premises for which the wholesaler also holds a wholesaler's permit and an alcohol beverage warehouse permit, prior to being delivered to a retail licensee or to another wholesaler. Require that a wholesaler must annually sell and deliver beer to at least 25 retail licensees or to other wholesalers that do not have any direct or indirect interest in each other or in the wholesaler. Specify that DOR may not issue a wholesaler's permit unless the applicant represents an intention to satisfy this requirement, and may not renew a permit unless the wholesaler demonstrates that this requirement has been satisfied. Prohibit a beer retail licensee or wholesaler from receiving a benefit from a violation of these provisions with knowledge of the circumstances giving rise to the violation.

Provide that a wholesaler who violates laws governing bona fide wholesalers must be fined not more than \$10,000. In addition, require a court to order the wholesaler to forfeit an amount equal to any profit gained by the wholesaler or retail licensee that violates these provisions, or by both, resulting from the violation. Also, require the court to order that the wholesaler's permit be

revoked. Specify that a court must order a retail licensee or wholesaler who violates these provisions to forfeit an amount equal to any profit gained by the retail licensee or wholesaler resulting from the violation, and to order that the retail license or wholesaler's permit be revoked. Specify that these provisions do not affect the authority of any municipality or DOR to revoke, suspend, or refuse to renew or issue a license or permit.

Require DOR to promulgate rules to administer and enforce these requirements. Specify that the rules must ensure coordination between the Department's issuance and renewal of permits and its enforcement of the requirements specified for wholesalers' permits, and must require that all applications for issuance or renewal of permits be processed by DOR personnel generally familiar with activities of beer wholesalers. Provide that the Department must establish by rule minimum requirements for warehouse facilities on premises described in wholesaler's permits and for periodic site inspections of such warehouse facilities.

Class "A" Licenses

Repeal the current law provision that a person who holds a Class "A" license (for off-premises sales of beer) and a beer wholesaler's license, both of which were issued before May 5, 1994, may transfer the licenses together to another premises in a different municipality within the same county. Repeal the requirement that an issuing municipality must transfer a Class "A" license under this provision and, upon approval of the transfer by the receiving municipality, that the receiving municipality must recognize the validity of the license, even if, at the time of transfer, the license has been suspended, revoked, or denied renewal provided that the suspension, revocation, or denial of renewal resulted from the licensed premises being relocated outside the corporate limits of the issuing municipality.

Brewers

Repeal the provision that requires wholesalers that are required to register with DOR for a business tax registration certificate to also obtain a permit to operate as a brewer. Specify that no person holding a Class "A" or Class "B" license or permit or a wholesalers' permit may register as a brewer. Repeal current provisions that: (a) permit a brewer to manufacture, possess, and store beer on the brewery premises and transport beer between the brewery premises and any depot or warehouse maintained by the brewer for which the brewer has a wholesaler's license; (b) permit a brewer or individual representing a brewer to provide taste samples; (c) allow a brewer to hold a wholesaler's license and a Class "B" license; and (d) prohibit a person issued a brewer's permit after November 25, 2007, from holding a restaurant permit.

Provide that DOR must issue brewer permits to eligible applicants and create laws authorizing all of the following activities for persons holding a brewer's permit:

- a. The manufacture of beer on the brewery premises.
- b. The bottling, packaging, possession, and storage of beer on the brewery premises.

c. The transportation of beer, subject to laws governing distribution restrictions on wholesalers, brewers, brewpubs, and out-of-state shippers, between the brewery premises and any depot warehouse maintained by the brewer.

d. The sale, shipment, transportation, and delivery, in original unopened packages or containers, to wholesalers, from the brewery premises, of beer that has been manufactured by the brewer on those premises or on other premises of the brewer.

e. The retail sale of beer that has been manufactured on the brewery premises, or on other premises of the brewer, for on-premise consumption by individuals at the brewery premises or an off-site retail outlet established by the brewer.

f. The retail sale to individuals of beer, in original unopened packages or containers, that have been manufactured on the brewery premises or on other premises of the brewer for off-premise consumption by individuals, if the sale occurs at the brewery premises or at an off-site retail outlet established by the brewer.

g. The retail sale of beer, for on-premises consumption or for off-premises consumption in original unopened packages or containers, that has been manufactured on another brewery premises in this state, provided that the beer is purchased from a person holding a wholesaler's permit or from another brewery located in this state that manufactures 300,000 or less barrels of beer in a calendar year.

h. The provision of free taste samples on the brewery premises, at an off-site retail outlet established by the brewer, or as authorized under laws governing the provision of taste samples on Class "A" premises.

i. Owning, maintaining, or operating places for the sale of beer at the State Fair Park or on any county fairgrounds located in this state

Provide that, if a wholesaler who has been granted distribution rights by a brewer for a brand in a designated sales territory is unable to service the designated sale territory for any reason, including, but not limited to, the discontinuation of the wholesaler's distribution rights, bankruptcy, or criminal prosecution of the wholesaler in connection with operation of the wholesaler, and the reason is not the result of an action by the brewer, then a brewer must be allowed, for a period of not more than one year, to sell or ship any brand of beer to retailers located in the wholesaler's designated sales territory.

Prohibit a brewer from making sales to a retail licensee, except that a brewer that manufactures 300,000 or less barrels of beer in a calendar year from all locations may sell, ship, transport and deliver beer, that has been manufactured on the brewery premises in original unopened packages or containers, to retailers from the brewery premises, provided that the brewer complies with the requirements of laws governing restrictions on dealings between brewers, brewpubs, wholesalers, and retailers and laws governing distribution restrictions on wholesalers,

brewers, brewpubs, and out-of-state shippers, including those imposed on wholesalers.

Permit a brewer to operate a restaurant on the brewery premises and at an off-site retail outlet established by the brewer. Specify that a brewer may not be licensed to operate a restaurant at any other location, except that a brewer may possess or hold an indirect interest in a Class "B" license for not more than 20 restaurants in each of which the sale of alcohol beverages accounts for less than 60% of the restaurant's gross receipts if no beer manufactured by the brewer is offered for sale in any of these restaurants.

Prohibit a brewer from holding any ownership interest in any wholesaler. Provide the following exemptions to this restriction: (a) a brewer may hold an ownership interest of less than 50% in a wholesaler, provided that such ownership interest will not occur for more than three years; and (b) if a wholesaler who has been granted distribution rights by a brewer for a brand in a designated sales territory is unable to service the designated sale territory for any reason, including but not limited to the discontinuation of the wholesaler's distribution rights, bankruptcy, or criminal prosecution of the wholesaler in connection with operation of the wholesaler, and the reason is not the result of an action by the brewer, then a brewer must be allowed, for a period of not more than one year, to take temporary control and operation of the wholesaler.

Out-of-State Shippers' Permits; Delivery to Wholesalers

Specify that all shipments of beer to a wholesaler of beer in this state, whether shipped to the wholesaler from inside this state or from outside this state, must be unloaded in, physically at rest in, and only then distributed from the wholesaler's warehouse in this state.

Eliminate the current statute that allows a brewer who holds an out-of-state shipper's permit for premises located in another state used for the manufacture of beer to ship beer from those premises to any brewery premises of the brewer in Wisconsin.

Require that out-of-state shippers' permits may be issued only to a person who does not maintain an office or street address in this state and who is the primary source of supply for the brand of beer. Specify that an out-of-state shippers' permit may not be issued to a person determined by DOR to be primarily engaged in wholesale or retail sales in another state.

Provide that an out-of-state brewer who manufactures 300,000 barrels of beer or less in a calendar year from all locations and who holds an out-of-state shipper's permit may sell and ship beer directly to retail licensees, provided that the out-of-state brewer registers with DOR, files whatever periodic reports with the Department as the Department may require, and complies with the requirements for laws governing restrictions on dealings between brewers, brewpubs, wholesalers, and retailers and laws governing distribution restrictions on wholesalers, brewers, brewpubs, and out-of-state shippers, including those imposed on wholesalers.

Multiple Licenses and Permits; Brewers

Repeal laws governing multiple licenses and permits for brewers.

Restrictions on Dealings Between Brewers, Brewpubs, Wholesalers, and Retailers

Specify that, for laws governing compensation for termination of wholesaler distribution rights, a "successor wholesaler" means any wholesaler who enters into an agreement, whether oral or written, to obtain a supply of a brand of beer that is a discontinued brand, or otherwise acquires the right to act as a wholesaler for a discontinued brand from a brewer, brewpub, brewer's agent, brewpub's agent, or holder of an out-of-state shipper's permit for purposes of selling such discontinued brand in a specially-defined territory, where such discontinued brand was sold by a terminated wholesaler in any portion of this same territory at a time immediately before said brand of beer became a discontinued brand.

Prohibit a wholesaler from purchasing beer for resale unless he or she purchases it either from the primary source of supply for the brand of beer sought to be sold or from a wholesaler within this state who holds a wholesaler's permit. Specify that no wholesaler may sell beer purchased by the wholesaler to any other brewer, brewpub, wholesaler, or retailer, if the beer has not been purchased by the wholesaler from the primary source of supply or from a wholesaler within the state holding a wholesaler's permit.

Distribution Restrictions on Wholesalers, Brewers, Brewpubs, and Out-of-state Shippers.

Modify the definition of "wholesaler" under these provisions to mean the holder of a beer wholesaler permit. Eliminate brewers and out-of-state shippers from this definition.

Specify that, under current law provisions governing the transportation or delivery of beer to a retailer, to require that beer must be first unloaded at, physically at rest at, and only then distributed from a wholesaler's warehouse premise covered by both a wholesaler's permit and an alcohol beverage warehouse permit, which premises must be in this state prior to beer being sold, transported, or delivered to a retailer. Eliminate the exemption from this provision for a brewer or out-of-state shipper that holds a Class "A" license or Class "B" license to sell beer to persons other than licensees and permittees in accordance with the terms of the license.

Repeal the following current law provisions:

- a. A brewer that, together with its brewer group, 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.
- b. A brewer that, together with its brewer group, manufactures 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, 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 must not be included in any calculation of the 1,000-barrel limitation.

c. 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; however, a brewer issued a wholesaler's license 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 for the brand in this designated sales territory is unable to service the designated sales territory for any reason, including because of discontinuance of the wholesaler's distribution rights. A brewer may sell or ship beer to retailers under this provision for up to 12 months after the wholesaler becomes unable to service the wholesaler's designated sales territory.

Eliminate the current law exemption for a brewer or out-of-state shipper that holds a Class "A" license or Class "B" license from the following provisions: (a) deliveries of beer to retailers may be made only to wholesalers and must be made to retailers only at their retail premises; and (b) no retailer may transport beer from one retail premises to another retail premises for purposes of selling the beer at the other retail premises unless both retail premises are operated by a brewer or brewpub holding the retail license. Instead, provide an exemption from these provisions for small brewer sales to retailers and restaurants operated by a brewer.

Modify the current law provision that 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 certain requirements, to, instead, provide that a brewer or out-of-state shipper may sell, transport, and deliver beer only to a wholesaler. Eliminate the current law exemptions from this provision for a brewer or out-of-state shipper that holds a Class "A" license or Class "B" license and for a brewer that holds an out-of-state shipper's permit for premises located in another state used for the manufacture of beer. Instead, provide exemptions from this provision for authorized activities of a brewer, small brewer sales to retailers, and out-of-state small breweries.

Repeal the current law provision that a brewer or out-of-state shipper that holds a Class "A" license or Class "B" license may sell beer to persons other than licensees and permittees in accordance with the terms of the license, the laws governing multiple licenses and permits of brewers, and the applicable provisions of beer laws relating to retailers. Repeal the current law exemption from laws governing distribution restrictions on wholesalers, brewer, brewpubs, and out-of-state shippers with respect to beer provided by a brewer to any retail premises for which the brewer holds the retail license.

As noted above, the motion would also specify that an out-of-state brewer who manufactures 300,000 barrels or less of beer in a calendar year at any location, and who holds an out-of-state shipper's permit, could sell and ship beer directly to retail licensees provided that the brewer

registers with DOR, files periodic reports as required by DOR, sells and delivers beer to at least 25 retail licensees that do not have any interest in each other, and complies with the restrictions on dealings between brewers, brewpubs, wholesalers, and retailers and with distribution restrictions on wholesalers, brewers, brewpubs, and out-of-state shippers.

Effective Date

Specify that these provisions would take effect on the budget bill's general effective date.

Note:

For current law governing wholesalers of beer, every municipal governing body may issue licenses to wholesalers for the sale of beer from premises within the municipality. Current law allows certain wholesalers to hold a combination of other licenses or permits, such as a Class "B" license or permit, and any person who held a wholesaler's license or permit and a Class "A" license or permit if granted prior to May 5, 1994 to hold such a license or permit if it has been renewed and continued ever since. Current law prohibits a wholesaler from making sales from the wholesaler's premise.

Under the motion, wholesalers must obtain a permit from DOR, rather than obtaining a municipal license to sell beer from a wholesaler's premises within the municipality. The motion provides laws governing a transitional period between January 1, 2012, and January 1, 2013, for wholesalers to operate under an unexpired municipality-issued license while seeking to obtain a permit from DOR. The motion would require that wholesalers must first unload the beer and have the beer physically at rest at the wholesaler's warehouse before distribution. Wholesalers of beer would be prohibited from holding Class "A" and Class "B" beer licenses under the motion. The motion also repeals the prohibition from making, and expressly permits a wholesaler to make, sales of beer to employees of the wholesaler and permits the wholesaler to hold events on the wholesaler's premise that are not open to the public. The motion also provides new regulations and penalties governing bona fide wholesalers.

Current law specifies that a wholesaler's license fee is determined by the municipal governing body, but may not exceed \$25 per year or a fractional part thereof. Under the bill, the permit fee paid to DOR would be determined by the Department in an amount not to exceed \$2,500 per year or fractional part thereof, and the Department would set the fee at an amount to pay for one special agent position dedicated to alcohol and tobacco enforcement at DOR, and would specify that all moneys received from the fee would be credited toward DOR's appropriation for administration of liquor tax and alcohol beverages enforcement. This motion would provide 1.0 PR position to DOR, along with \$73,200 PR in 2011-12 and \$87,800 PR in 2012-13.

The motion repeals most current law regulations governing brewers, and repeals laws permitting brewers to hold multiple licenses. Instead, the motion creates new laws governing

brewers, as specified in the motion. Among other provisions, the motion creates certain regulations governing the transportation of beer, permits breweries to temporarily operate as wholesalers if a wholesaler has ceased to operate in a specific area, prohibits a brewer that manufactures more than 300,000 barrels of beer in a calendar year to make direct sales to retailers, and specifies certain ownership restrictions for wholesalers to have an ownership stake in a brewery. It should be noted that, under the motion, a brewer would be permitted to make retail sales of beer from the brewer's premises or from a second premises owned by the brewer without obtaining any municipal license. A brewer manufacturing 300,000 barrels of beer or less (a small brewer) would be permitted to sell and deliver beer to retail licensees without obtaining a wholesaler's permit under the motion. A brewery would be permitted to sell beer manufactured in the state, for on premises or off premises, provided that the beer is purchased from a wholesaler or a small brewery.

In addition to the aforementioned changes to laws governing brewers, the motion eliminates current law provisions governing multiple licenses of, and permits for, brewers. Among the provisions repealed under the motion are that a brewer may hold up to two Class "B" beer licenses for on premise sales, that a brewer may own furniture and fixtures for a Class "B" premises, that a wholesaler's license is required for each depot or warehouse owned, maintained, or operated by the brewer, and certain other provisions governing beer sales if the brewer possesses a wholesaler's license, Class "A" license, or a Class "B" license. The motion also repeals two provisions permitting a brewer to: (a) hold interest in not more than 20 restaurants; and (b) own or operate places to sell beer at State Fair Park or county fairgrounds; however, these two provisions are recreated under separate provisions of the motion under laws governing brewers.

The motion requires a wholesaler to unload the beer from an out-of-state shipper and have the beer physically at rest at a wholesaler's warehouse in this state prior to distributing the beer in this state. The motion prohibits DOR from issuing an out-of-state's shippers permit to any person who maintains an office or street address in this state and who is the primary source of supply for that specific brand of beer, and an out-of-state shipper's permit may not be issued to a person primarily engaged in wholesale or retail sales in another state. An out-of-state brewer who manufactures more than 300,000 barrels of beer in a calendar year from all locations may not sell beer directly to a retail licensee in this state. The motion specifies certain changes to current law governing restrictions on dealings between brewers, brewpubs, wholesalers, and retailers, and specifies changes to current law distribution restrictions on wholesalers, brewers, brewpubs, and out-of-state shippers.

[Change to Bill: \$161,000 PR-REV, \$161,000 PR, and 1.0 PR position]

