



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0718/1
ARG:ahe

2019 ASSEMBLY BILL 92

March 22, 2019 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on State Affairs.

1 **AN ACT to renumber** 125.30 (3) and 125.58 (2); **to renumber and amend** 125.12
2 (5); **to amend** 125.30 (2) and 125.535 (3) (c); and **to create** 125.12 (4) (ag) 9.,
3 125.12 (5) (b), 125.30 (2) (d), 125.30 (3) (b), 125.535 (3) (b) 3., 125.535 (3) (d) and
4 (e) and 125.58 (2) (b) and (c) of the statutes; **relating to:** enforcement of alcohol
5 beverage laws against out-of-state alcohol beverage shippers and direct wine
6 shippers.

Analysis by the Legislative Reference Bureau

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

Current law regulating alcohol beverages is generally found in chs. 125 and 139, stats. The former sets forth the law regarding the authority and restrictions applicable to the manufacture, wholesale (distribution), and retail sales of alcohol beverages. The latter sets forth the law regarding the occupational (excise) taxation of alcohol beverages.

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There are 3 types of alcohol beverages permits that the Department of Revenue (DOR) may issue to a person, corporation, or limited liability company located outside of the state. These permits are: (1) the out-of-state fermented malt beverages (beer) shippers' permit; (2) the out-of-state intoxicating liquor (distilled spirits and wine, "liquor") shippers' permit; and (3) the direct wine shippers' permit. Subject to various restrictions, the out-of-state beer shippers' permit authorizes a person located outside of the state to ship beer to a person holding a beer wholesalers' permit. The out-of-state liquor shippers' permit, subject to various restrictions, authorizes a person located outside of the state to ship liquor to a person holding a liquor wholesaler permit, manufacturer's or rectifier's permit, or a winery permit. The direct wine shippers' permit, also subject to various restrictions, authorizes the manufacturer of wine located either inside or outside of the state to ship wine directly to individuals in the state who are of the legal drinking age, acknowledge receipt of the wine shipped, and are not intoxicated at the time of delivery.

The Bill

The bill requires out-of-state beer shippers' permittees, out-of-state liquor shippers' permittees, and direct wine shippers' permittees located outside of the state to consent to jurisdiction in this state for any proceeding in this state to enforce alcohol beverages laws found in chs. 125 and 139, stats.

Out-of-state beer shippers' permittees, out-of-state liquor shippers' permittees, and direct wine shippers' permittees located outside of the state must also accept service of process in this state for any proceeding in this state to enforce alcohol beverages laws found in chs. 125 and 139, stats. In order to accept service of process in this state, these permittees 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. That service 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.

Under the bill, if an out-of-state beer shippers' permittee, out-of-state liquor shippers' permittee, or direct wine shippers' permittee located out-of-state fails to maintain an agent in this state after a 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. The bill also codifies in ch. 125, stats., requirements regarding the payment of occupational taxes, filing reports and tax returns, keeping 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, which are already required under ch. 139, stats.

The bill also authorizes DOR to revoke or suspend any alcohol beverages license or permit issued in the state if the licensee or permittee ships alcohol into another state in violation of that state's law.

Lastly, the bill first applies to permits that are issued after the effective date of the bill, except with respect to suspending or revoking a permit if the permittee illegally ships

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alcohol into another state, and the bill has a delayed effective date of approximately 2 months.

1 **SECTION 1.** 125.12 (4) (ag) 9. of the statutes is created to read:

2 125.12 (4) (ag) 9. That the licensee has shipped alcohol beverages to any person
3 in another state in violation of that state's law.

4 **SECTION 2.** 125.12 (5) of the statutes is renumbered 125.12 (5) (a) and amended
5 to read:

6 125.12 (5) (a) The department may, after notice and an opportunity for hearing,
7 revoke, suspend, or refuse to renew any retail permit issued by it for the causes
8 provided in sub. (4) and any other permit issued by it under this chapter for any
9 violation of this chapter or ch. 139, except that, for a violation of sub. (4) (ag) 6. with
10 respect to a license issued under s. 125.51 (4) (v) or a violation of s. 125.535 or
11 139.035, the department shall revoke the license or permit.

12 (c) A revocation, suspension, or refusal to renew is a contested case under ch.
13 227.

14 **SECTION 3.** 125.12 (5) (b) of the statutes is created to read:

15 125.12 (5) (b) The department may, after notice and an opportunity for hearing,
16 revoke, suspend, or refuse to renew any permit issued by it under this chapter if the
17 permittee has shipped alcohol beverages to any person in another state in violation
18 of that state's law.

19 **SECTION 4.** 125.30 (2) of the statutes is amended to read:

20 125.30 (2) The application for an out-of-state shipper's permit and the permit
21 shall be on forms prescribed by the department which shall contain provisions
22 determined by the department as necessary to effectuate the purposes of ss. 139.01

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1 to 139.25 and shall include a provision that the permittee agrees to all of the
2 following:

3 (a) ~~To comply~~ Comply with s. 139.05 relating to filing a bond, filing returns,
4 paying taxes, and record keeping;

5 (b) ~~To permit~~ Permit inspections and examinations of the permittee's premises
6 and records by the department and its duly authorized employees, as authorized
7 under s. 139.08 (4); ~~and~~.

8 (c) ~~To pay~~ Pay the expenses reasonably attributable to such inspections and
9 examinations made within the United States.

10 **SECTION 5.** 125.30 (2) (d) of the statutes is created to read:

11 125.30 (2) (d) Accept service of process and consent to jurisdiction in any
12 proceeding in this state to enforce the provisions of this chapter or ch. 139.

13 **SECTION 6.** 125.30 (3) of the statutes is renumbered 125.30 (3) (a).

14 **SECTION 7.** 125.30 (3) (b) of the statutes is created to read:

15 125.30 (3) (b) 1. A permittee under this section shall appoint and continually
16 engage the services of an agent in this state to act as agent for the service of process
17 on whom all processes, and any action or proceeding against it concerning or arising
18 out of the enforcement of any provision of this chapter or ch. 139, may be served in
19 any manner authorized by law. That service shall constitute legal and valid service
20 of process on the permittee. The permittee shall provide to the department, in the
21 form and manner prescribed by the department, the name, address, phone number,
22 and proof of the appointment and availability of the agent.

23 2. The permittee shall provide notice to the department 30 calendar days before
24 termination of the authority of an agent under subd. 1. and shall provide proof to the
25 satisfaction of the department of the appointment of a new agent no less than 5

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1 calendar days before the termination of an existing agent appointment. In the event
2 an agent terminates an agency appointment, the permittee shall notify the
3 department of that termination within 5 calendar days and shall include proof to the
4 satisfaction of the department of the appointment of a new agent.

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

10 **SECTION 8.** 125.535 (3) (b) 3. of the statutes is created to read:

11 125.535 (3) (b) 3. The winery satisfies all requirements under par. (d).

12 **SECTION 9.** 125.535 (3) (c) of the statutes is amended to read:

13 125.535 (3) (c) Notwithstanding s. 125.04 (5) (a), natural persons obtaining
14 direct wine shippers' permits are not required to be residents of this state.
15 Notwithstanding s. 125.04 (5) (a) 5., a person is not required to complete a
16 responsible beverage server training course to be eligible for a permit under this
17 section. ~~Corporations and limited liability companies obtaining direct wine shippers'~~
18 ~~permits are subject to s. 125.04 (6) and any other person, including any natural~~
19 ~~person or cooperative, obtaining a direct wine shipper's permit shall appoint an~~
20 ~~agent, and be subject to all provisions of s. 125.04 (6), in the same manner applicable~~
21 ~~to corporations and limited liability companies. Notwithstanding s. 125.04 (5) (a) 2.~~
22 ~~and (c), an agent appointed under s. 125.04 (6) by a corporation or limited liability~~
23 ~~company obtaining a direct wine shipper's permit is not required to be a resident of~~
24 ~~this state.~~

25 **SECTION 10.** 125.535 (3) (d) and (e) of the statutes are created to read:

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1 125.535 (3) (d) 1. Unless the permittee or agent of the permittee appointed
2 under s. 125.04 (6) is a resident of this state, or unless the permittee maintains a
3 registered agent in this state under s. 180.0501, 180.1507, 183.0105, or 183.1007, a
4 permittee under this section shall appoint and continually engage the services of an
5 agent in this state to act as agent for the service of process on whom all processes,
6 and any action or proceeding against it concerning or arising out of the enforcement
7 of any provision of this chapter or ch. 139, may be served in any manner authorized
8 by law. That service shall constitute legal and valid service of process on the
9 permittee. The permittee shall provide to the department, in the form and manner
10 prescribed by the department, the name, address, phone number, and proof of the
11 appointment and availability of the agent.

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

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

24 (e) The application for a permit under this section shall include a provision that
25 the permittee agrees to all of the following:

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1 1. File reports, provide records, and allow inspections and examinations to the
2 extent provided in ch. 139.

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

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

7 **SECTION 11.** 125.58 (2) of the statutes is renumbered 125.58 (2) (a).

8 **SECTION 12.** 125.58 (2) (b) and (c) of the statutes are created to read:

9 125.58 (2) (b) 1. Unless the permittee or agent of the permittee appointed under
10 s. 125.04 (6) is a resident of this state, or unless the permittee maintains a registered
11 agent in this state under s. 180.0501, 180.1507, 183.0105, or 183.1007, a permittee
12 under this section shall appoint and continually engage the services of an agent in
13 this state to act as agent for the service of process on whom all processes, and any
14 action or proceeding against it concerning or arising out of the enforcement of any
15 provision of this chapter or ch. 139, may be served in any manner authorized by law.
16 That service shall constitute legal and valid service of process on the permittee. The
17 permittee shall provide to the department, in the form and manner prescribed by the
18 department, the name, address, phone number, and proof of the appointment and
19 availability of the agent.

20 2. The permittee shall provide notice to the department 30 calendar days before
21 termination of the authority of an agent under subd. 1. and shall provide proof to the
22 satisfaction of the department of the appointment of a new agent no less than 5
23 calendar days before the termination of an existing agent appointment. In the event
24 an agent terminates an agency appointment, the permittee shall notify the

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1 department of that termination within 5 calendar days and shall include proof to the
2 satisfaction of the department of the appointment of a new agent.

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

8 (c) The application for a permit under this section shall include a provision that
9 the permittee agrees to all of the following:

10 1. File reports, provide records, and allow inspections and examinations to the
11 extent provided in ch. 139.

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

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

16 **SECTION 13. Initial applicability.**

17 (1) The treatment of ss. 125.30 (2) and 125.535 (3) (b) 3., (c), (d), and (e), the
18 renumbering of ss. 125.30 (3) and 125.58 (2), and the creation of ss. 125.30 (2) (d) and
19 (3) (b) and 125.58 (2) (b) and (c) first apply with respect to permits issued after the
20 effective date of this subsection.

21 **SECTION 14. Effective date.**

22 (1) This act takes effect on the first day of the 3rd month beginning after
23 publication.

24

(END)