

# A Four Pack of Legal Developments Affecting Wisconsin Craft Brewers, Distillers and Consumers

Here are four quick legal updates that pertain to the craft beer and liquor world in Wisconsin. Befitting the time of year, it is best to enjoy this article with a Doppelbock.

## Growlers, Growlers, Everywhere

A bill aimed at expanding growler sales is moving through the Wisconsin legislature. Senate Bill 283 was proposed in September 2015 and amended in January 2016.

Class "A" retailers (for example, grocery stores and convenience stores) presently may sell prepackaged beer, but not beer in refillable containers such as growlers and [crowlers](#). Holders of Class "B" licenses—such as bars—are not explicitly authorized under the statute to offer growler fills, yet that is the generally accepted interpretation. Some grocers have received Class "B" licenses and currently fill growlers.<sup>[1]</sup> This bill would allow companies holding Class "A" licenses to get into the growler filling business without needing any additional licenses. More local, fresh beer will be the happy result for the Wisconsin consumer.

The bill goes even further. While the existing statute is clear that brewpubs are allowed to fill growlers, it is silent on whether breweries are permitted to do so. The industry has interpreted the statutory silence as acceptance: A trip to nearly any brewery taproom reveals that growler fills are widespread. The January amendment to this bill clarifies the statute by granting express permission for brewers to fill growlers.

The original bill also provided that brewers, brewpubs and wholesalers could sell certain equipment and services, related to the filling of growlers, at "fair market value" to Class "A" licensees that sell growlers. However, the January amendment substantially narrowed this provision—presumably to avoid potential coercive tactics by larger brewers. As a result, after this amendment, brewers, brewpubs and wholesalers would be permitted to offer tap knobs and signage, related to the sale of beer in growlers, to Class "A" licensees.

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## Relaxation of Zoning Ordinances

Cities are increasingly appreciating the sense of community and excitement that breweries, brewpubs, beer gardens and distilleries can foster. (More tax dollars don't hurt, either.) As such, cities are becoming more accommodating towards these kinds of developments.<sup>[2]</sup> Proof that this is a hot topic: While I was proofreading this article, a city contacted us asking for our guidance in tweaking its zoning ordinances to accept breweries.

One Wisconsin city that has recently revised its ordinances to expressly permit breweries is Racine. Under the [new City of Racine ordinances](#), a brewery, a brewery with a restaurant, and a brewpub,<sup>[3]</sup> in each case producing less than 1,000 barrels per year, are now allowed as conditional uses in "community shopping districts." Moreover, the amended Racine ordinances permit breweries as conditional uses in certain "industrial districts"—without imposing a production ceiling on these brewers. Note, however, that while restaurants and breweries are authorized in these industrial districts, brewpubs are apparently not.

As communities revise their zoning ordinances, they should take care to address all such possibilities and also ensure that any revisions are in harmony with state and federal laws. Likewise, brewers and brewpub owners need to be aware of what is (and is not) permitted under local zoning ordinances.

## Craft Beverage Modernization and Tax Reform Act

The Craft Beverage Modernization and Tax Reform Act, introduced in June 2015, is intended to [reduce taxes on the brewing, distilling and winemaking industries and streamline certain regulations](#)—both for craft brewers and for macro brewers. Accordingly, the bill has the support of the craft focused Brewers Association as well as the Beer Institute.

Senator Tammy Baldwin (D WI) is an original cosponsor of the bill and, in October 2015, Senator Ron Johnson (R WI) became a cosponsor. Fifteen states have split party representation in the Senate; only four have Senators from both sides of the aisle supporting this legislation. So, beer still unites us here in politically polarized Wisconsin. We all want to see our burgeoning craft beer industry flourish.

One final note: None of the Senators still running for President—Ted Cruz (R TX), Marco Rubio (R FL) and Bernie Sanders (I/D VT)—have signed on as cosponsors

to the bill. No beer for them!

## Liquor Licenses and Premier Economic Development Districts

The number of "Class B" liquor licenses<sup>[4]</sup> that a Wisconsin municipality may issue is generally determined by a formula based on the population of the municipality and the number of currently issued licenses. Once the municipality has issued its full quota of licenses, it cannot issue any more. Wisconsin State Assembly Bill 612 would change that in two ways.

First, the bill creates the "Regional Transfer Option"—where a municipality can transfer up to three unused "Class B" licenses to neighboring communities. This reduces the number of such licenses available to the transferring municipality and increases the number of licenses available to the receiving municipalities. The bill states that the receiving municipality must pay an "issuance fee" to the transferring municipality. This fee is established by the transferring municipality and, per the bill, must be at least \$10,000 per license.

In addition, the bill allows a municipality to designate a geographic area, subject to certain parameters, as a "premier economic development district." The municipality can issue up to two "Class B" licenses to be used within this district for an "economic development project" (that is, a project having a new construction assessed valuation increase of at least \$20 million). The municipality itself establishes the "issuance fee" for each such license, which fee cannot be less than \$30,000.

The genesis of this bill relates to the proposed Titledown District by Lambeau Field. Ashwaubenon has no "Class B" licenses available, and so this legislation increases the number of potential licenses available for future bars and restaurants in the district. If Aaron Rodgers ever gets hurt, Packers fans will definitely need the additional drinking establishments.

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<sup>[1]</sup> Personally, I was impressed with the selection at local grocer's new growler gallery—as a lover of German beer, seeing a Gose style brew was much appreciated.

<sup>[2]</sup> But some cities are not. In Portland (Maine), Allagash Brewing Co. would like to sell prepackaged snacks in its taproom. The zoning authorities are asserting



that the sale of these snacks is not allowed under their zoning ordinances. The moral of this story is that a simple bag of peanuts can trigger a zoning violation.

[3] For an explanation of the difference between a brewer and a brewpub, please read [here](#).

[4] Yes, there is a difference between a "Class B" license and a Class "B" license. "Class B" licenses cover serving liquor, whereas Class "B" licenses are needed to sell draft beer.

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