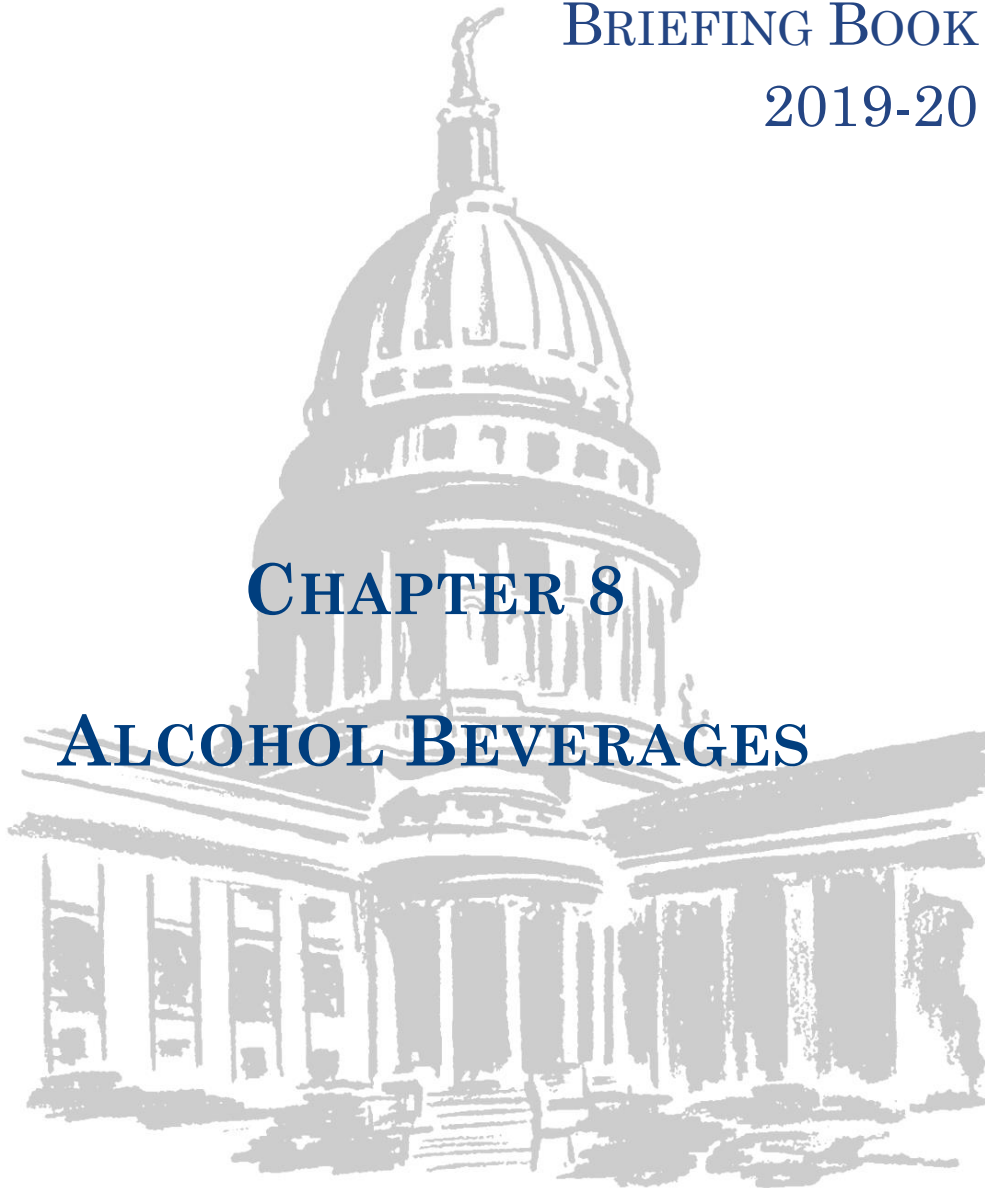


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CHAPTER 8
ALCOHOL BEVERAGES

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INTRODUCTION

Wisconsin’s system for regulating the alcohol beverages industry is commonly referred to as the “three-tier system.” The three tiers, or categories, of regulated entities are: (1) manufacturers; (2) wholesalers (or distributors), and (3) retailers. Unless a specific exception applies, all sales of alcohol beverages must occur through the three-tier system, from manufacturers to wholesalers to retailers to consumers. Chapter 125, Stats., Wisconsin’s Alcohol Beverages Chapter, sets forth the state’s system of regulating these three tiers.

The three-tiers of the alcohol beverages industry are: (1) manufacturers; (2) wholesalers (or distributors); and (3) retailers.

There are also three main types of alcohol beverages: (1) fermented malt beverages (beer); (2) distilled spirits; and (3) wine. In Wisconsin, both distilled spirits and wine are regulated as intoxicating liquors (liquor). The requirements placed upon manufacturers, wholesalers, and retailers vary depending upon what type of alcohol beverage is involved.

This briefing book chapter is intended to provide general information on Wisconsin’s three-tier system of regulating the manufacture, distribution, and sale of alcohol beverages. It is not a complete description of such regulations, nor is it an exhaustive discussion of every regulation included in the Alcohol Beverages Chapter.

OVERVIEW OF THE THREE-TIER SYSTEM

The Legislature has articulated its intent to regulate alcohol beverages through a three-tier regulatory system, as well as policy reasons for doing so, in the statutes:

[The Alcohol Beverages Chapter] shall be construed as an enactment of the legislature’s support for the 3-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 the public health and welfare and this state’s economic stability. Without the 3-tier system, the effective statewide regulation and collection of state taxes on alcohol beverages sales would be seriously jeopardized. It is further the intent of the legislature that without a specific statutory exception, all sales of alcohol beverages shall occur through the 3-tier system, from manufacturers to wholesalers holding a permit to retailers to consumers. Face-to-face retail sales at licensed premises directly advance the state’s interest in preventing alcohol sales to underage or

intoxicated persons and the state's interest in efficient and effective collection of tax. [s. 125.01, Stats.]

Unless a specific exception applies, a person must obtain the applicable permit or license in order to manufacture, distribute, or retail sell alcohol beverages. It is a crime to engage in one of these three activities without the appropriate permit or license.

Under a strict three-tier system, consumers would buy alcohol only from a retailer. A manufacturer would only manufacture alcohol beverages and would have no authority to distribute or sell alcohol at the retail level to consumers. While the three-tier system is the general rule in Wisconsin, there are many exceptions provided by statute.

Q: What is the penalty for manufacturing, distributing, or retail selling alcohol beverages without the appropriate permit or license to do so?

A: A fine of not more than \$10,000, imprisonment of not more than nine months, or both (an unclassified misdemeanor). [s. 125.04 (13), Stats.]

FEDERAL, STATE, AND LOCAL ALCOHOL BEVERAGES REGULATORY AUTHORITIES

The production, distribution, and sale of alcohol beverages are highly regulated activities. In Wisconsin, manufacturers and wholesalers are generally regulated under both federal and state law and retailers are generally regulated by state and local laws.

Federal Administration and Enforcement

The Federal Alcohol Administration Act, the Alcohol Beverages Labeling Act, and the Internal Revenue Code, 26 U.S.C. ch. 51, impose specific regulations upon the manufacture and distribution of alcohol. The Alcohol and Tobacco Tax and Trade Bureau (TTB), a bureau within the U.S. Department of Treasury, is responsible for administering and enforcing these federal laws. For example, a manufacturer, importer, or wholesaler of alcohol beverages must obtain a permit from TTB in order to engage in business in the United States. Another example is that TTB must approve labels used on alcohol beverages products. TTB ensures that manufacturers of both beer and liquor are properly

bonded and pay federal taxes in compliance with federal tax laws. Also in Wisconsin, TTB enforces federal advertising laws placed upon manufacturers and wholesalers of liquor, but not apply to beer manufacturers and wholesalers.

For more information on the U.S. FDA's regulation on food safety:

<https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/default.htm#2018>

Federal law also requires all alcohol beverages manufacturers and wholesalers (including foreign producers importing alcohol beverages into the United States) to register with the U.S. Food and Drug Administration (FDA). Any person engaged in manufacturing, processing, packing, or holding food for consumption in the United States must register with the FDA. This is because the definition of “food” is broadly defined to include “articles for drinking.” [21 U.S.C. s. 350d (a) (1) and (b).]

State Administration and Enforcement

DOR’s website is:

<https://www.revenue.wi.gov/>

DATCP’s website is:

<https://datcp.wi.gov/>

The Department of Revenue (DOR) is the agency responsible for enforcing the Alcohol Beverages Chapter and ch. 139, Stats., the Alcohol Beverages Tax Chapter, and it has the authority to promulgate rules consistent with these laws. [s. 125.03, Stats.] DOR also issues permits to

manufacture and distribute alcohol beverages. Examples of permits include brewers permits, brewpub permits, winery permits, liquor manufacturer or rectifier permits, fermented malt beverages (“beer”) wholesaler permits, intoxicating liquor (distilled spirits and wine, or “liquor”) wholesaler permits, and small winery cooperative wholesalers permits.

With respect to retailers, the authority to retail sell alcohol beverages is primarily authorized at the local level through the issuance of retail licenses by municipalities. However, DOR is authorized to issue permits to retail sell alcohol beverages under specific instances where it is expressly authorized by the statutes to do so. State law also places specific requirements upon DOR to assist in the licensure of alcohol beverages retailers. For example, DOR must create the retail licenses application and renewal forms used by municipalities as well as a concise, easy-to-read booklet explaining the statutes and rules relating to the retail sale of alcohol beverages.

DOR also maintains a list of retail licensees located throughout the state, as municipalities are statutorily required to annually mail DOR a list of persons to whom they issued a retail license, including the name, address, trade name, type of license, and if the person is a corporation or LLC, the name of the appointed agent. [ss. 125.04 (3) (a) and (b), (4), 125.045, 125.27, and 125.51 (5), Stats.]

Municipalities may enact regulations incorporating any part of the Alcohol Beverages Chapter and prescribe additional regulations of the sale of alcohol beverages that are not in conflict with the Alcohol Beverages Chapter.

Alcohol beverages manufacturers, as well as many retailers, are also subject to the Food Safety code, which is enforced by the Department of Agriculture, Trade, and Consumer Protection (DATCP). Manufacturers must hold the proper food processing permit. For example, manufacturers must hold the proper food processing permit from DATCP.

Another example is that if manufacturers and retailers sell food or hazardous liquid items, such as ice or milk that must be refrigerated, they will need to comply with DATCP rules and regulations related to retail food establishments and hold the applicable retail food establishment license. [See ss. 97.12, 97.30, 97.33, and 100.33 (2), Stats.]

Local Administration and Enforcement

Cities, villages, and towns (municipalities) are authorized under state law to issue licenses to retail sell alcohol beverages. This includes the authority to revoke, suspend, or refuse to renew a retail license. Municipalities also have the authority to issue operator's (bartender's) licenses and manager's licenses. In limited circumstances, counties may authorize the sale of alcohol beverages, such as the authority to authorize the sale of beer in a county park. The statutes provide immunity to municipalities and counties (and other local units of government, such as school districts and technical college districts) and their officers and employees, for any of the following: (1) issuing a license to sell alcohol beverages; (2) allowing the licensee or permittee to sell, dispense, or give away alcohol beverages on property owned or leased by the municipality; or (3) failing to monitor or supervise the activities of the licensee or permittee. [ss. 125.25, 125.26, and 125.51, Stats.]

Municipalities may enact regulations incorporating any part of the Alcohol Beverages Chapter and prescribe additional regulations of the sale of alcohol beverages that are not in conflict with the Alcohol Beverages Chapter. The municipality may also prescribe forfeitures or license suspension or revocation for violations of its regulations that have been adopted by ordinance. [s. 125.10 (1), Stats.]

MANUFACTURERS

In general, a person must obtain the applicable permit from DOR in order to manufacture alcohol beverages. Exceptions include making beer or wine at home or at a supply store, when done so in compliance with the Alcohol Beverages Chapter.

There are a number of different manufacturing permits issued by DOR.

The most common permits issued to manufacture beer are brewery permits and brewpub permits. The most common permits issued to manufacture liquor are winery permits, intoxicating liquor manufacturer permits, and rectifier permits. Other manufacturing permits include manufacturing permits for making industrial beer, medicinal alcohol, industrial alcohol, and industrial wine.

In Wisconsin, beer manufacturers include breweries and brewpubs; liquor manufacturers include wineries and intoxicating liquor manufacturers or rectifiers.

Brewers

A brewer’s permit authorizes the manufacturing of beer. This includes activities such as bottling, packaging, possessing, and storing beer on the brewer’s permitted premises. The brewer’s permit also authorizes a brewer to engage in certain retail activities, where the brewer may retail sell alcohol beverages directly to consumers. For example, the brewer’s permit authorizes a brewer to sell its own beer and other brewers’ beer directly to consumers at the brewery’s premises or the brewer’s off-site retail outlet. A brewer may act as a retailer directly under its brewer’s permit (without obtaining a retail license) and sell beer for consumption either at the brewery or retail outlet (on-premises consumption), or away from the brewery or retail outlet (off- premises consumption.)

A brewer may act as a beer retailer by owning, maintaining, or operating a place that sells beer at the State Fair Park or on any county fairgrounds located in Wisconsin. Brewers may also provide free taste samples as provided by statute on the brewery’s premises, its off-site retail outlet, or at a Class “A” beer retail premises with the authorization of the Class “A” beer retail license holder.

State law specifies when a brewer may act as a wholesaler directly under its brewer’s permit and self-distribute its own beer. For example, a brewer that manufactures 300,000 or fewer barrels of beer in a calendar year may self-distribute its own beer. Brewers that meet this qualification for self-distribution are often referred to as “craft brewers.” [s. 125.29, Stats.]

Brewpubs

Very generally, a brewpub permit is designed for a person who brews not more than 10,000 barrels of beer in a calendar year if there is a restaurant on the brewpub’s premises. A brewpub may have up to six locations; each location must have a separate permit. A brewpub with more than one location is referred to as a “brewpub group.” A brewpub permit authorizes the brewpub to manufacture not more than 10,000 barrels of beer in a calendar year, as long as the entire manufacturing process occurs on the brewpub’s premises.

Q: What is a “craft brewer?”

A: While there is no statutory definition, in Wisconsin, a craft brewer generally refers to a brewer that manufactures 300,000 or fewer barrels of beer in a calendar year.

A brewpub permit is designed for a person who brews no more than 10,000 barrels of beer in a calendar year if there is a restaurant on the brewpub’s premises.

In order to obtain a brewpub permit, a person must also hold a Class “B” beer retail license for the restaurant. The brewpub must retail sell its own beer, as well as beer manufactured by at least one other brewer at the brewpub’s restaurant. It may also hold either a “Class B” liquor retail license or a “Class C” wine-only retail license. A brewpub also has the express authority to sell its beer in refillable containers that exceed 24 oz. in volume, or “growlers,” at the brewpub.

The statutes specify that a winery may be issued either one “Class A” liquor retail license or one “Class B” liquor retail license for the winery premises or other real estate owned or leased by the winery.

The statutes specify when a brewpub may also act as a beer wholesaler and self-distribute its own beer directly under its brewpub permit. For example, a brewpub may self-distribute its own beer in original unopened packages or containers that have been manufactured on the brewpub’s premises or on other brewpub premises of the brewpub. However, a brewpub is limited to self-distributing at wholesale not more than 1,000 barrels of its own beer in a calendar year. [s. 125.295, Stats.]

Wineries

A winery permit authorizes a person to manufacture and bottle wine on the premises covered by the permit for sale to intoxicating liquor wholesalers. This includes the authority to possess and mix or blend liquor to produce wine.

The statutes authorize a winery to engage in certain retail activities. For example, the statutes expressly authorize a winery to sell wine at one location if it also obtains a liquor retail license to do so. The statutes specify that a winery may be issued either one “Class A” liquor retail license or one “Class B” liquor retail license for the winery premises or other real estate owned or leased by the winery. However, in order to obtain a “Class B” liquor retail license, a winery must be capable of producing at least 5,000 gallons of wine per year in no more than two locations. A “Class B” liquor retail license issued to a winery is not counted under a municipality’s liquor license quota and only authorizes the retail sale of wine.

A winery may also make retail sales and provide taste samples as provided by law on county or district fairgrounds, but this wine sold or provided as taste samples must be purchased from an intoxicating liquor wholesaler. [ss. 125.51 (1) (a), (3) (am), and 125.53, Stats.]

State law also authorizes a winery to act as both a wholesaler and a retailer by shipping its own wine as provided by a direct wine shipper’s permit. Under this permit, the winery may directly ship wine that it manufactured or bottled directly to a person who is 21 years of age or older, who acknowledges receipt of the wine shipped, and who is not intoxicated at the time of delivery. Direct wine shippers permits may be issued to wineries located in other

states, as well as to Wisconsin manufacturers or rectifiers that make and bottle wine. [See, s. 125.535, Stats.]

Manufacturers and Rectifiers

DOR issues manufacturers and rectifiers permits, which authorize the manufacture or rectification of liquor on the premises covered by the permit. As previously mentioned in the beginning of this chapter, in Wisconsin, liquor includes both distilled spirits and wine. A manufacturer ferments, manufactures, or distills liquor. A rectifier may rectify, purify, or refine distilled spirits or wine or may blend liquor. A person holding a manufacturers' or rectifiers' permit does not need to obtain a winery permit to manufacture and bottle wine if the wine is made pursuant to the terms of the permit. DOR may also issue a combination manufacturer's and rectifier's permit. [ss. 125.02 (10) and (16), and 125.55 (1), Stats.]

A person who holds a manufacturer's or rectifier's permit, or combination thereof, may sell liquor to liquor wholesalers, wineries, and other manufacturers and rectifiers from the premises described in the permit.

The statutes also specify when a person holding a manufacturer's or rectifier's permit, or a combination thereof, may act as a retailer. For example, a person holding one of these permits may sell liquor that is manufactured or rectified on its premises for consumption on or off the premises. A manufacturer or rectifier may also provide free taste samples of liquor that it produced for consumption on the premises as provided by law. Also, a manufacturer or rectifier may obtain a direct wine shippers' permit to ship wine it produces and bottles directly to a person who is 21 years of age or older, who acknowledges receipt of the wine shipped, and who is not intoxicated at the time of delivery. [ss. 125.52 and 125.535, Stats.]

WHOLESALERS

As previously discussed, alcohol beverages generally must pass through a wholesaler for distribution before a retailer may sell them to a consumer. Alcohol beverages distributed by a wholesaler must have been purchased from either a manufacturer, another wholesaler, or an exclusive agent for the manufacturer. There are separate permits for beer wholesalers and liquor wholesalers. Under certain circumstances, wine may also be distributed by a small winery cooperative wholesaler that holds a liquor wholesaler permit. Wholesalers permits are issued by DOR.

A beer wholesaler must annually sell and deliver beer to at least 25 retail licensees or other beer wholesalers that do not have any direct or indirect interest in each other or in the wholesaler.

Beer Wholesalers

A beer wholesaler permit authorizes a person to sell beer in original packages or containers to retailers or other wholesalers. The various requirements placed upon a beer wholesaler include the requirement that a wholesaler's premises described in the permit be capable of warehousing beer. Another requirement is that any beer sold by the beer wholesaler must be physically unloaded at the premises described in the wholesaler's permit or at a warehouse for which the wholesaler also holds both a wholesaler's permit and an alcohol warehouse permit prior to being delivered to a retailer or another wholesaler. Under DOR rule, beer wholesaler premises must be at least 1,000 square feet of floor space and must be located in a free-standing building that is not part of or connected to premises covered by a beer retail license or permit. DOR may waive that 1,000 square foot minimum space requirement when doing so would be fair and equitable.

A beer wholesaler must also annually sell and deliver beer to at least 25 retail licensees or other beer wholesalers that do not have any direct or indirect interest in each other or in the wholesaler. [s. 125.28, Stats., and s. Tax 7.23 (5) (a) and (b), Wis. Adm. Code.]

Liquor Wholesalers

A person holding a liquor wholesaler's permit may sell liquor from its premises to retailers that are licensed to sell liquor and other liquor wholesalers, as well as to liquor manufacturers, rectifiers, and wineries for production purposes. State law prohibits a liquor wholesaler from acting like a manufacturer by bottling, packaging, or repackaging liquor. An intoxicating liquor wholesaler is also prohibited from acting like a retailer by selling liquor for consumption on its premises.

Similar to beer wholesalers, the various requirements placed upon a liquor wholesaler include the requirement that any liquor sold by the liquor wholesaler be physically unloaded at the premises described in the wholesaler's permit or at a warehouse for which the wholesaler holds an alcohol warehouse permit prior to being delivered to a retailer or another wholesaler. DOR rule also requires that the liquor wholesaler premises be at least 1,000 square feet of floor space, which must be located in a freestanding building that is not part of or connected to a premises covered by a liquor retail license. DOR may waive the 1,000 square foot minimum space requirement when doing so would be fair and equitable.

A liquor wholesaler must annually sell and deliver intoxicating liquor to at least 10 retailers that do not have any direct or indirect interest in each other or in the wholesaler and may hold not more than two liquor wholesaler permits.

Liquor wholesalers also differ from beer wholesalers in a couple of ways. For example, a liquor wholesaler must annually sell and deliver liquor to at least 10 retailers that do not have any direct or indirect interest in each other or in the wholesaler and may not hold

more than two liquor wholesaler permits. The liquor wholesalers permit does not authorize the sale of liquor, so any liquor wholesaler employee who solicits liquor sales for future distribution of the liquor must hold a separate liquor wholesaler salesperson permit to do so. [ss. 125.54 and 12.65, Stats.; and s. Tax 8.63 (1) and (1m), Wis. Adm. Code.]

Small Winery Cooperative Wholesalers

Between October 1, 2008, and December 1, 2008, DOR was authorized to issue liquor wholesalers' permits to no more than six small winery cooperative wholesalers. Two small winery cooperatives applied for and were granted wholesalers' permits during this time, and currently exist today. A "small winery" is a winery that produces and bottles less than 25,000 gallons of wine in a calendar year. A small winery may become part of a small winery cooperative wholesaler if it holds a direct wine shipper's permit and is certified by DOR as a small winery. Very generally, a small winery cooperative wholesaler may purchase wine on consignment from its small winery members and distribute it to liquor retailers and other liquor wholesalers. [s. 125.545, Stats.]

RETAILERS

Retail licenses authorize a person to sell alcohol beverages to consumers (someone other than a manufacturer, wholesaler, or retailer of alcohol beverages). Retail licenses are issued by municipalities (cities, villages, and towns). In limited circumstances, DOR may generally issue a permit authorizing the retail sale of beer or liquor. Retail licenses (or permits, if issued by DOR) are issued for a specific geographic area that is described in the retail application, referred to as the "licensed premises," or "permitted premises" if issued by DOR. Retail sales must generally occur face-to-face on the licensed or permitted premises.

There are numerous types of alcohol beverages retail licenses that vary by both of the following: (1) the kind of alcohol beverage that may be sold under the license; and (2) where the alcohol may be consumed. Separate retail licenses are needed to sell beer and liquor (spirits and wine).

Retailers are subject to numerous requirements under the Alcohol Beverages Chapter, including requirements relating to hours of operation and selling alcohol beverages to underage or intoxicated persons. The section below does not address every restriction applicable to alcohol beverages retailers. More thorough discussions may be found in two publications prepared by DOR: (1) *Publication 302: Wisconsin Alcohol Beverage and Tobacco Laws for Retailers*; and (2) *Informational Pamphlet: Licensing for Alcohol Beverages*.

Class "A" and Class "B" Beer Retail Licenses

A **Class "A" beer retail license** authorizes the sale of beer for consumption off the premises where sold ("off-premises" consumption), and in the original sealed package, container, or bottle. Class "A" beer retailers may also provide to persons who have attained

the legal drinking age (21 years of age) not more than two free taste samples of beer per day that do not exceed three fluid ounces each between 11:00 a.m. and 7:00 p.m. A Class “A” beer retail license is most commonly used by a package store or grocery store, given that the beer may be consumed only off the licensed premises. [s. 125.25, Stats.]

A **Class “B” beer retail license** authorizes the sale of beer for either consumption on the premises where sold (“on-premises consumption”) or off-premises consumption. A Class “B” beer retail license is most commonly used by a bar, tavern, or restaurant. Current law is also interpreted by DOR to authorize the filling of growlers at a customer’s request and while the customer is waiting. [s. 125.26, Stats.]

“Class A” and “Class B” Liquor Retail Licenses

A **“Class A” liquor retail license** authorizes the sale of liquor for off-premises consumption and in original packages and containers. A “Class A” liquor retail license holder may also provide to persons 21 years of age not more than two free taste samples of wine per day that do not exceed three fluid ounces each, and may provide not more than one free taste sample of distilled spirits per day that does not exceed 0.5 fluid ounce. The taste samples may be provided between the hours of 11:00 a.m. and 7:00 p.m. [ss. 125.06 (13) and 125.51 (2), Stats.]

Municipalities may also issue a “Class A” cider-only retail license, which only authorizes the sale of cider. In order to obtain this type of license, the applicant must first have been issued a Class “A” beer retail license. Also, a person holding a “Class A” cider-only retail licensee may provide taste samples only of cider. Cider is regulated as a type of wine, therefore a “Class A” cider-only retail licensee must comply with the taste sample requirements applicable to wine. [s. 125.51 (2) (e), Stats.]

A **“Class B” liquor retail license** authorizes the sale of liquor for on-premises consumption by the glass and not in the original package or container. Wine may also be sold in any quantity for off-premise consumption in the original package or container. In addition, a municipality may enact an ordinance authorizing “Class B” liquor retail licensees to do either of the following: (1) sell liquor to be consumed by the glass only for on-premises consumption; or (2) sell distilled spirits in the original package or container, in multiples not to exceed four liters at any one time, for off-premises consumption.

A “Class B” liquor retail license issued to a winery only authorizes the sale of wine. Under the license, the winery may sell the wine for on-premises consumption either by the glass or in opened containers. The winery may also sell the wine in the original, sealed package or container for off-premises consumption.

Among the various requirements applicable to “Class B” liquor retail licenses, an applicant for a “Class B” liquor retail license must first have been issued a Class “B” beer retail license. This requirement does not apply to a temporary “Class B” liquor retail license discussed below. As discussed below, state law also places a quota on the number of “Class B” liquor retail licenses that a municipality may issue. [s. 125.51 (3) and (4), Stats.]

“Class C” Wine-Only Retail Licenses

A “Class C” wine-only license authorizes the sale of wine by the glass or in an opened original container for consumption on the premises where sold. This type of license may be issued only to a restaurant where the sale of alcohol beverages accounts for less than 50% of gross receipts and, if the licensee has a barroom, the licensee does not sell distilled spirits in the barroom. [s. 125.51 (3m), Stats.]

Temporary Beer and Wine Retail Licenses

Temporary retail licenses, commonly referred to as “picnic licenses,” may be issued only to bona fide clubs and chambers of commerce, to county or local fair associations or agricultural societies, to churches, lodges, or societies that have been in existence for at least six months before the date of application, and to posts of veterans organizations. Temporary licenses may be issued to either authorize the organization to sell beer or wine at a picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. Temporary licenses may also be issued for “beer walks” and “wine walks.” [ss. 125.26 (6) and 125.51 (10), Stats.] There are a number of restrictions placed upon temporary licenses, which are described in the application form for temporary licenses, prepared by DOR.

Quota for “Class B” Liquor Retail Licenses

State law restricts the number of “Class B” liquor retail licenses that a municipality may issue through a system commonly referred to as the “quota system.” The quota system limits only the number of “Class B” liquor retail licenses that a municipality may issue. It does not apply to the number of any other type of retail license that may be issued. A “Class B” liquor retail license issued to a winery is not subject to the quota.

Very generally, a municipality’s quota is based upon the sum of the following: (1) the number of “Class B” liquor retail licenses granted or issued in good faith by the municipality and in force on December 1, 1997; and (2) the number of additional reserve “Class B” liquor retail licenses issued after December 1, 1997. [s. 125.51 (4) (b), Stats.]

Q: What is the quota system?

A: The quota system is a way of limiting the number of “Class B” retail liquor licenses a municipality may issue. A municipality’s quota is based upon the sum of the following: (1) the number of “Class B” liquor retail licenses granted or issued in good faith by the municipality and in force on December 1, 1997; and (2) the number of additional reserve “Class B” liquor retail licenses issued after December 1, 1997.

A municipality's number of reserve "Class B" liquor licenses is the number of "Class B" liquor retail licenses first issued after December 1, 1997. An applicant for a reserve "Class B" license must pay a \$10,000 initial license fee to the municipality; this initial license fee does not apply to non-reserve "Class B" licenses. The number of reserve licenses available to a municipality increases by one every time the municipality's population increases by 500, as determined by the Department of Administration for purposes of revenue sharing. A municipality's number of reserve "Class B" liquor licenses may also increase through annexation or if a neighboring municipality that is either contiguous to, or within a two-mile radius of, transfers a reserve "Class B" liquor license to the municipality. This transfer process also has the effect of decreasing the number of reserve "Class B" liquor licenses available to the transferring municipality. Not more than three unused reserve "Class B" liquor licenses may be transferred through this process. [s. 125.51 (4) (bm) to (g), Stats.]

There are a number of specific exceptions that allow a municipality to grant or issue a "Class B" liquor retail license outside of the quota system. Some of these exceptions are considered "above-quota," because the exceptions allow a municipality to grant or issue a "Class B" liquor retail license only after the municipality has granted or issued a number of licenses equal to or in excess of its quota. Other exceptions to the quota allow a municipality to grant or issue a "Class B" liquor retail license regardless of whether the municipality is at or exceeding its quota. [s. 125.51 (u) to (x), Stats.]

SELECT RESTRICTIONS ON RELATIONSHIPS BETWEEN MANUFACTURERS, WHOLESALERS, AND RETAILERS

The Alcohol Beverages Chapter maintains a three-tier system through numerous regulations that specify or restrict how manufacturers, wholesalers, and retailers may interact with one another. This section discusses some examples of these regulations.

Direct or Indirect Interest

One way that Wisconsin's Alcohol Beverages Chapter maintains a three-tier system is through various restrictions that are placed upon the relationships between a manufacturer, wholesaler, and retailer. One restriction involves whether a manufacturer or wholesaler may hold a license to retail sell beer or liquor, or have a direct or indirect interest in a retail

Q: Does state law provide examples of what constitutes a manufacturer or wholesaler having direct or indirect interest in a retail establishment?

A: Yes. Section Tax 8.87, Wis. Adm. Code, provides a list of examples of what constitutes a manufacturer or wholesaler having a direct or indirect interest in a retail establishment.

establishment. For example, a retailer licensed to sell beer may not be issued to a person holding a beer wholesaler’s permit, or to a person who has a direct or indirect ownership interest in a beer wholesaler’s permit. Similarly, a liquor manufacturer, rectifier, winery, or wholesaler is generally prohibited from holding any direct or indirect interest in a liquor retail establishment.

There are exceptions to these general prohibitions, however. For example, see the previous sections about brewers and wineries.

Tied-House Laws

A “tied-house” generally refers to a bar, pub, tavern, or restaurant licensed to sell beer that is owned or controlled by a beer manufacturer (i.e., brewer or brewpub). Both state and federal law contains restrictions on tied-houses, referred to as “tied-house laws.” Tied-house laws attempt to create free competition among brewers and prevent monopolistic sales practices that were common prior to the ratification of U.S. Const. amend. XXVIII, which took effect on January 16, 1920, and began a 13-year period where the manufacture, distribution, and sale of alcohol beverages was prohibited, commonly referred to as “prohibition.”

While the federal tied-house law applies to both beer and liquor manufacturers and wholesalers (in the course of interstate or foreign commerce), Wisconsin’s tied-house law applies only to beer manufacturers and wholesalers. The state law generally prohibits a brewer, brewpub, or beer wholesaler from furnishing, giving, lending, leasing, or selling anything of value to a Class “B” beer retailer. There are numerous exceptions to this, however, such as giving to a Class “B” beer retailer signs, clocks, and menu boards with an aggregate value of not more than \$2,500 for placement inside of the retail premises. [21 U.S.C. s. 205 (b) and s. 125.33 (1) (a), and (2), Stats.]

Q: What is a “tied-house”?

A: A “tied-house” generally refers to a bar, pub, tavern, or restaurant licensed to sell beer that is owned or controlled by a beer manufacturer (i.e., brewer or brewpub). Prior to the ratification of U.S. Const. amend. XXVIII, which took effect on January 16, 1920, tied-houses were common. To increase beer sales, brewers engaged in monopolistic practices, which led to intemperate drinking.

Exclusive Sales

Both federal and state law contain restrictions on the ability of a manufacturer or wholesaler to require a retailer to exclusively sell alcohol that is produced by one manufacturer. Federal law prohibits any contract or agreement that requires a retailer to purchase beer or liquor exclusively, in whole or in part, from one manufacturer or wholesaler (if the requirement is made in the course of interstate or foreign commerce). [21 U.S.C. s. 205 (a).]

Under the state’s Alcohol Beverages Chapter, a beer wholesaler is prohibited from selling or offering to sell a brand of fermented malt beverages exclusively to one Class “A” beer retailer or to a group of Class “A” beer retailers affiliated through common ownership, management, or control, unless the brand of beer is produced by a brewer that produces fewer than 300,000 barrels of beer in a calendar year (i.e., a “craft brewer”) or by a brewpub. [s. 125.33 (8), Stats.]

State law also prohibits a brewer, brewpub, or beer wholesaler from requiring a Class “B” beer retailer to purchase the beer of any brewer or brewpub to the exclusion of those manufactured by other brewers or brewpubs. Contracts that require such exclusive sales are prohibited. [s. 125.33 (1) (b), Stats.]

ADDITIONAL REFERENCES

1. At the beginning of each biennial legislative session, the Legislative Fiscal Bureau publishes Informational Papers, relating to state programs and local government issues, including alcohol and tobacco taxation. These Informational Papers are available at: <http://legis.wisconsin.gov/lfb>.
2. DOR has prepared a number of forms, publications, tax reports, and frequently asked questions applicable to alcohol beverages retailers and permittees:
 - Forms related to retail licenses may be found at: <https://www.revenue.wi.gov/Pages/Form/alcohol-Home.aspx>.
 - Information regarding alcohol beverages laws applicable to retailers may be found in: *Wisconsin Alcohol Beverage and Tobacco Laws for Retailers*, DOR Publication 302 (updated 12/16): <https://www.revenue.wi.gov/DOR%20Publications/pb302.pdf>.
 - Answers to common questions regarding alcohol beverages laws for retailers are available at: <https://www.revenue.wi.gov/Pages/FAQS/home.aspx>.
 - Forms, tax reports, and other information related to alcohol beverages permits are available at: <https://www.revenue.wi.gov/Pages/Businesses/Liquor.aspx>.
 - *Alcohol Beverage Tax Information*, DOR Publication 303 (updated 01/16): <https://www.revenue.wi.gov/DOR%20Publications/pb303.pdf>.
 - Answers to common questions regarding beer and liquor taxation are available at: <https://www.revenue.wi.gov/Pages/FAQS/home.aspx>.
3. Department of Agriculture, Trade, and Consumer Protection (DATCP) Food Licensing Consultants: https://datcp.wi.gov/Pages/Licenses_Permits/FoodLicenses.aspx.
4. Alcohol and Tobacco Tax and Trade Bureau, U.S. Department of Treasury: <https://www.ttb.gov/alcohol/bev-alc.shtml>.

5. The U.S. Food and Drug Administration has prepared a number of compliance guidance documents, applicable to alcohol beverages permittees, available at:
 - <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/default.htm>.
 - <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/default.htm>.
6. League of Wisconsin Municipalities (LWM), *Municipal Licensing and Regulation of Alcohol Beverages* (2016). LWM also prepares advisory legal opinions for municipalities on alcohol beverages licensing questions: <http://www.lwm-info.org/>.
7. Town’s Association: <http://wisctowns.com/home>.
8. Aaron R. Gary, *Alcohol Beverages Regulation in Wisconsin* (State Bar of Wisconsin, PINNACLE 2012).
9. Raymond B. Fosdick and Albert L. Scott, *Toward Liquor Control* (Center for Alcohol Policy, <https://www.centerforalcoholpolicy.org/>, 2011). This study of alcohol control policy options was originally commissioned by John D. Rockefeller and published in 1933, during the ratification of the 21st Amendment to repeal prohibition.

GLOSSARY

Alcohol beverages: Fermented malt beverages (beer) and intoxicating liquor (distilled spirits, wine).

Alcohol Beverages Chapter: Chapter 125, Stats., which contains the statutory requirements regulating the manufacture, distribution, and sale of alcohol beverages (the three tiers) in Wisconsin.

Alcohol and Tobacco Tax and Trade Bureau (TTB): The federal bureau housed within the U.S. Treasury Department that is responsible for enforcing federal alcohol beverages laws.

Brewer: Any person who manufactures fermented malt beverages for sale or transportation, except that “brewer” does not include a brewpub permittee.

Brewpub: A permittee holding a brewpub permit.

Craft brewer: While there is no definition in state law, “craft brewer” generally refers to a brewer who produces less than 300,000 barrels of fermented malt beverages in a calendar year

Department of Agriculture, Trade and Consumer Protection: The state agency that has enforcement authority over bottling establishments, food products, and labels on plastic containers to facilitate recycling.

Department of Revenue: The state agency that has enforcement authority over ch. 125, Stats., the Alcohol Beverages Chapter, and ch. 139, Stats., the Alcohol Beverages Tax Chapter.

Fermented malt beverages (beer): Any beverage made by the alcohol fermentation of an infusion in potable water of barley, malt, and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing 0.5% or more of alcohol by volume.

Intoxicating liquor (distilled spirits, wine): All ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include beer.

License: An authorization to sell alcohol beverages issued by a municipal governing body under the Alcohol Beverages Chapter.

Manufacturer: A person, other than a rectifier, that ferments, manufactures, or distills intoxicating liquor.

Permit: Any permit issued by DOR under the Alcohol Beverages Chapter.

Premises: The area described in a license or permit issued under the Alcohol Beverages Chapter.

Quota: The number of “Class B” liquor retail licenses that a municipality may issue, which is calculated by the sum of the following: (1) the number of “Class B” liquor retail licenses granted or issued in good faith by the municipality and in force on December 1, 1997; and (2) the number of additional reserve “Class B” liquor retail licenses issued after December 1, 1997.

Rectifier: Any one of the following:

- A person that rectifies, purifies, or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort, or wash through continuous closed vessels or pipes until the manufacture thereof is complete.
- A person who, possesses any still or leach tub or keeps any other apparatus for refining distilled spirits.
- A person who, after rectifying and purifying distilled spirits by mixing such spirits with any materials, manufactures any spurious, imitation, or compound liquors for sale.
- A distiller or any person under substantially the same control as a distiller who, without rectifying, purifying or refining distilled spirits by mixing such spirits with any materials, manufactures any spurious, imitation, or compound liquors for sale under the name of “whiskey,” “brandy,” “gin,” “rum,” “spirits,” “cordials,” or any other name.
- A person who places intoxicating liquor in bottles or other containers.

Retailer: Any person who sells, or offers for sale, any alcohol beverages to any person other than a person holding an alcohol beverages permit or a license under the Alcohol Beverages Chapter.

Sell, sold, sale, or selling: Any transfer of alcohol beverages with consideration or any transfer without consideration if knowingly made for purposes of evading the law relating to the sale of alcohol beverages or any shift, device, scheme, or transaction for obtaining alcohol beverages, including the solicitation of orders for, or the sale for future delivery of, alcohol beverages.

Three-tier system: A method of regulating the production and sale of alcohol beverages by dividing the alcohol beverages industry into three levels. In Wisconsin, these three tiers, or levels, are: (1) manufacturers (producers); (2) wholesalers (distributors); and (3) retailers.

Tied-House: A bar, pub, tavern, or restaurant licensed to sell beer that is owned or controlled by a beer manufacturer (i.e., brewer or brewpub).

Wholesaler: A person, other than a brewer, brewpub, manufacturer, or rectifier, who sells alcohol beverages to a licensed retailer or to another person who holds a permit to sell alcohol beverages at wholesale.

Wine: Products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits or other agricultural products, imitation wine, compounds sold as wine, vermouth, cider, perry, mead and sake, if such products contain not less than 0.5% nor more than 21% of alcohol by volume.

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