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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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IM-2023-08

### **CHANGES TO THE REGULATION OF ALCOHOL BEVERAGES UNDER 2023 WISCONSIN ACT 73**

2023 Wisconsin Act 73 make numerous changes relating to the regulation of alcohol beverages under ch. 125, Stats. (Wisconsin’s alcohol beverages chapter). The act also includes a number of provisions related to the enforcement of laws by the Department of Revenue (DOR).

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. 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 the type of alcohol beverage involved.<sup>1</sup>

### **STATE ENFORCEMENT OF ALCOHOL BEVERAGES LAWS AND TAXATION**

#### **Reorganizing the Structure of State Agency Enforcement**

##### **Current Law**

Current law generally provides the DOR with regulation and enforcement authority over the manufacture, distribution, and retail sale of alcohol beverages, as well as the authority to regulate and enforce the taxation of alcohol beverages.<sup>2</sup> [See ss. 73.03 (24), 125.14, 125.145, and 139.08 (1) and (3), Stats.]

##### **The Act**

The act creates the Division of Alcohol Beverages (DAB) as a subunit of DOR. The act provides DAB and its employees with all necessary police powers to prevent violations of Wisconsin’s alcohol beverages chapter. Within DAB, there are two separate bureaus dedicated to: (1) enforcement; and (2) legal services, permitting, and reporting. It also creates a unit within DAB dedicated to education and community outreach. The act transfers all of DOR’s regulation and enforcement authority over the manufacture, distribution, and retail sale of alcohol beverages,

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<sup>1</sup> For an overview of Wisconsin’s alcohol beverages laws, please see Legislative Council Information Memorandum, [Overview of Alcohol Beverages Regulations](#) (March 12, 2021).

<sup>2</sup> For a more thorough discussion of DOR’s regulation and enforcement authority over alcohol beverages, please see Legislative Council Study Committee Memorandum, [Department of Revenue’s Statutory Authority and Requirements Related to Wisconsin’s Alcohol Beverages Chapter](#) (July 16, 2018).

which are found in Wisconsin's alcohol beverages chapter, to DAB. The act also specifies the following:

- DAB must administer Wisconsin's alcohol beverages chapter and have jurisdiction over alcohol beverage regulation, enforcement, and education in the state.
- DAB is responsible for administering regulatory programs; promoting regulatory transparency; promoting statutory changes to create clarity, consistency, and simplicity in alcohol beverage regulatory requirements; and ensuring active consistent enforcement of alcohol beverages laws.

The act **does not** make any changes to DOR's authority related to the taxation of alcohol beverages under ch. 139, Stats. Under the act, DOR retains its current authority related to the taxation of alcohol beverages and the taxation and enforcement of laws related to cigarettes and tobacco.

The following sections describe DAB's organizational structure under the act, as well as provisions that transition authority and duties to DAB.

### **DAB Administrator and Bureau Directors**

The act provides that the DAB administrator is appointed outside of the classified service, the state's civil service system; nominated by the DOR secretary and confirmed with the advice and consent of the Senate; and serves at the pleasure of the DOR secretary. The two bureaus within DAB are each headed by a bureau director, who reports to, and serves at the pleasure of, the DAB administrator. The unit dedicated to education and community outreach is headed by an individual who reports to the DAB administrator.

### **DAB Employees**

Under the act, all DOR positions that are primarily related to alcohol beverages regulation and enforcement, as determined by the DOR secretary, are transferred to DAB on the effective date of the act. In addition, the act transfers a sufficient number of currently vacant authorized full-time equivalent (FTE) positions in DOR to total 20.0 FTE positions in DAB. Of these positions, DAB must have no fewer than 10 alcohol field agents to perform activities under DAB's enforcement bureau.

DAB employees are subject to the state's standards of conduct and conflict of interest prohibitions under the state's ethics code and may not be employed by, or have a substantial financial interest in, the alcohol beverage industry.

### **Administrator of Division of Income, Sales and Excise Tax Interim Authority**

The act provides DOR's administrator of the Division of Income, Sales and Excise Tax with the interim authority to undertake all measures necessary to implement the changes in the act by the effective date of each change, including taking action in preparation for the creation of the DAB and appointment of a DAB administrator and its bureau directors. A discussion of the act's effective dates are provided at the end of this information memorandum.

### **DAB Assets, Property, and Contracts**

To effectuate the creation of DAB and transfer of DOR's alcohol beverages regulation and enforcement authority to DAB, the act also provides all of the following:

- DOR's assets and liabilities primarily related to alcohol beverages regulation and enforcement, as determined by the DOR secretary, become the assets and liabilities of DAB.

- All DOR tangible personal property, including records, that is primarily related to alcohol beverages regulation and enforcement, as determined by the DOR secretary, is transferred to DAB.
- All contracts entered into by DOR that are in effect on the effective date of the act and that are primarily related to alcohol beverages regulation and enforcement, as determined by the DOR secretary, remain in effect and are transferred to DAB. DAB must carry out any obligations under those contracts unless modified or rescinded by DAB, to the extent allowed under the contract.
- The DOR secretary must develop a plan for an orderly transfer from DOR to DAB and must resolve any disagreement between DOR and DAB with respect to any matter related to the transfer.

### **Other Specified Provisions to Assist in the Transfer of Authority and Duties to DAB**

To effectuate the transfer of DOR's alcohol beverages regulation and enforcement authority under the alcohol beverages chapter to DAB, the act clarifies the following:

- Alcohol Beverage Administrative Rules and Orders. All rules promulgated by DOR, and all orders issued by DOR, that relate to alcohol beverages regulation and enforcement that are in effect on the effective date of the act, remain in effect until their specified expiration dates or until amended or repealed, or modified or rescinded, by DAB.
- Pending Matters. Any matter pending with DOR on the effective date of the act that is primarily related to alcohol beverages regulation and enforcement, as determined by the DOA secretary, is transferred to DAB. All materials submitted to or actions taken by DOR with respect to the pending matters are considered as having been submitted to or taken by DAB.
- Permit Fees. All fees established by DOR related to alcohol beverages permits that are in effect on the effective date of the act must remain in effect until modified or rescinded by DAB.<sup>3</sup>

### **Issuance and Administration of Licenses and Permits**

The act does the following related to the issuance and administration of alcohol beverage licenses and permits:<sup>4</sup>

- Requires an applicant to notify the licensing authority of any changed fact set out in an application within 30 days of the change in fact. Under current law, an applicant must do so within 10 days.
- Requires DAB to annually publish the list of retail licensees on its website. Under current law, the clerk of each municipality must annually provide DOR a list with the name, address, and trade name of each person holding a license issued by that municipality (other than an operator's license or a temporary Class "B" beer license), the type of license held, and, if the licensee is a corporation or limited liability company, the name of the agent.

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<sup>3</sup> The act also establishes an annual fee of \$500 for any permit for which neither DOR nor the statutes have already established a different fee.

<sup>4</sup> While much of Act 73 was originally introduced in Senate Amendment 2 to 2023 Senate Bill 268, these provisions were included in the bill as introduced.

- Requires an applicant to pay any fees incurred by DAB for purposes of conducting a criminal history search to determine an applicant's qualifications for a permit.
- Prohibits an applicant or permit holder whose permit has been revoked from reapplying for the permit for a period of six months following revocation.

## **State Jurisdiction Over Out-of-State and In-State Permittees**

### **Current Law**

There are three types of alcohol beverages permits that DOR may issue to a person, corporation, or limited liability company located outside of the state. These permits are: (1) the out-of-state beer shippers' permit; (2) the out-of-state 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, subject to various restrictions, authorizes a wine manufacturer located either in 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 Act**

The act requires a person holding an out-of-state beer shippers' permit, out-of-state liquor shippers' permit, or a direct wine shippers' permit who is located outside of Wisconsin to consent to jurisdiction in this state for any proceeding in this state to enforce alcohol beverages laws found in both the alcohol beverages chapter and ch. 139, Stats.

These permittees must also accept service of process in this state for any Wisconsin proceeding to enforce alcohol beverages laws. In order to accept service of process in this state, these permittees must appoint and continually engage the services of an agent in this state and meet specified requirements so that the permittee may accept service in Wisconsin relating to the enforcement of any alcohol beverages law.

The act codifies requirements regarding the payment of occupational taxes, filing reports and tax returns, keeping records, submitting to DAB inspections and examinations, and paying expenses reasonably attributable to these inspections and examinations made by DAB at any premises of the permittee located outside of the state, which is similar to what is required under ch. 139, Stats.

The act also creates the authority for DAB to revoke or suspend any Wisconsin alcohol beverages license or permit if the licensee or permittee ships alcohol into another state in violation of that state's law.

## Taxation of Alcohol Beverages

### Timing for the Imposition of Alcohol Occupational Taxes

#### Current Law

Under current law, Wisconsin generally imposes an occupational (excise) tax on the sale of beer and liquor in Wisconsin, or shipment of the product into the state.<sup>5</sup> The occupational tax on beer is paid by the following: (1) a brewery, brewpub, or bottler; (2) an out-of-state shipper who ships beer into Wisconsin from other states; and (3) a beer wholesaler who imports beer into Wisconsin from a foreign country. [ss. 139.02 and 139.05 (1) and (2), Stats.]

Similarly, the occupational tax on liquor which is paid by the following: (1) a manufacturer, rectifier or winery; (2) a direct wine shipper who ships wine to individuals in Wisconsin; (3) an out-of-state shipper who ships liquor into Wisconsin from other states; and (4) a Wisconsin liquor wholesaler who imports liquor from a foreign country. [ss. 139.03, 139.035, and 139.06 (1) (b), Stats.]

The statutes provide numerous exceptions to the imposition of occupational taxes on both beer and liquor. For example, no occupational tax is imposed upon either of the following:

- The sale or shipment of beer by a brewer to a bottler.
- The sale or shipment of liquor in bulk between manufacturers, rectifiers, and wineries. Liquor sold in bulk must have a label or statement affixed to it stating that the shipment is made for the purpose of bottling or rectifying.

[ss. 139.04 (4) and 139.06 (3), Stats.]

#### The Act

The act adds an exception to provide that no occupational tax may also be imposed upon the sale or shipment of beer between brewers. The act also amends the exception to the occupational tax for liquor sold or shipped between manufacturers, rectifiers, and wineries. Under the act, no occupational tax may be imposed on liquor sold **in bulk or any state of packaging** between manufacturers, rectifiers, and wineries. The act also provides that a manufacturer or rectifier shipping liquor to another manufacturer, whether in bulk or in any state of packaging, must affix a label or statement that the shipment is a tax-exempt transfer.

### Taxation and Production of Gluten-Free Beer and Hard Seltzers as Beer

#### Current Law

Currently, products such as gluten-free beers and hard seltzers are classified as “beer” under federal law, but classified as “intoxicating liquor” under Wisconsin law. As a consequence, these products are subject to a higher tax rate and must be made by a person holding a manufacturer’s or winery permit.<sup>6</sup> Specifically, federal law defines “beer” as:

[B]eer, ale, porter, stout, and other similar fermented beverages  
(including sake and similar products) of any name or description

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<sup>5</sup> For more information about the occupational tax for beer and liquor, see DOR, [Alcohol Beverage Tax Information](#), Publication 303 (12/21).

<sup>6</sup> See [DOR on Tap](#), February 2023.

containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt.

[27 C.F.R. s. 25.11]

In contrast, state law defines beer, or “fermented malt beverages,” as “any beverage made by the alcohol fermentation of an infusion of potable water of barley malt and hops, with or without grains or decorticated and degerminated grains or sugar containing 0.5 percent or more of alcohol by volume.” [s. 125.02 (6), Stats.]

### **The Act**

The act adds to the state’s definition of “fermented malt beverages” any beverage that is recognized by the federal Department of the Treasury as “beer” under 27 C.F.R. Part 25, except sake or similar products. This change allows gluten-free beers and hard seltzers that are classified as beer under federal law to also be classified as “beer” under state law and thus to be subject to the state’s lower taxation rate for beer. It also allows these products to be manufactured under a brewer’s or brewpub permit.

## **PROVISIONS RELATED TO ALCOHOL BEVERAGES MANUFACTURERS**

### **Brewers, Wineries, Manufacturers, and Rectifiers: Retail Sales Authority**

#### **Current Law**

Under current law, brewers, wineries, manufacturers, and rectifiers (“producers”)<sup>7</sup> may engage in limited retail sales of alcohol beverages to consumers, as described below.

A brewer’s permit allows the retail sale of beer at two locations: the brewer’s premises and a separate, off-site retail location established by the brewer. At those locations, a brewer may sell beer manufactured by the brewer or other Wisconsin brewers either for off-premises consumption, if sold in original unopened packages, or for on-premises consumption. A brewer may operate a restaurant at either location (but not at any other location) and may provide consumers with free samples. A brewer is not required to obtain municipal approval for the off-site retail location. A brewer may not obtain a retail license, although a brewer that held a liquor retail license on June 1, 2011, may maintain that license. [s. 125.29 (3), Stats.]

A winery must obtain a liquor retail license in order to make retail sales to consumers. Specifically, a winery may be issued either one “Class A” liquor retail license<sup>8</sup> or one “Class B” liquor retail license<sup>9</sup> 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, the winery must be capable of producing at least 5,000 gallons of wine per year in no more than two locations. A winery may

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<sup>7</sup> Brewpubs also manufacture alcohol beverages but are treated differently, particularly with respect to authorized retail sales, as is discussed below.

<sup>8</sup> A “Class A” liquor retail license authorizes the retail sale of liquor in its original package or container for off-premise consumption. Similarly, a Class “A” beer retail license authorizes the retail sale of beer in its original package, container, or bottle for off-premise consumption. “Class A” liquor and Class “A” beer licenses are most commonly used by package stores, liquor stores, and grocery stores. For more information on retail licenses, see Legislative Council Issue Brief, [Alcohol Beverage Retail Licenses](#) (September 2022).

<sup>9</sup> Generally, a “Class B” liquor retail license authorizes the retail sale of liquor by the glass and not in the original package or container for either on- or off-premise consumption. A Class “B” beer retail license authorizes the retail sale of beer for on-premise consumption or for off-premise consumption. “Class B” liquor and Class “B” beer licenses are most commonly used by bars, taverns, and restaurants.

not make retail sales from an off-site location. A winery license also authorizes the provision of free taste samples from the winery's premises. [ss. 125.51 and 125.53, Stats.]

A manufacturer's or rectifier's permit allows the retail sale of liquor that is manufactured or rectified on its premises for consumption on or off the premises. It also authorizes the provision of free taste samples of liquor that it produced on the premises. A manufacturer or rectifier may not make retail sales from an off-site location, but a person may obtain up to two manufacturer's or rectifier's permits. Manufacturers and rectifiers may also obtain a Class "A" or Class "B" beer retail license. [ss. 125.52 (1) (b) 2. and (7) and 125.69 (1), Stats.]

## **The Act**

The act makes all of the following changes to current law: (1) expands the ability of producers, as defined above, to make retail sales on the production premises; (2) allows producers to establish full-service retail outlets dependent on the producer's maximum production in any of the three previous calendar years; and (3) modifies the hours during which producers are prohibited from making retail sales to match those that are applicable to a Class "B" beer retailer. These changes are discussed in greater detail below.

### **Retail Sales From Premises**

The act generally creates a more uniform standard for retail sales for brewers, wineries, manufacturers and rectifiers. Specifically, any of these producers may sell their alcohol beverages from the premises, and if a producer meets specified production thresholds, that producer may also make retail sales of types of alcohol beverages other those it manufactures.

Under the act, a producer may make retail sales of alcohol beverages that it manufactured on its premises or on other premises of the producer, for on-premises or off-premises consumption. In addition to selling alcohol beverages manufactured on the its premises, a producer that meets specified production thresholds may engage in full-service retail sales from the manufacturer's premises. Those production thresholds are the following:

- For a brewer, at least 250 barrels of beer in any of the three preceding calendar years.
- For a manufacturer or rectifier, 1,500 liters of liquor.
- For a winery, 1,000 gallons of wine.

Full-service retail sales is defined as retail sales of beer or liquor, for on-premises or off-premises consumption, and the provision of taste samples of beer or liquor. If a producer is eligible to make full-service retail sales and engages in the sale of alcohol beverages other than those manufactured on the premises, the producer must purchase those alcohol beverages from a permitted beer or liquor wholesaler or from a brewer, brewpub, or out-of-state beer shipper authorized to make sales to retailers. Because the act allows certain producers to engage in full-service retail sales, it eliminates the option for a producer to also hold a retail license.<sup>10</sup>

### **Full-Service Retail Outlet**

The act allows producers that meet specified production thresholds to establish between one and three full-service retail outlets and make full-service retail sales from those premises, subject to the approval of the municipality and DAB.

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<sup>10</sup> A brewer may sell liquor from their premises if the brewer held a license or permit authorizing the retail sale of liquor at the location on June 1, 2011; the liquor has been purchased from a permitted liquor wholesaler; and the brewer is not eligible to make full-service retail sales at the location.

A producer's authority to operate full-service retail outlets is based on its cumulative maximum production in any of the preceding three calendar years, as follows:<sup>11</sup>

- One outlet to any of the following: (1) a brewer that has produced at least 250 barrels of beer; (2) a winery that has produced at least 1,000 gallons of wine; or (3) a manufacturer or rectifier that has produced at least 1,500 liters of liquor in a year.
- Two outlets to any of the following: (1) a brewer that has produced between 2,500 and 7,500 barrels of beer; (2) a winery that has produced between 5,000 and 25,000 gallons of wine; or (3) a manufacturer or rectifier that has produced between 5,000 and 35,000 liters of liquor in a year.
- Three outlets to any of the following: (1) a brewer that has produced more than 7,500 barrels of beer; (2) a winery that has produced at least 25,000 gallons of wine; or (3) a manufacturer or rectifier that has produced more than 35,000 liters of liquor in a year.

Any alcohol beverages sold by a producer, other than those manufactured by the producer, must be purchased from a permitted wholesaler or from a brewer, brewpub, or out-of-state beer shipper authorized to make sales to retailers. A producer is subject to the same requirements and penalties relating to purchasing alcohol beverages from a permitted wholesaler as a retailer.<sup>12</sup>

As was mentioned, a producer must obtain the approval of both the municipality in which the full-service retail outlet is located and DAB. The municipality's approval must be based on the same standards and criteria that the municipality has established by ordinance for the evaluation and approval of retail license applications; a municipality may not impose requirements or restrictions on a producer that it does not impose on retail licenses. Municipalities may limit the scope of alcohol beverages that the producer may offer for sale at the outlet, but only with respect to alcohol beverages that are not the same type as those produced by the producer.

DAB must approve an application for a retail outlet, and may not revoke that approval, unless the producer has violated a provision of ch. 125, Stats., related to full-service retail outlets. Denial of approval or revocation of the approval of a retail outlet does not affect any other retail outlet operated by the producer. If DAB approves an outlet, the permit must particularly describe the premises constituting the retail outlet; these premises are then considered part of the premises under the producer's permit.

Upon notice to DAB, a producer may relocate a full-service retail outlet to another location in the state. One location may be relocated without limitation on frequency; any other location may be moved to a new location once per calendar year.

The act also allows a producer to operate a restaurant on its premises and at any full-service retail outlet operated by the producer.

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<sup>11</sup> A producer that holds more than one type of manufacturing permit—such as a brewer's permit and a manufacturer's permit—may not establish more full-service retail outlets, in the aggregate, than it would be allowed to establish under any single permit, and may not exceed three full-service retail outlets.

<sup>12</sup> Brewers that also hold a manufacturer's, rectifier's, or winery permit may make retail sales on the brewery premises of liquor produced under the manufacturer's, rectifier's, or winery permit without first purchasing the liquor from a liquor wholesaler.

### **Brewer's Off-Site Retail Outlet**

Under current law, a brewer's permit authorizes, the sale of beer to consumers from an off-site retail outlet for on-premises or off-premises consumption. [s. 125.29 (3) (e) and (f), Stats.]

The act allows the operation of an off-site retail outlet only by brewers that are not otherwise eligible to engage in full-service retail sales. Current law allows a brewer to operate a restaurant at an off-site retail outlet, but only allows the sale of beer manufactured under the brewer's own brewer's permit.

### **Brewers, Wineries, Manufacturers, and Rectifiers: Closing Hours**

#### **Current Law**

Current law specifies when a retailer is prohibited from selling alcohol beverages for on-premise and off-premise consumption, commonly referred to as "closing hours." For example, a retailer that sells alcohol beverages for on-premises consumption, a Class "B" beer, a "Class B" liquor, or a "Class C" wine-only retailer, must generally be closed between the hours of 2:00 a.m. and 6:00 a.m., Monday through Friday, or between 2:30 a.m. and 6:00 a.m., Saturday or Sunday. A Class "A" or Class "B" beer retailers is prohibited from selling beer in an original unopened package, container, or bottle for consumption away from the premises between the hours of midnight and 6:00 a.m.; a "Class A" liquor retailer is prohibited from selling liquor for off-premise consumption between 9:00 p.m. and 6:00 a.m., though municipalities may establish more restrictive hours. [ss. 125.32 (3) and 125.68 (4) (c), Stats.]

Regarding closing hours for alcohol beverages manufacturers, a brewpub is required to obtain a retail license and is thus subject to the same closing hours described. A winery that has been issued a "Class B" liquor license must be closed for retail sales between the hours of 9:00 p.m. and 8:00 a.m. Current law does not specifically address the closing hours for retail sales made by a brewer, manufacturer, or rectifier. [ss. 125.295 (2) (a) 4. and (3) (c), 125.68 (4) (c) (3m), Stats.]

#### **The Act**

The act establishes more uniform closing hours for retailers and producers by subjecting producers to the same closing hours that apply to a Class "B" beer retailer in the municipality where the producer's premises or off-site retail location is located. The act prohibits producers from doing the following during closing hours:

- Selling alcohol beverages at retail for on-premises consumption, providing taste samples, or allowing consumption of alcohol beverages on the premises of the producer or any full-service retail outlet.
- Selling alcohol beverages at retail for off-premises consumption on the premises of the producer or any full-service retail outlet.
- Allowing any member of the public or invited guest to be on the premises of the producer.

## **Brewers, Manufacturers, Rectifiers, and Wineries: Taste Samples Provided on Retail Premises**

### **Current Law**

The statutes allow brewers and certain retailers to provide free taste samples on a retailer's premises. Samples may only be provided in limited quantities between the hours of 11:00 a.m. and 7:00 p.m. Quantities of samples are limited as follows:

- A brewer or Class "A" retailer may provide up to two samples of beer per person of up to three ounces in volume on the retailer's premises. The retailer must have purchased the beer from a wholesaler; if a brewer provides the samples, the brewer must have purchased the samples from the retailer. The municipality may establish more restrictive tasting hours by ordinance. [ss. 125.25 (1) and 125.33 (12), Stats.]
- A "Class A" retailer may provide one free taste sample per person of distilled spirits of up to half an ounce in volume. The retailer must have purchased the spirits from a wholesaler. A manufacturer, rectifier, winery, or out-of-state liquor shipper may assist the retailer. [s. 125.51 (2) (am), Stats.]
- A "Class A" retailer may provide up to two free taste samples of wine per person of up to three ounces in volume. The retailer must have purchased the wine from a wholesaler. A municipality may prohibit the provision of wine taste samples. [s. 125.06 (13), Stats.]

### **The Act**

The act expands the ability of brewers, manufacturers, rectifiers, and wineries to offer free taste samples on a retailer's premises. Under the act, a brewer may provide free taste samples on the premises of a Class "A" or Class "B" retailer, while a manufacturer, rectifier, or winery may provide free taste samples on the premises of a "Class A," "Class B," or "Class C" retailer.

The ability to provide free taste samples is subject to restrictions in hours and in quantity. Samples may be provided between the hours of 11:00 a.m. and 7:00 p.m., and may be provided in the following quantities: for wine, up to two samples of three ounces in volume; for distilled spirits, one sample of half an ounce in volume; and for beer, up to two samples of three ounces in volume. The alcohol beverages used for the samples must be either purchased by the producer from the retailer or produced by the producer and brought to the retailer's premises. A producer is prohibited from leaving any leftover alcohol beverages on a retailer's premises, other than those purchased from the retailer.

## **Brewers, Wineries, Manufacturers, and Rectifiers: Other Authorized Retail Activities**

### **Current Law**

Under current law, the permit of a brewer, winery, manufacturer, or rectifier authorizes the manufacturing of specified types of alcohol beverages and certain activities related to manufacturing.

## **The Act**

The act allows the following additional activities for producers (other than brewpubs):

- A producer may transport alcohol beverages between the production premises and any depot, warehouse, or full-service retail outlet maintained by the producer, or any other permitted premises of the producer.
- A producer may sell, ship, transport, or deliver alcohol beverages, in bulk or in any other state of packaging, to another producer that holds a permit that allows production of the same type of alcohol beverages.
- A manufacturer, rectifier, or winery may sell or transfer liquor to, or receive liquor from, another permitted manufacturer, rectifier, or winery for purposes of further manufacturing, bottling, or storage.

## **Brewpubs: Authorized Activities**

### **Current Law**

Under current law, the authorized activities for brewpubs are different than those for brewers. A brewpub may operate up to six locations as part of a brewpub group; it must hold a Class “B” beer retail license and operate a restaurant on the premises, which must sell beer brewed by a Wisconsin brewer. A brewpub may manufacture beer on the premises of the brewpub and engage in certain activities related to manufacturing, but may not produce more than 10,000 barrels of beer per year and must manufacture all beer on the premises. Requiring production to occur on the brewpub premises prevents a brewpub from engaging in contract brewing. A brewpub may sell up to 1,000 barrels of beer per year in original, unopened packages directly to retailers. [s. 125.295, Stats., and DOR, [Brewpub Permits](#), Fact Sheet 3112 (August 16, 2022).]

### **The Act**

The act includes the following provisions related to brewpubs:

- Increases the manufacturing limit from 10,000 barrels of beer per year to 20,000.
- Increases a brewpub’s self-distribution limit from 1,000 barrels of beer per year to 2,000.
- Eliminates the requirement that the entire manufacturing process occur on the brewpub premises and allows brewpubs to engage in contract brewing.
- Allows a brewpub to sell beer from another brewpub, or that of a brewer, to meet the requirement of selling beer other than that brewed by the brewpub at the brewpub’s restaurant.
- Allows a brewpub to sell, ship, transport, or deliver, in bulk or any state of packaging, beer manufactured by the brewpub to another brewpub.

## **Brewers: Licensing Exception for Beer Provided on Brewery Premises**

### **Current Law**

Under current law, a brewer is not required to obtain a license or permit to furnish beer free of charge to customers, visitors, and employees on the brewery premises, as long as the beer is consumed on the brewery premises and is not furnished or consumed in or near any room or place where liquor is sold. [s. 125.06 (1), Stats.]

## The Bill

The act expands this licensing exception by eliminating the requirements that the beer is consumed on brewery premises and is not furnished or consumed in or near any room or place where liquor is sold.

## Manufacturers and Rectifiers: Limits on the Number Permits Held by One Person

### Current Law

Under current law, DOR is prohibited from issuing more than two manufacturers' or rectifiers' permits to one person, and from issuing more than two liquor wholesalers' permits to one person. [ss. 125.52 (7) and 125.54 (6), Stats.]

### The Act

The act repeals both of these prohibitions.

## All Alcohol Beverages Manufacturers: Production Agreements

### Current Federal Law

The U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) allows beer, distilled spirits, and wine to be manufactured through contract production or alternating proprietorship agreements.<sup>13</sup> With respect to beer, for example, TTB Industry Circular 2005-2, described a contract brewing agreement as follows:

A **contract brewing arrangement** is a business relationship in which one person, such as a wholesale or retail dealer or a brewer, pays a brewing company, the "contract brewer," to produce beer for him or her. The contract brewer is entirely responsible for producing the beer, keeping appropriate brewery records, labeling the beer with its name and address, obtaining necessary certificates of label approval (COLAs), and paying tax at the appropriate rate upon removal of the beer from the brewery. The contract brewer retains title to the beer at least until the beer is taxpaid or removed from the brewery. TTB considers contract brewing arrangements to be ordinary commercial arrangements.

[TTB, [Industry Circular 2005-2](#); (emphasis added).]

In contrast, in an alternating proprietorship agreement, two or more people use the same physical premises and equipment of a brewery to manufacture beer. The TTB described an alternating proprietorship agreement as follows:

An "**alternating proprietorship**" is a term we use to describe an arrangement in which two or more people take turns using the physical premises of a brewery. Generally, the proprietor of an existing brewery, the "host brewer," agrees to rent space and equipment to a new "tenant brewer." The tenant qualifies as a brewer under [27 C.F.R. Part 25] by filing the appropriate documents with TTB. The tenant produces beer, keeps appropriate brewery records, labels the beer with its own name and

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<sup>13</sup> See TTB, [Industry Circular 2005-2](#), [Industry Circular 2008-4](#), and [Industry Circular 2018-3](#).

address, obtains the necessary COLAs, and pays tax at the appropriate rate upon removal of its beer from the brewery. The tenant brewer has title to the beer at all stages of the brewing process.

Alternating brewery proprietorships allow existing breweries to use excess capacity and give new entrants to the beer business an opportunity to begin on a small scale, without investing in premises and equipment. Regulations in [27 C.F.R. Part 25] do not refer to this type of arrangement. However, in the mid-1980s, ATF began approving applications for alternate methods and procedures that allow two or more brewers to alternate the use of brewery premises and equipment.

[TTB, [Industry Circular 2005-2](#).]

### **Current State Law**

While contract brewing agreements and alternating proprietorship agreements are permitted by the TTB under federal law, Wisconsin statutes are silent regarding these brewing arrangements. The administrative code, however, details the requirements necessary in order for persons to engage in contract brewing arrangements. Specifically, s. Tax 7.23 (1) (a), (e), and (f), Wis. Adm. Code, defines both the brewer manufacturing the beer and the person holding the beer recipe to be brewers. The brewer directly manufacturing the beer for another brewer is defined as the “production brewer,” and the person who contracts with an agent to directly manufacture the beer is defined as the “recipe-brewer.” Because the production brewer and the recipe-brewer are both defined as brewers, both must obtain a brewer’s permit. [s. Tax 7.23 (4) (a), Wis. Adm. Code.] According to DOR, a person holding a brewpub permit is prohibited from engaging in contract brewing arrangements. [DOR, *DOR On Tap: An Alcohol Industry Update*, [Hold My Beer Recipe](#) (Aug. 2021).]

Regarding contract brewing agreements, all of the following apply to the brewer’s permit process:

- An application for a brewer’s permit must include a certification by the recipe-brewer as to both of the following:
- The recipe-brewer is contracting with a production brewer to produce beer.
- The contract between the recipe-brewer and production brewer specifically provides that the production brewer is an agent of the recipe-brewer and the recipe-brewer has retained the right to control the work contracted for.
- An application for a brewers permit must designate the premises where the beer will be manufactured as the exclusive permitted brewery premises and provide the permit number of the production brewer.
- A brewer’s permit issued or renewed is specific to the premises of the production brewer. The same brewery premises are described in the brewer’s permit applications for both the production brewer and recipe-brewer. If the recipe-brewer seeks to have beer manufactured at multiple locations, it must submit a brewer’s permit application for each new premises.
- The production brewer obtains a federal label and federal brewers notice from TTB.

- The recipe-brewer is the brewer required to file Wisconsin beer tax returns and file monthly reports to DOR regarding beer manufactured, received, sold, delivered, or shipped in the preceding month.

[s. Tax 7.23 (4) (b) - (h), Wis. Adm. Code.]

With respect to liquor being produced through contract production or alternating proprietor agreements, DOR issued a declaratory ruling on May 11, 2023, that the statutes do not prohibit these types of agreements. Prior to this ruling, DOR had interpreted s. 125.52 (3), Stats., as prohibiting these types of production agreements. In the declaratory ruling, DOR found that s. 125.52 (3), Stats.:

[D]oes not explicitly prohibit production agreements for the rectification and manufacture of intoxicating liquor, such as alternating proprietorships and contract production, between two properly permitted rectifiers.... Rulemaking will be required to codify this decision and create a process for state oversight of this industry practice to ensure public safety, fairness across the industry, and proper tax payment.

[*City Brewing Co. LLC and Wis. Brewing Co., LLC, v. Wis. Dept. of Rev.*, Declaratory Ruling, 3 (May 11, 2023), available at: [www.revenue.wi.gov/Pages/AlcoholBeverage/2023/Declaratory-Ruling.pdf](http://www.revenue.wi.gov/Pages/AlcoholBeverage/2023/Declaratory-Ruling.pdf).]

## The Act

The act codifies the authority for a brewer, brewpub, winery, manufacturer, or rectifier to produce alcohol beverages by means of contract production,<sup>14</sup> alternating proprietorship,<sup>15</sup> or licensing agreement,<sup>16</sup> and further specifies certain requirements for and consequences of such an arrangement. These arrangements must be established by written agreement, which generally may be entered into only by producers holding the same type of alcohol beverages manufacturer's permit. Specifically, the act provides the following:

- **Contract production arrangements.** The “contract producer” manufactures, bottles, or labels the alcohol beverages, which are purchased from the contract producer by the “recipe producer” or “out-of-state recipe supplier.” A recipe producer generally holds the same type of Wisconsin permit as the contract producer, while an out-of-state recipe supplier is a person located in another state that produces alcohol beverages in that state. The alcohol beverages produced under a contract production arrangement count toward the production volume of the recipe producer, except they may not be considered for purposes of determining the alcohol beverages manufacturer's retail sales authority (i.e., full-service retail authority discussed above). The recipe producer is considered the producer for purposes of taxation and reporting to the DAB.
- **Alternating proprietorship arrangements.** A “host producer” provides its production facility to a “guest producer” for the guest producer to use to produce the guest producer's alcohol

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<sup>14</sup> The bill defines “contract production” to mean “a contract, agreement, or business arrangement described in [the bill] whereby a recipe producer or out-of-state recipe supplier provides consideration to a contract producer for the production, bottling, or labeling of alcohol beverages.”

<sup>15</sup> The bill defines “alternating proprietorship” to mean “an arrangement in which a host producer provides use of space and equipment, and may additionally provide personnel, to a guest producer for the production of alcohol beverages.”

<sup>16</sup> The bill defines a “licensing agreement” as an agreement between a licensor and a producer for the production of alcohol beverages containing the name, symbol, or mark of the licensor.

beverages. The act specifies that alcohol beverages produced under an alternating proprietorship count toward the production volume of the guest producer, and the guest producer is considered the producer for purposes of taxation and reporting to the DAB.

- Licensing agreements. A producer enters into a written licensing agreement with a licensor authorizing the producer-licensee to use the licensor's trademark or name if the producer-licensee is entirely responsible for producing the alcohol beverages and for all related processing steps and regulatory requirements.

The act also specifies that a producer entering into a contract production arrangement, alternating proprietorship arrangement, or licensing agreement does not act as an agent for or in the employ of another with respect to certain provisions of current law.

## **PROVISIONS RELATED TO THE DISTRIBUTION AND SHIPPING OF ALCOHOL BEVERAGES**

### **Beer Wholesalers: Transfer of Permits to Another Premises in the State**

#### **Current Law**

Under current law, alcohol beverages licenses and permits, including beer wholesaler's permits, generally may be transferred only to another place or premises within the same municipality. In comparison, a liquor wholesaler's permit may be transferred to another premises within the state. [ss. 125.04 (12) and 125.28 (3), Stats.]

#### **The Act**

Under the act, both beer and liquor wholesalers may transfer their permits to another premises anywhere within the state.

### **Liquor Wholesalers: Limits on the Number Permits Held by One Person**

#### **Current Law**

As previously mentioned, under current law, DOR is prohibited from issuing more than two manufacturers' or rectifiers' permits to one person and from issuing more than two liquor wholesalers' permits to one person. [ss. 125.52 (7) and 125.54 (6), Stats.]

#### **The Act**

The act repeals both of these prohibitions.

### **Cooperative Wholesalers**

#### **Current Law**

A small winery is defined as a winery that produces and bottles less than 25,000 gallons of wine in a calendar year. Between October 1 and December 31, 2008, DOR was authorized to issue up to six liquor wholesalers' permits to small winery cooperatives. To qualify, a small winery was required to hold a direct shipper's permit and be certified by DOR as a small winery. Small wineries that qualified could organize cooperatives and collectively hold a cooperative wholesaler's permit. A cooperative wholesaler's permit authorizes the sale and distribution of wine to retailers and other permitted wholesalers, and the principal purpose of a cooperative wholesaler must be to sell and distribute wine manufactured, blended, or mixed, and also

bottled, by its members. Cooperative wholesalers must purchase wine on consignment from its members to be resold to retailers and other wholesalers. [s. 125.545, Stats.]

## **The Act**

The act makes the following changes related to cooperative wholesalers:

- For purposes of participating in a cooperative wholesaler, increases the production limit as to what constitutes a small winery from 25,000 gallons in a calendar year to 50,000 gallons.
- Allows small manufacturers, in addition to small wineries, to obtain a liquor wholesaler's permit as a cooperative wholesaler. A small manufacturer is a manufacturer or rectifier that produces and bottles less than 50,000 gallons of intoxicating liquor (other than wine) in a calendar year.
- Allows DAB to issue cooperative wholesalers' permits for a period of time following the act's effective date. The act retains the limit of six total cooperative wholesaler's permits, but allows DAB to issue new cooperative wholesaler's permits and renew existing wholesaler's permits from the act's effective date until the first day of the seventh month following the effective date.
- Allows cooperative wholesalers to sell and distribute any form of intoxicating liquor made by its members to retailers and other wholesalers.

## **Direct Wine Shipping, Fulfillment Houses, and Common Carrier Shipments**

### **Current Law**

Current law authorizes a person holding a direct wine shipper's permit, subject to various restrictions, to ship wine directly to an individual in this state who is of the legal drinking age, who acknowledges receipt of the wine shipped, and who is not intoxicated at the time of delivery. The annual fee for the permit may not exceed \$100. A direct wine shipper's permit may be issued to any person who manufactures and bottles wine on premises covered by any of the following:

- A manufacturer's or rectifier's permit issued by DOR.
- A winery permit issued by DOR.
- A winery license, permit, or other authorization issued to the winery by any state from which the winery will ship wine into this state.
- A federal basic permit for a winery.

Containers of wine shipped to an individual in this state by a direct wine shipper's permittee must be clearly labeled to indicate that the package may not be delivered to an underage person or to an intoxicated person. No individual may resell, or use for a commercial purpose, wine that was shipped by a direct wine shipper's permittee. Also, no individual in this state may receive more than 108 liters of wine annually that was shipped by a direct wine shipper. [s. 125.535, Stats.]

## **The Act**

### **Direct Wine Shipping and Fulfillment Houses**

The act creates a fulfillment house permit, which authorizes a person to provide services for the warehousing, packaging, order fulfillment, and shipment of alcohol beverages produced by and belonging to a direct wine shipment permittee.

Under the act, a fulfillment house permittee must ensure that all containers of wine shipped directly to an individual in this state are labeled with all of the following information:

- The words “CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY.”
- The name, address, and permit number of the fulfillment house permittee.
- The name, address, and permit number of the direct wine shipper permittee on whose behalf the wine is shipped.

The act prohibits a fulfillment house permittee from shipping wine into this state from any person not holding a direct wine shipper’s permit. A fulfillment house permittee may ship wine in this state only by using a common carrier that holds a common carrier permit issued by DAB. Prior to shipping wine to an individual in this state, a fulfillment house permittee must verify the validity of the direct wine shipper’s permit and common carrier permit associated with the direct-to-consumer shipment.

The penalty for a fulfillment house that fails to obtain a permit before shipping wine into this state is a fine of not more than \$10,000. The penalty for a fulfillment house shipping alcohol beverages other than wine obtained from a direct wine shipper permittee is a forfeiture of not more than \$2,000; DAB must also revoke the permit of a fulfillment house that violates this prohibition in more than one month during a calendar year.

The act requires a fulfillment house permittee to submit a monthly report to DAB that includes all of the following information for each shipment of alcohol beverages during the preceding month:

- The name and address of the manufacturer of the alcohol beverages.
- The name and address of the consignor of the shipment, if different from the manufacturer.
- The name and address of the consignee of the shipment.
- The date of the shipment.
- The type and quantity of alcohol beverages shipped to the consignee.
- The parcel tracking number for the shipment.

DAB must keep confidential the name and address of the consignee and the parcel tracking number, but other information in the reports is not confidential and is subject to the public records law. A fulfillment house permittee must maintain all records related to the reports for three years. The penalty for failing to submit a required report is a forfeiture of not more than \$2,000.

The act allows a direct wine shipper permittee to arrange with a fulfillment house to ship wine on the direct wine shipper permittee’s behalf only if the fulfillment house holds a fulfillment house permit. A direct wine shipper permittee may only use a common carrier holding a common carrier permit to ship wine directly to an individual in Wisconsin.

## **Common Carrier Shipments**

The act creates a common carrier permit and prohibits a common carrier from transporting or delivering alcohol beverages into or within this state, other than to an alcohol beverages licensee or permittee, unless the common carrier first obtains a permit from DAB. This permit authorizes a common carrier to transport or deliver into or within this state wine on behalf of a person holding either a: (1) direct wine shipper's permit; or (2) a fulfillment house permit. A common carrier must pay an annual permit fee of \$1,000; the penalty for failing to obtain a common carrier permit prior to commencing delivery of alcohol beverages in this state is a fine of not more than \$10,000.

Under the act, a common carrier who ships any alcohol beverages other than wine obtained from a direct wine shipper permittee or fulfillment house permittee is subject to a forfeiture of not more than \$2,000. DAB must revoke the common carrier's permit if the common carrier violates this prohibition in more than one month during a calendar year.

The act also requires a common carrier permittee to submit a monthly report to DAB that includes all of the following information for each shipment of alcohol beverages during the preceding month

- The name and address of the manufacturer of the alcohol beverages.
- The name and address of the consignor of the shipment, if different from the manufacturer.
- The name and address of the consignee of the shipment.
- The date of the shipment.
- The type and quantity of alcohol beverages shipped to the consignee, as reported to the common carrier.
- The parcel tracking number for the shipment.

DAB must keep confidential the name and address of the consignee and the parcel tracking number, but other information in the reports is not confidential and is subject to the public records law. A common carrier required to submit reports under the act must maintain all records related to the reports for three years. The penalty for failing to submit a required common carrier report is a forfeiture of not more than \$2,000.

## **Transporting Homemade Beer and Wine Into Wisconsin for Competitions**

### **Current Law**

Current law authorizes homemade wine and beer<sup>17</sup> that is made as authorized under state law to be used for purposes of exhibition, demonstration, judging, tasting, sampling, contest, or competition, if it is done so at a private residence or on retail licensed premises. Current law sets forth restrictions under which such events may occur, including a prohibition on any fee charged for the consumption of the homemade wine or beer. [s. 125.06 (3) and (3g), Stats.]

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<sup>17</sup> For purposes of the Alcohol Beverages Chapter, the making of "homemade" wine or beer, or both, means the wine or beer is "made by a person's own efforts and not for a commercial purpose, but does not require that the wine or fermented malt beverages be made in the person's home." [s. 125.02 (6m), Stats.]

## **The Act**

The act provides that a person who made homemade wine or beer outside of Wisconsin may transport up to 10 gallons of homemade wine or beer into the state, without the need to obtain a license or permit, for purposes of participating in a competition or exhibition that complies with state law regarding these competitions, is held by a national organization, and has participants from more than 25 states.

## **PROVISIONS RELATED TO RETAILERS**

### **Transferring Retail Liquor Licenses From One Municipality to Another**

#### **Current Law**

Current law authorizes the transfer of up to three “Class B” liquor retail licenses from one municipality to a neighboring municipality, with certain conditions. The transfer has the effect of decreasing the transferring municipality’s quota<sup>18</sup> and increasing the receiving municipality’s quota. Specifically, all of the following conditions must be met:

- The transferring municipality must be contiguous with or located within two miles of the receiving municipality.
- A municipality may transfer no more than three “Class B” liquor licenses under this exception.
- The transferring municipality must have issued at least one license itself before transferring a license to a neighboring municipality.

Also under current law, the transferring municipality must establish a fee, in an amount not less than \$10,000, for initial issuance of a transferred license. The receiving municipality must remit the fee received to the transferring municipality. [s. 125.51 (4) (e), Stats.]

#### **The Act**

The act eliminates the requirement that the two municipalities must “be contiguous with, or within two miles of” each other. Under the act, the requesting municipality and the transferring municipality must be “located in whole or in part in the same county.”

### **“Class C” Wine-Only Retail Licenses**

#### **Current Law**

Under current law, 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 percent of gross receipts and, if the licensee has a barroom, the licensee does not sell distilled spirits in the barroom. Also, a “Class C” wine-only license may not be issued to a foreign

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<sup>18</sup> “Class B” liquor licenses are subject to a quota system that limits the number of licenses that a municipality may issue. A municipality’s quota is calculated as the sum of the number of “Class B” liquor licenses granted or issued in good faith and in force on December 1, 1997, and the number of reserve “Class B” liquor licenses the municipality may issue. Very generally, a municipality’s number of reserve licenses is based on its population growth, previous number of licenses issued, and any licenses transferred to or by the municipality. [s. 125.51 (4), Stats.]

corporation, a foreign LLC, or a person acting as agent for or in the employ of another. [s. 125.51 (3m), Stats.]

### **The Act**

The act eliminates the limitations, described above, under which a “Class C” wine-only license may be issued. Under the act, a “Class C” wine-only license may be issued to any person otherwise qualified to hold an alcohol beverages retail license.

## **Penalty for Retailer Purchases of Beer From Nonwholesalers**

### **Current Law**

Generally, alcohol beverages must be distributed by an authorized wholesaler before they may be sold by a retailer to consumers. Accordingly, retailers generally may not purchase beer or liquor from, or possess beer or liquor purchased from, any person other than a permitted beer or liquor wholesaler.<sup>19</sup>

Any retailer who purchases or possesses liquor in violation of this provision is subject to a forfeiture of up to \$100 if the total volume of liquor purchased or possessed is 12 liters or less in one month or a forfeiture of between \$1,000 and \$10,000 if the total volume of liquor is more than 12 liters in one month. However, a “Class B” liquor licensee who purchases liquor from a “Class A” liquor licensee for resale, or who possesses liquor purchased from a “Class A” liquor licensee for resale, may be fined up to \$100. Any retailer who purchases or possesses beer purchased from any person other than a permitted beer wholesaler is subject to a fine of up to \$10,000 or imprisonment for up to nine months, or both. [ss. 125.33 (9) and 125.69 (6), Stats.]

### **The Act**

The act modifies the penalties for beer retailers who purchase beer from a person other than a permitted beer wholesaler to create a penalty structure similar to that for liquor retailers. Specifically, a retailer who purchases, or possesses beer purchased, from any person other than a permitted beer wholesaler is subject to a forfeiture of up to \$100 if the total volume purchased or possessed in one month is 4,320 fluid ounces or less, and is subject to a fine of up to \$10,000 or imprisonment or both if the total volume in one month is greater than 4,320 fluid ounces. However, a Class “B” beer retailer who purchases beer, or possesses beer purchased for resale, from a Class “A” beer retailer may be fined up to \$100.

## **Leaving a Restaurant With Unfinished Bottles of Wine**

### **Current Law**

Under current law, a “Class B” liquor or “Class C” wine-only license authorizes the retail sale of one bottle of wine in an opened original bottle, for consumption both on and off the premises, if all of the following apply: (1) the licensed premises is a restaurant that is also operated under a “Class B” liquor or “Class C” wine-only license, and the purchaser of the wine orders food to be consumed on the licensed premises; (2) the licensee provides a dated receipt that identifies the purchase of the food and bottle of wine; and (3) the licensee securely reinserts the cork to the point where the top of the cork is even with the top of the bottle before the opened, partially consumed bottle of wine is taken off the licensed premises. [s. 125.51 (3r), Stats.]

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<sup>19</sup> Retailers may also purchase beer from brewpubs and certain brewers that have manufactured the beer distributed.

## **The Act**

The act allows licensees and producers that are authorized to engage in full-service retail sales and that operate a restaurant to either securely reinsert the cork or securely reattach the original cap to the bottle.

## **Selling Pre-Mixed Cocktails**

### **Current Law**

Current law authorizes a “Class B” liquor licensee to sell liquor by the glass, and not in the original container, for consumption on the premises. Such a licensee may also sell liquor for consumption off the premises as a “cocktail to go” if the licensee seals the container of liquor with a tamper-evident seal before it is removed from the premises. However, retailers are generally prohibited from pre-mixing cocktails for retail sale. DOR considers a person who pre-mixes and bottles or kegs cocktails to be a rectifier. The definition of “rectifier” includes 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 permit is required to become a rectifier. [s. 125.02 (16) (c), Stats., and [DOR on Tap](#), November 2021.]

### **The Act**

The act allows “Class B” liquor retailers, on their licensed premises, to prepare, store, and dispense mixed drinks containing intoxicating liquor in advance of sale, for consumption on the premises or as a “cocktail to go,” if all of the following apply:

- The mixed drink is provided to the consumer in a glass or other container not exceeding 72 ounces in volume.
- The mixed drink has not been stored in a container for more than 48 hours prior to its sale to a consumer.
- If the mixed drink is stored in or dispensed from a container exceeding 1.75 liters in volume, the container does not exceed five gallons in volume and complies with certain labeling requirements in a form prescribed by DAB, which must include information such as the ingredients of the batch and expiration date.
- The licensee has complied with the current law requirement that liquor be purchased only from a liquor wholesaler.
- The licensee has not stored the mixed drink in or dispensed the mixed drink from a wine bottle, and has ensured compliance with state laws that generally prohibit refilling an original container with alcohol and possessing diluted liquor or refilled original containers.
- The licensee has complied with any other applicable state or federal food safety regulation and with any federal alcohol regulation.

The act also excludes “Class B” liquor retailers that prepare, store, or dispense mixed drinks in advance of sale in compliance with these requirements from the definition of “rectifier.”

## **Eliminating the “Other Business” Restrictions for Retailers With an Axe-Throwing Facility**

### **Current Law**

Very generally, current law provides that a Class “B” beer retail license may not be issued for any premises where any “other business” may be conducted.<sup>20</sup> Also under current law, a retailer may not allow a person under the age of 21 (underage person) to enter or be on the retail licensed premises unless the person is accompanied by his or her parent, guardian, or spouse who is at least age 21. While current law provides different exceptions to both of these prohibitions, the following are examples of exceptions to both prohibitions: (1) hotels; (2) bowling centers; (3) movie theaters; and (4) painting studios. [ss. 125.07 (3) (a) and 125.32 (3m), Stats.]

### **The Act**

The act creates an exception for an axe-throwing facility to both the prohibitions on “other business” and unaccompanied underage persons on the premises of a retail licensed premises. The act defines an “axe throwing facility” to mean “an establishment that provides customers with a venue to engage in the activity of axe throwing and that either derives at least 51 percent of its revenue from fees associated with axe throwing or maintains at the venue at least five axe throwing lanes.”

## **Extending Retailer Closing Hours During 2024 National Political Convention**

### **Current Law**

Under current law, a Class “B” beer, a “Class B” liquor, and a “Class C” wine-only retail licensed premises must generally be closed between the hours of 2:00 a.m. and 6:00 a.m., Monday through Friday, or between 2:30 a.m. and 6:00 a.m., Saturday or Sunday.

### **The Act**

The act extends the closing hours during which retailers located in a “southeast Wisconsin municipality”<sup>21</sup> must close during a 2024 national political convention held in Milwaukee. Specifically, from the first day of the convention until the day after the convention’s last day, the closing hours in a southeast Wisconsin municipality must be between 4:00 a.m. and 6:00 a.m., for any of the following: (1) a Class “B” beer, “Class B” liquor, or “Class B” wine-only retail licensed premises; or (2) any producer’s full-service retail outlet.

The act also provides that a southeast Wisconsin municipality may establish a process to designate, and may so designate, that any licensed premises or producer’s full-service retail outlet as ineligible or disqualified for the extended hours specified above. A southeast Wisconsin municipality may establish a process to opt-out of these extended hours.

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<sup>20</sup> The “other business” restriction generally also applies to “Class B” liquor retail licensees because a person must hold a Class “B” beer retail license before the person may be issued a “Class B” liquor retail license. The other business restriction does not apply to temporary “Class B” liquor licenses as a person does not need to hold a Class “B” beer retail license in order to obtain a temporary “Class B” liquor license. [s. 125.51 (3) (f), Stats.]

<sup>21</sup> “Southeast Wisconsin municipality” is defined by the bill to mean “[a city, village, or town] any part of which is located within Kenosha, Racine, Walworth, Rock, Milwaukee, Waukesha, Jefferson, Dane, Ozaukee, Washington, Dodge, Columbia, Sheboygan, or Fond du Lac County.”

# CONSUMING ALCOHOL BEVERAGES IN PUBLIC PLACES AND PRIVATE EVENTS

## Current Law

Current law generally prohibits an owner, lessee, or person in charge of a “public place” from permitting the consumption of alcohol beverages on the “premises”<sup>22</sup> of the public place unless the person has an appropriate retail license or permit. Current law does not define what constitutes a “public place” for purposes of this prohibition. DOR interprets the term “public place” to be dependent upon the nature of the event hosted on the property. Specifically, DOR considers whether the event is limited to personally invited guests known to the host and not open to the general public. As long as alcohol beverages are not sold, either directly or indirectly, and the event is limited to personally invited guests known to the host and not open to the general public, then an alcohol beverages retail license is not required under DOR’s interpretation.<sup>23</sup>

The general prohibition described above is subject to certain exceptions. This prohibition does not apply to municipalities, buildings and parks owned by counties, regularly established athletic fields and stadiums, school buildings, campuses of private colleges at the place and time an event sponsored by the private college is being held, churches, premises at State Fair Park, or clubs.<sup>24</sup> [s. 125.09 (1), Stats.]

Current law also imposes a quota on the number of “Class B” liquor licenses that a municipality may issue. This quota is generally determined by a formula based on the number of licenses previously issued by the municipality and the municipality’s population. Current law also provides a limited number of quota exceptions. Some exceptions are considered “above-quota” licenses because the issuing municipality must first have issued a number of liquor licenses equal to or exceeding its quota and have no more liquor licenses available. [s. 125.51 (4), Stats.]

## The Act

### Consuming Alcohol at Public Places

The act provides that an owner, lessee, or person in charge of a “public place” may not permit the consumption of alcohol beverages on the “property” of the public place, unless the person has the appropriate retail license or permit, or a no-sale event venue permit created by the act. The act also makes the following changes:

- Defines a “public place” for purposes of the prohibition on the consumption of alcohol beverages on public property, to include a venue, location, open space, room, or establishment that is any of the following: (1) accessible and available to the public to rent for an event or social gathering; (2) held out for rent to the public for an event or social gathering; or (3) made available for rent to a member of the public for an event or social gathering.

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<sup>22</sup> The alcohol beverages chapter defines “premises” to mean the area described in a license issued by a municipality, or permit issued by DOR, for the sale of alcohol beverages. [s. 125.02 (9), (13) and (14m), Stats.]

<sup>23</sup> For more information on DOR’s interpretation of “public place” for purposes of s. 125.09 (1), Stats., please see Legislative Council Study Committee Memorandum, [Items for Consideration Related to Alcohol Consumption at Certain Private Events](#) (August 15, 2018).

<sup>24</sup> This prohibition also does not apply to the consumption of beer on commercial quadricycles, except in municipalities that have adopted ordinances prohibiting this activity. [s. 125.09 (1), Stats.]

- Provides exceptions to the prohibition on the consumption of alcohol beverages on public property for any of the following:
  - A room in a hotel, motel, or bed and breakfast that is used for overnight accommodations.
  - Vacation rental property, or any other property of temporary lodging, that is used for overnight accommodations if the property is furnished with sufficient beds for all adult guests to sleep.
  - A campsite on a campground licensed by the Department of Agriculture, Trade and Consumer Protection.
  - A parking lot, driveway, or yard where vehicles may be parked on the same day as a professional or collegiate sporting event, or other ticketed event open to the public.
  - Property located within a local professional football stadium district (Brown County) if the property is used in connection with, and on the same day as, a professional football game, or other ticketed event open to the public, held at the football stadium.
  - Property located within a local professional baseball park district (Milwaukee, Ozaukee, Racine, Washington, and Waukesha Counties) if the property is used in connection with, and on the same day as, a professional baseball game held at the baseball park.

### **Creating No-Sale Event Venue Permits**

The act creates a “no-sale event venue permit” that is issued by DAB and authorizes property owners to rent or lease real property for use as an event venue where beer and wine are consumed for up to six days per year and one day per month. In general, a no-sale event venue permit may be issued to a person who holds a retail license. However, a no-sale event venue permit may not be issued to a person who holds a permit as a brewer, brewpub, winery, manufacturer or rectifier, beer wholesaler, liquor wholesaler, out-of-state beer shipper, or out-of-state liquor shipper. DAB must establish an annual fee for a permit, which must be calculated to cover DAB’s administrative costs.

Under the act, a no-sale event venue permittee is generally authorized to do any of the following:

- Allow the renter or lessee of the event venue to bring the renter’s or lessee’s own beer and wine onto the event venue and serve it to guests without charge.
- Allow the guests of the renter or lessee to bring beer and wine onto the event venue to be consumed by the guests without charge.
- Allow the renter or lessee to obtain temporary Class “B” and “Class B” licenses for an event held on the event venue and sell beer and wine under the temporary licenses on the event venue. The renter or lessee may sell alcohol beverages to guests or attendees, including charging admission, but may not allow the possession of distilled spirits. If there are 20 or more people on the event venue, service of beer and wine must be performed by a licensed bartender.
- Allow the renter or lessee to contract with a licensed caterer that also holds a Class “B” and “Class B” licenses for the caterer to provide beer and wine to the renter or lessee and guests without charge on the event venue. If the renter or lessee contracts with a caterer, the renter or lessee and guests may not bring alcohol beverages onto the event venue. The renter or lessee must first purchase the beer and wine in a face-to-face transaction on the caterer’s retail licensed premises. The caterer may then deliver and serve the alcohol beverages at the event venue, but service must be performed by licensed bartenders.

The act also prohibits a no-sale event venue permittee from doing any of the following:

- Selling or otherwise providing alcohol beverages to either the renter or lessee of the event venue, or a guest or attendee of the event.
- Allowing any person to possess distilled spirits on the event venue when the event venue is being used by a renter or lessee.

### **Quota Exception for Opting-Out of No-Sale Event Venue Permits**

The act creates an above-quota exception for an event venue that is certified by DAB as meeting certain criteria to be considered a “qualifying event venue.” Under the act, a “qualifying event venue” is real property that is rented or leased for use as an event venue for private events, and in the prior 12-month period, both of the following apply:

- There were at least five events held at the venue at which at least 50 invited guests attended.
- The venue owner received at least \$20,000 in revenue from renting or leasing the venue for these events.

For six months after the effective date of the act,<sup>25</sup> DAB must certify an owner of a “qualifying event venue” as eligible for the quota exception if all of the following apply:

- The venue is and has been in operation for the 12-month period immediately preceding the date of the application.
- The venue has not been a “Class B” liquor licensed premises during the 12-month period immediately preceding the date of the application.
- The venue owner has not applied for a no-sale event venue permit.
- The venue owner provides documentation to DAB that the municipality in which the venue is located has reached its liquor license quota and is unable to issue a “Class B” liquor license to it.
- The venue owner provides documentation showing, and DAB confirms, that the venue meets the definition of a “qualifying event venue” and has been in operation as required above.
- The venue owner provides notice to DAB within 60 days after the act’s effective date that the owner is applying for a “Class B” license and is not seeking a no-sale event venue permit.

Under the act, DAB must act on an application for certification within 30 days of the application. A municipality may only issue an above-quota “Class B” liquor license under this quota exception if the license application is received within six months after the act’s effective date. The act also provides that if the “Class B” liquor license issued under this quota exception is revoked or not renewed, the municipality may only reissue the license if all of the following apply:

- The licensee sells or transfers ownership of the licensed premises or a business operated on the licensed premises.
- The license is surrendered or not renewed in connection with the sale or transfer of the property or business.

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<sup>25</sup> This provision of the act has a two-year delayed effective date, taking effect on the first day of the 25<sup>th</sup> month beginning after publication, as do the provisions related to no-sale event venue permits and the consumption of alcohol beverages in public places.

- The licensee continued to operate the licensed premises as a qualifying event venue, as defined by the act, from the time of license issuance until the time the license is surrendered or not renewed.
- The license is reissued for the same location.
- The applicant for reissuance of the license satisfies the requirements to hold the license.
- The applicant certifies to the municipality that the applicant will continue to operate the licensed premises as a qualifying event venue.

## **RESTRICTIONS ON RELATIONSHIPS BETWEEN MANUFACTURERS, WHOLESALERS, AND RETAILERS**

### **Tied-House Law**

#### **Current Law**

Wisconsin's "tied-house law" restricts the relationship between brewers, brewpubs, beer wholesalers, and Class "B" beer retailers. It generally prohibits a brewer, brewpub, or beer wholesaler from providing a Class "B" beer retailer with anything "of value," such as furniture, equipment, or money. There are, however, several exceptions. For example, brewers, brewpubs, and beer manufacturers may provide Class "B" beer retailers with tap handles.

#### **The Act**

The act creates a new exception to the tied-house law to allow a brewer, brewpub, or beer wholesaler to enter into a landlord-tenant relationship with a Class "B" retailer if specified requirements are satisfied, including that the landlord has no control over or day-to-day involvement in the retailer's business.

### **Interest Restrictions**

#### **Current Law**

The statutes maintain a three-tier system through numerous regulations that specify or restrict how manufacturers, wholesalers, and retailers may interact with one another. Those restrictions generally prohibit a permittee or licensee from holding an interest in a permit or license of another tier of that same alcohol beverages type.<sup>26</sup>

DOR rules provide examples of prohibited direct and indirect interest restrictions applicable to manufacturers, rectifiers, liquor wholesalers, and liquor retailers. For example, immediate family members who reside in the same household may not have "effective control" in both a wholesaler and retailer. [s. Tax 8.87, Wis. Adm. Code.]

#### **The Act**

The act standardizes language regarding interest restrictions and expands the restrictions to apply across tiers and alcohol beverages types. The restrictions apply to: production permittees (brewers, brewpubs, manufacturers, rectifiers, wineries, out-of-state beer shippers, or out-of-

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<sup>26</sup> The language for the restrictions differs in the statutes. For example, brewers are prohibited from holding a Class "A" beer license, Class "B" beer license, beer wholesaler's permit, or an ownership in any wholesaler, or a brewpub permit, while beer wholesalers generally may not "hold or have a direct or indirect ownership interest" in a premises that holds a beer retail license or permit, brewer's permit, or brewpub permit.

state liquor shippers); distribution permittees (beer and liquor wholesalers); and retail permittees (Class “A”, Class “B”, “Class A”, “Class B”, and “Class C” licensees; Class “B” or “Class B” permittees; and no-sale event venue permittees), and to any restricted individual<sup>27</sup> of a production, distribution, or retail permittee.

Specifically, the act establishes the following restrictions:

- Production permittees may not hold any interest<sup>28</sup> in a distribution permittee,<sup>29</sup> a retail licensee or permittee, or a no-sale event venue permittee.<sup>30</sup>
- Distribution permittees may not hold any interest in a retail licensee or permittee, a production permittee, an out-of-state beer or liquor shipper permittee, or a no-sale event venue permittee.<sup>31</sup>
- Retailers may not hold any interest in a distribution permittee or production permittee.<sup>32</sup>

However, the act specifies certain permissible interests. First, it allows a licensee or permittee to be owned in part, or to grant an ownership interest to, a restricted investor in another tier if all of the following requirements are satisfied:

- No single restricted investor holds an ownership interest of more than 10 percent in the licensee or permittee.
- No restricted investor serves as an officer, director, manager, operator, or agent of the licensee or permittee.
- No restricted investor is involved in the day-to-day operations of the licensee or permittee or exerts any control over such operations beyond the person’s ability to vote as an owner.
- The aggregate amount of ownership held by all restricted investors in the licensee or permittee does not exceed 49 percent.
- The licensee or permittee discloses all restricted investors to DAB.
- Each restricted investor executes an affidavit swearing to a complete lack of involvement in the day-to-day operations of, and lack of control over, the licensee or permittee beyond the restricted investor’s ability to vote as an owner.

Second, as was mentioned, the act allows a brewer, brewpub, or beer wholesaler to enter into a landlord-tenant relationship with a Class “B” retailer if specified requirements are satisfied,

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<sup>27</sup> A restricted individual is any of the following: a person identified on a manager’s license or who works or acts in a managerial capacity for a permittee or licensee; a person serving as an officer, director, member, manager, or agent of a corporation or limited liability company holding a permit or license; or a person who holds more than a 10 percent ownership interest in a permittee or licensee.

<sup>28</sup> Employment in a nonmanagerial capacity for a licensee or permittee is not considered an interest in the licensee or permittee.

<sup>29</sup> The bill maintains a current law provision that allows brewers to take temporary control and operation of a wholesaler that has been granted designated distribution rights for a brand in a designated sales area, but is unable to serve the area for any reason. [s. 125.29 (2) (b) 3., Stats.]

<sup>30</sup> The bill maintains a current law exception under which brewpubs must hold a Class “B” beer license for the restaurant on the brewpub premises and may hold a “Class B” liquor or “Class C” wine license. [s. 125.295 (3), Stats.]

<sup>31</sup> The bill maintains a current law exception for beer wholesalers holding an interest in a brewer on July 1, 2011.

<sup>32</sup> The bill maintains a current law exception that requires brewpubs to hold a Class “B” beer license.

including that the landlord has no control over or day-to-day involvement in the retailer's business.

Third, the act specifies that a spouse may have an interest in a license or permit of the other spouse if the marriage is governed by a valid marital property agreement or prenuptial agreement, which is disclosed on any license or permit application and provided to the municipal clerk or DAB prior to the issuance of the license or permit, and both spouses execute an affidavit swearing to a complete lack of involvement in the day-to-day operations of, and lack of control over, each respective business. Accordingly, the act also repeals DOR rules related to prohibited direct and indirect interest restrictions for liquor.

## **OPERATORS' PERMITS**

### **Current Law**

Under current law, to serve alcohol at a licensed or permitted retail premises, an individual generally must hold an operator's license, issued by a municipality.<sup>33</sup> Generally, the municipality must issue an operator's license to an applicant who meets the following qualifications:

- The applicant is at least 18 years of age when the license is issued.
- The applicant has successfully completed an approved responsible beverage server training course.
- The applicant has not been convicted of a felony that substantially related to the licensed activity or be a habitual law offender of laws substantially related to the licensed activity.
- The applicant has paid the relevant fee.

The applicant need not successfully complete the server training course if the applicant is renewing an existing operator's license, has completed the training course within the last two years, or has held a retail license, manager's license, or operator's license anywhere in Wisconsin within the last two years. No municipality may require an applicant undergo any additional training, but may require the applicant to purchase at cost materials that deal with relevant local subjects not covered in the course. [s. 125.04 (5) (a) and (d) and (6), Stats.]

Once issued, an operator's license is valid only in the municipality where issued. The municipality must determine whether the license is valid for one or two years, and must also establish by ordinance the fee for the license. [s. 125.17 (3), Stats.]

### **The Act**

The act creates an operator's permit, issued by DAB, that is similar to an operator's license. The primary difference is that the operator's permit is valid in all Wisconsin municipalities. Under the act, DAB must issue an operator's permit to any applicant who meets the same qualifications applicable to operator's licenses listed above. DAB must determine whether the operator's permit is valid for one or two years, and must determine the fee for the operator's permit. DAB also may not require an applicant undergo any additional training, but may require the applicant to purchase at cost materials that deal with relevant local subjects not covered in the course.

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<sup>33</sup> Municipalities may also issue temporary operator's licenses and provisional operator's licenses. [s. 125.17 (4) and (5), Stats.]

## **SAFE RIDE PROGRAM**

### **Current Law**

Under current law, the Department of Transportation awards Safe Ride grants to a county, municipality, or nonprofit corporation, as defined by current law, to cover the cost of transporting persons suspected of having a prohibited blood alcohol concentration for any licensed alcohol beverages retail establishment to the person's residence, or to cover the costs of advertising the availability of such services. These grants are funded from a \$50 surcharge imposed upon certain operating while intoxicated convictions. [ss. 85.55 and 346.657, Stats.]

### **The Act**

The act increases the surcharge from \$50 to \$75 for violations that occur on or after the effective date of the act. The act also requires DAB to provide any person first issued a Class "B" beer or "Class B" liquor retail permit after the effective date of the act with information about the Safe Ride program; similarly, a municipality is required to provide information about the Safe Ride program to any person initially issued a Class "B" beer, "Class B" liquor, or "Class C" wine-only license.

## **DELAYED EFFECTIVE DATE**

All provisions of the act take effect on the first day of the fifth month beginning after publication, except as follows:

- The following take effect on the day after publication:
  - Provisions related to the transferring of authority to regulate alcohol beverages from DOR to DAB.
  - Provisions related to extending retailer closing hours during a 2024 national political convention.
- The repeal of DOR's rule regarding direct and indirect interest restrictions takes effect on the first day of the month commencing after publication.
- The following have a 12-month delayed effective date, taking effect on the first day of the 13<sup>th</sup> month beginning after publication:
  - Provisions related to operators' permits.
  - Provisions related to fulfillment houses and common carriers.
  - Provisions related to an annual fee of \$500 for any permit for which neither DOR nor the statutes have already established a different fee.
  - Provisions related to cooperative wholesalers.
- Provisions related to no-sale event venue permits and the consumption of alcohol in public places have a two-year delayed effective date, taking effect on the first day of the 25<sup>th</sup> month beginning after publication.

This information memorandum was prepared by Tom Koss, Staff Attorney, and Melissa Schmidt Principal Attorney, on December 7, 2023.