



## Alcohol Beverages Three-Tier Laws

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This issue brief provides background information regarding Wisconsin's system for regulating the manufacture, distribution, and sale of alcohol beverages, commonly referred to as the "three-tier system." In Wisconsin, the three tiers, or categories, of regulated entities are: (1) manufacturers; (2) wholesalers (or distributors); and (3) retailers. The state's three-tier laws are set forth in ch. 125, Stats., Wisconsin's Alcohol Beverages Chapter, and are enforced by the [Department of Revenue](#) (DOR).

### ORIGIN OF THE THREE-TIER SYSTEM

After the repeal of Prohibition by the ratification of the Twenty-first Amendment, states were tasked with regulating the alcohol beverages industry. In an effort to prevent the negative effects of alcohol, John D. Rockefeller, Jr. commissioned a study, commonly referred to as the "Rockefeller Study",<sup>1</sup> to evaluate how states could best regulate the alcohol industry. The study concluded that state regulatory structures should not stimulate the demand for alcohol, but instead, meet the normal demand. Reasons for doing so included guarding against problems like bootlegging and tied-houses that were common before Prohibition while also protecting consumers from exploitation. This study became the basis for states' regulatory tiered structures for regulating alcohol beverages,<sup>2</sup> including Wisconsin's three-tier system.

### LEGISLATIVE INTENT AND REASONS FOR THREE-TIERS

The Legislature articulated its intent to regulate alcohol beverages through a three-tier regulatory system, as well as policy reasons for doing so, in s. 125.01, Stats.:

[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.

Unless a specific exception applies, a person must obtain the applicable permit or license in order to manufacture, distribute, or retail sell alcohol beverages to a consumer. Failing to do so is a crime, with a fine of up to \$10,000, up to nine months imprisonment, or both.<sup>3</sup>

### SELECT RESTRICTIONS ON RELATIONSHIPS BETWEEN THE THREE TIERS

Wisconsin's 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. In a strict three-tier system, consumers would only buy alcohol from a retailer. A manufacturer would only manufacture alcohol beverages and would have no authority to distribute alcohol or sell it to the consumer. While this is the general rule in Wisconsin, there are many exceptions. This section discusses some of the regulations that create the three tiers, as well as examples of the exceptions to these regulations.

## Direct or Indirect Interest Restrictions

Wisconsin's alcohol beverages industry is divided into three separate tiers, in part due to direct or indirect interest restrictions placed on manufacturers, wholesalers, and retailers. These interest restrictions generally prohibit: (1) manufacturers and wholesalers from holding a retailer license to sell beer or liquor, or having a "direct or indirect" interest in a retail establishment; (2) retailers from having a direct or indirect interest in a manufacturer's or wholesaler's permit; and (3) manufacturers from having a direct or indirect interest in a wholesaler permit, and vice versa. A list of specific examples of what is considered either a direct or indirect interest may be found in s. Tax 8.87, Wis. Adm. Code.<sup>4</sup>

There are also various exceptions to these direct or indirect interest restrictions. For example, a brewer may sell beer at its brewery or off-site retail outlet directly under its brewer's permit and a distiller may sell its distilled spirits at its distillery directly under its manufacturer's or rectifier's permit. A brewer may also possess or hold an indirect interest in a Class "B" beer retail license (e.g., bar or restaurant) for not more than 20 restaurants in which the sale of alcohol beverages accounts for less than 60% of the restaurant's gross receipts, if none of the brewer's beer is offered for sale in any of these restaurants. A winery may possess a "Class A" (e.g., package store) or a "Class B" retail license (e.g., bar, restaurant) to sell wine.<sup>5</sup>

## Tied-House Laws

A "tied-house" generally refers to a bar, pub, tavern, or restaurant that is licensed to retail sell alcohol, but is also owned or controlled by a manufacturer. Both state and federal law contain restrictions on tied-houses, referred to as "tied-house laws", in an attempt to create free competition among alcohol manufacturers and prevent monopolistic sales practices that were common prior to Prohibition.

Wisconsin's tied-house law applies only to beer manufacturers and wholesalers. It 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. The federal tied-house law applies to both beer and liquor manufacturers and wholesalers (in the course of interstate or foreign commerce).<sup>6</sup>

## Exclusive Sales

Both state and federal law restrict the ability of a manufacturer or wholesaler to require a retailer to exclusively sell alcohol that is produced by one manufacturer. Under state law, a beer wholesaler may not sell, or offer to sell, a brand of beer exclusively to one Class "A" beer retailer (i.e., package store) 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. 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.<sup>7</sup>

The federal exclusive sales restriction 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).<sup>8</sup>

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<sup>1</sup> Published as: Raymond B. Fosdick & Albert L. Scott, *Toward Liquor Control* 2 (The Center for Alcohol Policy 2011) 1933.

<sup>2</sup> Andrew D'Aversa, *Brewing Better Law: Two Proposals to Encourage Innovation in America's Craft Beer Industry*, 165 U. Pa. L. Rev. 1465, 1472-76 (2017).

<sup>3</sup> ss. 125.01 and 125.04 (13), Stats.

<sup>4</sup> ss. 125.25 (2) (b) 1., 125.26 (2) (b) 2., 125.28 (2) (b), 125.51 (2) (b), (3) c), and (8), and 125.69 (1) (a), (b), and (c), Stats.

<sup>5</sup> ss. 125.29 (3) (e) and (f) and (6), and 125.53 (1), Stats.

<sup>6</sup> s. 125.33 (1) (a) and (2), Stats.; and 21 U.S.C. s. 205 (b).

<sup>7</sup> s. 125.33 (1) (b) and (8), Stats.

<sup>8</sup> 21 U.S.C. s. 205 (a).