



Alcohol Coalition Supports Updated Alcohol Sales Regulation

Three-Tier Reform Encourages Free Market Competition

Collectively, our coalition represents nearly every aspect of the alcohol beverage industry. As such, we urge support for Senate Bill XXX / Assembly Bill XXX, as the legislation represents a comprehensive update of the state's alcohol regulatory framework. Following nearly a decade of negotiations among industry stakeholders, this proposal has the support of our respective associations, companies and membership and is needed to transition Wisconsin's alcohol laws to the 21st century.

The proposed legislation makes various changes to improve alcohol beverage regulation and further develop an already successful industry. These changes add consistency across regulations for brewers, brewpubs, wineries and distillers/rectifiers and clarity to the existing three-tier system.

Although changes to the state alcohol laws have been proposed in the current and prior legislative sessions, oftentimes the proposals fail to advance given differing perspectives among industry stakeholders. SB XXX / AB XXX includes many of the alcohol-related changes proposed over the past several legislative sessions. And, while stakeholders still hold differing perspectives on individual provisions contained in the bill, this negotiated and agreed-upon package required all coalition members to find consensus and agree to compromise. Absent the provisions of this bill being considered collectively in a single legislative package, industry support will undoubtedly collapse.

In the coming days and weeks we look forward to meeting with legislators and the administration to advocate for passage of this bill. For too long uncertainty surrounding the state's alcohol laws has created a patchwork of regulation that is not only challenging for the industry, but also unfair to consumers. Please join us in supporting SB XXX / Assembly Bill XXX to ensure this vital industry to the state's economy can continue to grow to the benefit of the state and its residents.

ALCOHOL BEVERAGE LEGISLATION

Expands Brewery Winery and Distillery Retail Sales / Full-Service Taprooms	Creates Statutory Framework for Contract Production	Expands Small Winery Cooperative Wholesaler Permit to Include Intoxicating Liquor	Clarifies Hard Seltzers as Fermented Malt Beverages	Creates Division of Alcohol Beverages	Creates Public Place and Event Venue Regulations	Creates Uniform Closing Hours for Retailers and Producers
Doubles Brewpub Production and Self-Distribution Caps	Removes Cap on Number of Production Permits for Intoxicating Liquor	Creates Wine-Only Bars / Remove Certain Class C Wine License Restrictions	Increases the Number of Manufacturer's Permits per Legal Entity	Imposes Common Carrier and Fulfillment House Requirements	Increases SafeRide Funding	Requires SafeRide Program Notification Upon License Issuance
Standardizes Hours of Operation for Nonretail Activity	Allows Producers to Bring Alcohol Beverages to Licensed Retailers to Provide Free Samples	Allows Brewpubs to Satisfy Permit Requirement Through Sale of Beer from Another Brewpub	Expands Availability of Winery Permits to Manufacturers and Rectifiers	Allows Premixing of Cocktails by Class B License Holders	Allows County-Wide Transfer of Class B Licenses	Creates Statewide Alcohol Beverage Seller/Server License
Allows Recapping Bottles of Wine	Clarifies Taxation of Alcohol Sales Between Producers	Allows Wineries to Sell Wine to Other Producers	Modifies Cross-Tier Restrictions to Allow Incidental and Indirect Interests	Reduces Penalty for Retailer-to-Retailer Beer Purchases	Clarifies Axe Throwing Facility Licensing	Extends Closing Hours during Republican National Convention

PROPOSED MODIFICATIONS TO ALCOHOL BEVERAGE REGULATION IN WISCONSIN

Wisconsin is among the majority of states that has adopted a three-tier system of alcohol beverage regulation. This “license” based system allows private enterprise to conduct production, wholesale distribution and retail sales of distilled spirits, wine, and beer – subject to industry oversight to promote health, welfare, safety and competition. The Wisconsin free-market model stands in stark contrast to the government monopoly system embraced in other states.

Under the state’s existing alcohol beverage regulatory structure, Wisconsin has developed one of the most robust alcohol beverage industries in the country, by any measure. Forbes magazine has highlighted that 3 of the top 25 cities in the country to launch a successful craft brewery are located in Wisconsin (Madison (#2); La Crosse (#9); Milwaukee (#23)). Wisconsin craft beer production ranks 7th nationwide, producing over 1 million barrels of craft beer annually – roughly 7.6 gallons of beer per year for each adult over 21. The state is also home to dozens of wineries and a small winery cooperative with over 50 small winery members. And, more distilleries are opening each year, with over 40 established distilled spirit producers already in business.

Despite this success, Wisconsin can do better. The proposed legislation would make various changes to improve alcohol beverage regulation and further develop an already successful industry. These changes add consistency across regulations for brewers, brewpubs, wineries and distillers/rectifiers (“producers”)¹ and clarity to the existing three-tier system. The proposed changes also strengthen the overall alcohol beverage industry and regulatory framework by creating a new division dedicated to promoting and regulating the alcohol beverage industry.

The proposed legislation would (1) create a dedicated division at the Department of Revenue (“DOR”) for the regulation of the alcohol beverage industry; (2) clarify and expand permissible activities and abilities under production permits, including full-service retail sales at taprooms; (3) specify the types of passive or limited investments that are permitted across tiers while making clear that a specific statutory exception is necessary or cross-tier ownership would be prohibited regardless of subchapter and alcohol beverage product sold; (4) provide clarity on arrangements between producers for contract production of alcohol beverages; and, (5) make changes to taste samples and various other provisions of Chapter 125 providing clarity and consistency in retail license regulation. To combat illegal internet sales of alcohol, the legislation also would implement reporting requirements for common carriers shipping alcohol beverages.

¹ “Producers” is used as a term of convenience in this document to include breweries, brewpubs, wineries, manufacturers and rectifiers. The more precise terms and definitions will remain and continue to be used in Chapter 125 as will the three subchapters.

ALCOHOL BEVERAGE REGULATORY BODY

Most license states have administrative commissions or agencies dedicated to oversight of the alcohol beverage industry. These entities have staff familiar with trade practices and they play a more significant role in education – for industry participants, local governments, law enforcement and the general public. States without dedicated agencies typically have dedicated alcohol divisions or units structured within other, larger government departments. Wisconsin currently has neither.

Under the current structure, about a dozen employees within the Wisconsin Department of Revenue (“DOR”) handle alcohol beverage regulation in addition to their other subject matter responsibilities. As a result, there is no agency or employee dedicated solely to the education and enforcement of the state’s alcohol beverage laws and regulations.

This proposal would create a new Division of Alcohol Beverages within DOR to serve this function for Wisconsin. The Division would be charged with 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 beverage laws.

- Create a Division of Alcohol Beverages dedicated exclusively to alcohol beverage education, regulation and enforcement. The Division and its staff would be located within DOR and part of DOR for budgetary and administrative purposes.
- The Division would be headed by a Division Administrator who would be appointed by the DOR Secretary, subject to Senate confirmation.
- The Administrator would be a full-time, salaried employee, appointed outside the classified service. The Administrator would have the authority to appoint and supervise staff necessary to carry out permitting, audit, education and enforcement duties. These staff would be appointed within the classified service.
- Staff reporting to the Administrator would include a director of enforcement, a director of legal education and community outreach and a director of legal services. All three positions would report directly to the Administrator.
- Under the director of enforcement, there would be field agents working across the state.
- No new positions would be created. Instead, positions in the Division would be filled with existing Department of Revenue employees.
- The Administrator and alcohol beverage regulatory staff would be subject to conflict of interest statutes and specifically prohibited from working or holding financial interests in the alcohol beverage industry.

Authority

The new Division's statutory authority will derive from existing provisions in Chapter 125. Proposed legislation would not expand the Division's substantive regulatory jurisdiction beyond DOR's existing jurisdiction under Chapter 125. The legislation would not interfere with a municipality's or district attorney's existing jurisdiction under Chapter 125.

ALCOHOL BEVERAGE PRODUCTION PERMIT ACTIVITIES

Expansion of Small Winery Cooperative Wholesaler Permit to Include All Intoxicating Liquor

Under current law, small winery cooperative wholesalers may receive wholesale permits to distribute on behalf of their members. The law allowed permits to be issued to six small winery cooperative wholesalers before December 31, 2008. Membership in the cooperative is limited to small wineries that produce and bottle less than 25,000 gallons of wine in a calendar year, and the winery must hold a direct shipper's permit and be certified by the department for eligibility in the cooperative. Membership is available to both Wisconsin and out-of-state wineries. Members of the cooperative must distribute exclusively through the wholesaler cooperative and may not sell directly to any other wholesaler or retailer.

The proposal would expand the activities and membership of small cooperative wineries to operate as "small cooperative wholesalers" that include all small producers of intoxicating liquor – distilled spirits and wine. The proposal would increase the "small" producer volume size from 25,000 to 50,000 gallons per year. Otherwise, it would include the same requirements as current law, but for the direct shipper's permit requirement that is unavailable for distilled spirits. The proposal would also allow for the creation of new, additional small cooperative wholesalers provided that the cooperative must be issued a permit prior within approximately six months after the bill's effective date. The proposal would also clarify that cooperative wholesalers do not purchase alcohol beverages on consignment as such arrangements are prohibited under federal law.

Alcohol Beverage Production Permits and Retail Sales

Under current law, breweries, wineries and manufacturers/rectifiers have various ability to provide taprooms or retail sales.

- Brewers are able to conduct retail sales of beer for on-site and off-site consumption at the brewery premises or an off-site retail outlet established by the brewer. Brewers may also offer taste samples at the brewery premises, off-site retail location or Class "A" retail locations.
- A winery may have either one "Class A" license or one "Class B" license, but not both; the license may be issued for the winery premises or for real estate owned or leased by the winery. The winery may provide wine manufactured, mixed, or blended on the winery premises directly to the "Class A" or "Class B" premises, and may provide taste samples on the premises. Under current law, the "Class A" or "Class B" license only allows for the retail sale of wine, not distilled spirits.

- A manufacturer or rectifier permit authorizes the retail sale of intoxicating liquor manufactured or rectified on premises for consumption on or off the premises and authorizes the provision of taste samples subject to limitation.

The proposed legislation would modify the law surrounding retail sales by a producer and create more consistent treatment for brewers, wineries and manufactures/rectifiers. As a part of the producer’s permit, the proposal would allow for full-service retail sales at the producer’s premises and, as described below, potential retail sales at additional off-site locations. All retail activity by a producer would be authorized as part of the producer’s permit and not a retail license. Instead, a producer could only engage in retail sales via the production permit. The proposal would state:

- A production permit allows full-service retail sales at a single location. The retail sales could occur at the production premises or another location, subject to the qualifications and limitations set forth below. The producer will indicate on its permit the location where retail sales will occur and it be considered as part of the “premise” under that permit.
- “Full-service retail sales” means the sale for on and off-premise consumption of fermented malt beverages and intoxicating liquor as well as the taste sampling of those alcohol beverages.
- The producer’s retail sales location would be allowed to sell alcohol beverages manufactured by the producer, without purchasing the product through a wholesaler (or small brewery permitted to engage in direct-to-retail sales under current law).
- Provided that the alcohol beverages are purchased through a wholesaler, the retail sales location may sell alcohol beverages from other producers for on-premise and off-premise consumption.
- The producer may operate a restaurant at the retail sales location but is not required to do so.
- Although the retail sales location would not be subject to a locally issued retail license, approval for full-service retail sales by the producer would be required by the local municipality in a manner similar to how retail licenses are issued. Similar to a retail license, a municipality could limit the scope of products offered for sale by the producer. For example, a brewery could be limited by the municipality to only selling beer and wine. However, a producer’s state-issued permit would still allow for the retail sale of alcohol beverages manufactured under that permit and a municipality could not limit a producer’s retail sales of those products. Only a producer’s ability to engage in full-service retail sales could be limited by the municipality.

Additional Off-Site Retail Sales by Producers

In addition to a retail sales location at a producer’s premises, a producer may be eligible to establish up to four additional retail outlets. The exact number of off-site retail outlets and

qualifications to do so depends on the type of producer, production volume and retail sales will not occur at more than five total locations.

Brewers

Brewers that have filed a federal Brewer’s Notice with TTB for at least one production premises may establish up to three additional full-service retail outlets if the brewer has cumulatively produced in this state, a minimum volume of fermented malt beverages within any one of the previous three calendar years at any number of the brewer’s own production premises in Wisconsin. The additional full-service retail outlets may be established away from the production premises. No more than three such retail outlets may be established in total by a brewer. The following are the minimum cumulative production levels in any one of the previous three years to qualify for full-service retail sales:²

- 250 barrels – on the brewery premises
- 250 – 2,500 barrels – on the brewery premises and one full-service retail outlet
- 2,500 – 7,500 barrels – on the brewery premises and two full-service retail outlets
- 7,500+ barrels – on the brewery premises and three full-service retail outlets

One of these additional locations could change during the year provided that timely notice of any change in location is provided to the Division.

If any brewer also contracts as a recipe brewer with another production brewer, the volume of the contract-brewed beer is attributed to the production brewer for the purpose of determining full-service retail eligibility. The volume of the contract-brewed beer does not count toward meeting any production threshold for the recipe brewer.

Wineries

Wineries that operate at least one production premises may establish up to three additional full-service retail outlets if the winery has cumulatively produced or bottled in this state, a minimum volume of wine within any one of the previous three calendar years at any number of the winery’s own production premises in Wisconsin. The additional full-service retail outlets may be established by the winery away from the production premises. No more than three such retail outlets may be established in total by a winery. The following are the minimum cumulative production levels in any one of the previous three years to qualify for full-service retail sales:

- 1,000 gallons - on the winery premises
- 1,000 – 5,000 gallons - on the winery premises and one full-service retail outlet
- 5,000 – 25,000 gallons - on the winery premises and two full-service retail outlets
- 25,000+ gallons - on the winery premises and three full-service retail outlets

If any winery also contracts with another production winery, the volume of the contract-produced or bottled wine is attributed to the producing or bottling winery for the purpose of

² The existing grandfather statute Wis. Stat. §125.29(3)(h) will remain in effect to preserve status quo for brewers who would not otherwise qualify to maintain their existing full service retail sales.

determining full-service retail eligibility. The volume of the contract-produced or bottled wine does not count toward meeting any production threshold for the non-producing or bottling winery.

Manufacturers or Rectifiers

Manufacturers or rectifiers that operate at least one production or rectifying premises may establish up to three additional full-service retail outlets if the manufacturer or rectifier has cumulatively produced or rectified in this state, a minimum volume of intoxicating liquor within any one of the previous three calendar years at any number of their own production or rectifying premises in Wisconsin. The additional full-service retail outlets may be established by the manufacturer or rectifier away from the production or rectifying premises. No more than three such retail outlets may be established in total by the manufacturer or rectifier. The following are the minimum cumulative production levels in any one of the previous three years to qualify for full-service retail sales:

- | | |
|-----------------------|--|
| 1,500 liters | - on the manufacturer/rectifier premises |
| 1,500 – 5,000 liters | - on the manufacturer/rectifier premises and one full-service retail outlet |
| 5,000 – 35,000 liters | - on the manufacturer/rectifier premises and two full-service retail outlets |
| 35,000+ liters | - on the manufacturer/rectifier premises and three full-service retail outlets |

If any manufacturer or rectifier also contracts with another manufacturer or rectifier, the volume of the contract-produced or rectified intoxicating liquor is attributed to the producing manufacturer or rectifier for the purpose of determining full-service retail eligibility. The volume of the contract-produced or rectified intoxicating liquor does not count toward meeting any production or rectified threshold for the non-producing manufacturer or rectifier.

Maintain Off-Site Retail Outlets for Small Craft Brewers

If a brewer is not eligible or does not desire to establish a full-service retail outlet, a brewer may maintain an off-site retail outlet at which it sells its own beer for on-premise or off-premise consumption. Moreover, a brewer that held an intoxicating liquor license prior to June 1, 2011, the brewer may continue to make retail sales of intoxicating liquor for on-premise consumption.

Remove Cap on Number of Production Permits

Current law restricts the number of production permits and production locations that a person may hold for the production of a particular alcohol beverage product. Any one person may not hold more than two manufacturers' or two rectifiers' permits. No similar limitation exists for breweries.

The proposal would remove the cap on permits for intoxicating liquor producers and allow multiple permits to be issued for manufacturing the same product or brand.

Match Permit Retail Outlet Closing Hours with Retail License Closing Hours

Under current law, Class “B” licensed premises must close between 2:00 a.m. and 6:00 a.m. during the week, and 2:30 a.m. and 6:00 a.m. on Saturdays and Sundays. Various other exceptions apply. Sales at Class “A” premises and off-site consumption sales at Class “B” premises must cease sales between 12:00 midnight and 6:00 a.m., however a municipality may impose a narrower window for sales. Similar requirements apply for intoxicating liquor retailers.

Wineries operating under a “Class B” license must remain closed between 9:00 p.m. and 8:00 a.m. No explicit closing hours exist for retail sales at breweries or distilleries.

The proposed legislation would state that the same closing hours that apply to retail licensees in a municipality would apply to all producers in that municipality selling alcohol beverages pursuant to their alcohol beverage production permit at the production facility or at a retail sales location.

Hours of Operation for Nonretail Activity

Additionally, the proposal would clarify that only the sale and consumption of alcohol must cease during closing hours for a permittee. The production, shipment, transportation or delivery of beer, wine or distilled spirits may continue during the closing hours applicable to retail sales and consumption.

Double the Brewpub Production and Self-Distribution Caps

The proposal would increase the annual production cap for brewpub permits from 10,000 to 20,000 barrels. The proposal would also increase the brewpub self-delivery cap from 1,000 to 2,000 barrels.

Allow Brewpubs to Satisfy Permit Requirement through Sale of Beer from another Brewpub

Under current law, to maintain a brewpub permit, a brewpub must sell beer from another brewer other than the brewpub permittee. The proposal would clarify that a brewpub could satisfy this requirement by selling beer from another brewpub instead of a brewer.

Allow Wineries to Sell Wine to Other Producers

Under current law, a winery permit authorizes the sale of wine to wholesalers. Unlike the statute on manufacturer and rectifier permits, the winery statute does not expressly authorize a Wisconsin winery to sell wine to other manufacturers, rectifiers or wineries in Wisconsin. The proposal would make clear that a winery permit also authorizes the sale of wine to other producers.

INTEREST RESTRICTION MODIFICATIONS

Under current law and guidance from Department of Revenue, individuals who are owners and employees of licensees and permittees are greatly restricted in any investment of an entity that is licensed or permitted in a different, restricted tier. The proposal would make several changes to

the interest restrictions in state law by allowing incidental, passive investments, while ensuring independence among regulated entities across tiers. Unless there is a specific statutory exception, however, cross-tier ownership would be prohibited and the prohibition on cross-tier ownership would apply to all producers, wholesalers and retailers of alcohol beverages regardless of subchapter and type of alcohol beverage product sold.

Specify Permissible Passive Investment Arrangements

Under the proposal, state law would be modified to make clear that minority, passive investments do not violate the cross-tier restrictions. The specify that:

- Individuals and entities subject to Chapter 125 on a license or permit (that is, individuals identified on a manager’s or operator’s license and individuals identified as an officer, director, member, manager or agent of a corporation or limited liability company holding a license or permit) would be considered “restricted investors”.
- “Restricted investors” would also include any individual or entity holding more than a 10% ownership interest.
- The aggregate amount of ownership held by restricted investors could not at any time exceed 49% of the ownership of the entity in the other tier.
- No single restricted investor could hold more than a 10% ownership interest, including any passive or disregarded entities connected to the restricted investor.
- A restricted investor would be strictly limited to a passive investment and could not be involved in the day-to-day operations of the permittee/licensee or exert any control over such operations beyond their ability to vote as an investor.
- A restricted investor could not serve as an officer, director, manager, operator or agent of the licensee/permittee in the other tier.

To be able to monitor such investments, licensees and permittees would be required to disclose the ownership interest of any restricted investor to the department.

Nothing would limit or modify the ability under current law to have ownership or investments within a tier. For example, a person could hold an unlimited ownership in multiple breweries, distilleries or wineries at the same time. Similarly, a person could have ownership interest in multiple wholesalers, including both fermented malt beverage and intoxicating liquor wholesalers. And, a person could have an ownership interest in multiple retail licensees. The restrictions ownership and exception passive investments only applies to cross-tier ownership.

Exclude Real Estate Investments from Cross-Tier Ownership Restrictions

The proposed legislation would specify that the mere act of owning real estate is a permissible passive investment, even if that real estate is leased to a licensee or permittee. For example, if a brewery or restricted investor owns a building that also contains retail space, that space could be leased to a restaurant provided that the brewery does not have any day-to-day involvement in the restaurant or control over its operation. Similarly, a tenant could not be party to a licensing or exclusivity agreement or other arrangement with the landlord that would limit the tenant from operating in an arm’s-length and independent manner. And, such restriction on day-to-day

involvement, control or exclusivity would need to be included as a term in the lease using standard language contained in state law.

Allow Marital Property Agreements to Avoid Cross-Tier Ownership Restrictions.

Presently, the Department of Revenue does not recognize pre-marital agreements or other marital property planning documents as a mechanism to avoid cross-tier ownership restrictions. For example, a husband cannot own a brewery if his wife owns a bar even when there is marital property agreement in place.

The proposal would amend state law to recognize the use of such agreements to allow spouses to avoid triggering cross-tier ownership restrictions. The existence of such an agreement would need to be disclosed on any license/permit application and a copy provided to the clerk or department issuing the licenses or permit. The department also develop an affidavit to be signed by each individual swearing to a complete lack of involvement in the day-to-day operations of each respective business as well as a lack of control. Violation of this affidavit would be subject to penalty and license revocation.

CONTRACT PRODUCTION AGREEMENTS

Under current law, contract production agreements exist whereby one producer permittee contracts with another for the production of alcohol beverages. These contractual agreements occur entirely within the production tier of the three-tier system and between producers. Wisconsin administrative code provisions define the terms “production brewer” and “recipe-brewer” and include certain requirements for each. However, no similar provisions exist for intoxicating liquor production, despite the prevalence of such contract production agreements between producers in this state.

The proposal would provide clarity and certainty in state law regarding these contract production arrangements. The proposal would specify:

- Contract production is allowed for all producer types.
- All contract production must occur pursuant to a written agreement between the purchasing producer and manufacturing producer.
- Contract production includes the production, bottling or labeling of alcohol beverages – all reported and occurring under the purchasing producer’s federal basic permit.
- Contract production volume is considered to be production of the requesting producer for various thresholds under chapter 125 (self-distribution, brewpub permit requirements, advertising purchases, cooperative wholesale arrangements) tied to the permit but not status as a bona fide production facility.
- Transportation of a product between the premises of the producers who are parties to the production contract is allowed.

- Contract production arrangements between producers do not create an impermissible direct or indirect interest of one party with respect to the other or an impermissible agency relationship.

The proposal would also make clear that alternating proprietorship agreements for the production of fermented malt beverages and intoxicating liquor are expressly permitted under state law.

RETAIL LICENSE ISSUES

Allow Producers to Bring Alcohol Beverages to Licensed Retailers to Provide Free Samples

Under current law, a brewer may provide taste samples free of charge on Class “A” licensed premises, subject to certain requirements regarding the size of the sample, the number of samples per person per day, and the hours during which samples may be made available. When providing samples on a Class “A” premises, the brewer is required to purchase the sample products from the Class “A” licensee on whose premises the taste samples are provided.

Wineries are able to provide samples on “Class A” licensed premises under similar circumstances, but may only provide samples of wine purchased directly from a wholesaler.

Similarly, distillers and rectifiers are able to assist a “Class A” licensee in dispensing or serving taste samples of intoxicating liquor that is purchased from a wholesaler.

The proposal would remove the requirements in these various sections that samples of alcohol beverages be purchased from a wholesaler or retailer. Instead, producers would be allowed to bring and serve taste samples of their products to any retail location, including Class “B”/“Class B” and temporary retail licensees. However, the proposal would prohibit the producer from leaving at the retail location any unused product brought by the producer.

Allow for Extended Closing Hours during a National Political Convention

The proposal would create a closing hour exception available to on-premise Class “B”, “Class B” and “Class C” licensed retailers as well as all producers selling alcohol beverage pursuant to their alcohol beverage production permit at their production facility or a full-service retail sales location operating within Columbia, Dane, Dodge, Fond du Lac, Jefferson, Kenosha, Milwaukee, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, and Waukesha counties. The exception would be available during summer 2024 and the closing hour would be 4:00 a.m. Each municipality in the affected counties may opt out of this extended closing hours exception.

Create Wine-Only Bars/Remove Certain “Class C” Wine License Restrictions

“Class C” licenses authorize the retail sale of wine by the glass or in an unopened original container for consumption on premises. Under current law, “Class C” licenses may only be issued for restaurants in which the sale of alcohol beverages accounts for less than 50 percent of the gross receipts and (i) which does not have a barroom (“a room primarily used for the sale and consumption of alcohol beverages”), or (ii) has a barroom in which wine is the only intoxicating liquor sold. Additionally, “Class C” licenses may not be issued to foreign corporations or LLCs, or a person acting as an agent for or in the employ of another.

The proposal would remove these restrictions from “Class C” license eligibility, and instead include similar restrictions as those for “Class B” licensees.

Recapping Bottles of Wine

Under current law, sales of the wine by the bottle in restaurants under “Class B” or “Class C” retail licenses may be “recorked” and removed from the premises. The proposal would clarify that wine bottles could also be “recapped”.

Retailer Purchases of Fermented Malt Beverages from a Non-Wholesaler and Application to Producers with Full-Service Retail Outlets

Under current law, a Class “B” retailer must purchase fermented malt beverages from either a fermented malt beverage wholesaler or certain small breweries. A Class “B” retailer who violates these restrictions is subject to certain penalties.

Under the proposal, a tiered penalty structure would be created for violations with respect to fermented malt beverages that is similar to the existing tiered structure for intoxicating liquor violations. Under the proposal, if a retail licensee purchases or possesses fermented malt beverages in violation of the prohibition, the penalty that may be imposed is one of the following:

1. If a Class “B” licensee purchases beer from a Class “A” licensee for resale or possesses beer purchased from a Class “A” licensee for resale, a fine of not more than \$100.
2. If 1. does not apply and the total volume of beer purchased or possessed in one month is 4,320 fluid ounces (15 cases) or less, a forfeiture of not more than \$100.
3. If neither 1. nor 2. apply, a fine of not more than \$10,000 or imprisonment for not more than nine months or both.

Under the proposal, the tiered penalty structures – for both fermented malt beverages and intoxicating liquor – would be modified to apply to all producers selling alcohol beverages pursuant to their alcohol beverage production permit at a full-service retail sales location.

Statewide Operators’ Permit

Under current law, municipalities issue operators’ (bartenders’) licenses to individuals who supervise alcohol beverage sales at retail licensees. As a result, an operator’s license is only valid in the municipality that issued the license.

Under the proposals, the Division would issue a statewide operators’ permit that would authorize the individual to work as an operator throughout Wisconsin.

Transfer of Retail Licenses by Municipalities within a County

Under current law, a municipality may exhaust the available number of retail licenses available under the quota of “Class B” liquor licenses.

Under the proposal, the restriction that a municipality may transfer a reserve “Class B” liquor license to a contiguous municipality is replaced with a county-wide transfer program. That is, the proposal allows a municipality to transfer a reserve “Class B” liquor license to another municipality located within the same county.

Axe Throwing Facilities

Without a specific statutory exception, current law limits what other businesses may be conducted at a licensed alcohol beverage retailer.

Under the proposal, axe throwing facilities would be added to the list of exceptions. Moreover, underage individuals would be allowed at these axe throwing facilities.

COMMON CARRIER REGULATION

The proposal would include the provisions on common carrier regulation advanced by the Joint Legislative Council’s Study Committee on Alcohol Beverages Enforcement. Under that proposal, any common carrier that transports into or delivers within the state any alcohol beverages must submit monthly reports to the DOR. This proposal would require reporting to the Division instead of DOR but maintain all of the other requirements and provisions in the Study Committee bill draft.

This proposal would also require that any common carrier shipping alcohol into Wisconsin register with the Division and obtain a new common carrier shipping permit subject to annual fee based on the amount of alcohol shipped into the state each year. Under current law, only wine may be shipped to individual consumers in Wisconsin. Any common carrier that ships alcohol beverages other than wine would be subject to a monetary penalty and permit subject to revocation with repeat violations.

This proposal would also include the Study Committee’s proposed legislation requiring out-of-state permittees to consent to jurisdiction in Wisconsin for any proceeding to enforce the state’s alcohol beverage laws.

Ancillary to common carrier regulation is making clear that wineries and out-of-state shippers using common carriers to ship alcohol to Wisconsin residents are also subject to regulation. Fulfillment providers would obtain a permit similar to a winery to ensure that the work is being performed on behalf of a production winery, with wine of its own production. Accordingly, registration and reporting by fulfillment providers would disclose all shipments and the wineries that they were shipped on behalf of to a Wisconsin consumer.

INTOXICATING LIQUOR WHOLESALER – LIMITATION ON MULTIPLE PERMITS

Under current law, no person shall be issued more than two intoxicating liquor wholesaler permits. The proposal would eliminate this limitation as intoxicating liquor wholesalers are already subject to bona fide wholesaler requirements.

TAXATION OF SALES OF ALCOHOL BETWEEN PRODUCERS

Under current state law, the holder of a manufacturer's or rectifier's is permitted to sell "intoxicating liquor" to wholesalers, to wineries and to other manufacturers and rectifiers in Wisconsin. DOR interprets this provision to allow a manufacturer or rectifier in Wisconsin to sell intoxicating liquor only "in bulk" to other manufacturers, rectifiers and wineries in Wisconsin.

The proposal would make clear that no tax is levied on the sale or shipment of intoxicating liquor (whether in bulk containers or non-bulk packages) between producers.

SAFE RIDE PROGRAM

Under current law, the Department of Transportation is authorized to award grants to cover costs of transporting persons suspected of having prohibited alcohol concentration from certain licensed alcohol beverage retailers to their places of residence. The program is funded with a surcharge imposed on individuals convicted of operating while under the influence.

The proposal would increase the current Safe Ride program surcharge by \$25, from \$50 to \$75.

The proposal also requires a municipality to provide all retail licensees with information about the Safe Ride program.

EVENT VENUE REGULATION

Under the proposal, state law would define what is a public place and, if not excluded, require retail Class "B" / "Class B" licensing if alcohol is consumed at these public places.

- Defines "public place" to include any venue, location, open space, room or establishment that is:
 - Accessible and available to the public to rent for an event or social gathering
 - Held out for rent to the public for an event or social gathering.
 - Made available for rent to a member of the public for an event or social gathering.
- Excludes from the definition of "public place":
 - Hotel rooms and other accommodations used for overnight lodging.

- Vacation rental properties used for overnight lodging provided it has beds for sleeping
- A campsite on a licensed campground
- Tailgating locations in parking lots, driveways, yards, professional football or baseball districts.
- Unless excluded, a public place requires a retail Class “B” / “Class B” alcohol beverage license if consumption is to occur.

No Sale Event Venue Permit. It creates a new permit issued by WI DOR for event venues that are regulated as public places and alcohol is served/consumed but not sold.

The new event venue permit would be available for any event venue that is otherwise a public place but is rented out on six or fewer days per calendar year, no more than one day per month, for events at which alcohol is served/consumed, but not sold.

- To operate as a “no sale event venue,” an owner would obtain annual permit issued by the Department and pay a fee to cover administrative costs.
 - In the permit application, an owner would need to certify how many events were held at the venue during the previous permit year.
 - In the permit application, an owner would identify the property with specificity (more than a street address) that would be permitted as a no sale event venue but this property would not be considered a “premise” under Chapter 125.
- A no sale event venue permittee would be considered a retail licensee and subject to the ownership interest restrictions in Chapter 125. Accordingly, a retail licensee could also own and operate a no sale event venue but a producer or wholesaler could not.
- A no sale event venue permittee could not sell or otherwise provide alcohol beverages to a lessee at any time.
- The permit would not allow a permittee or lessee of the no sale event venue to sell any alcohol beverages at any time to attendees or guests, including charging admission for an event held at the event venue where alcohol is served.

Alcohol Beverages Brought by Either Event Host or Caterer. Alcohol served (not sold) at a no sale event venue would be provided by the event host or a caterer.

No Sale Event Venue Permit Requirements. An event venue operating under a no sale event venue permit would be subject to certain conditions and limitations in its operation.

- The no sale permit would allow:

- A lessee to bring their own fermented malt beverages and wine onto the property and serve it to their guests without charge; or,
- The guests of the lessee to bring fermented malt beverages and wine onto the property to be consumed by guests without charge; or,
- A lessee to obtain a temporary Class “B”/“Class B” license for an event to be held on the property; or,
- A lessee to contract with a licensed caterer that then provides and serves fermented malt beverages and wine to the lessee and their guests without charge at the event venue.
 - If a licensed caterer is used, neither a lessee nor guests may bring alcohol beverages onto the property.
 - If a licensed caterer is used, a licensed bartender must be used at the event to serve the fermented malt beverages and wine.
 - If a licensed caterer is used, the sale must occur in a face-to-face transaction at the caterer’s licensed premise but the fermented malt beverages and wine can be brought to the event venue by the caterer.
- When an event venue is being used by a lessee, no distilled spirits may be on the event venue property.
- When an event venue is being used by a lessee and there are 20 or more people on the property and fermented malt beverages or wine is being served, a licensed bartender must be used at the event to serve the fermented malt beverages or wine.

Six-Month Class “B” / “Class B” Application Period. Any event venue that does not qualify for the no sale event venue permit, shall have six months from the effective date of the proposed legislation to secure a Class “B” / “Class B” license. Similarly, any event venue that has secured a no sale event venue permit and determines that it can no longer operate under such a permit, will have a one-time six-month time period to secure a Class “B” / “Class B” license. During these six-month time periods, the event venue may continue to operate in a manner similar to how it has been operating in the prior twelve months provided that the event venue provides notice to the Department that it is actively seeking a Class “B” / “Class B” license.

Quota Exception During Application Period.

Qualifying event venues that decide to seek a “Class B” license would be able to take advantage of a quota exception if no “Class B” licenses are available.

A “qualifying event venue” must have been operating during 12-month period prior to the effective date, held at least five events with at least 50 attendees and with at least \$20,000 in revenue derived from these events. Upon application, the division will certify an owner of a qualifying event venue as eligible for the quota exception if:

- the venue is and has been in operation for the 12-month period preceding the application;
- the venue has not been a retail licensed premises during this 12-month period;
- the venue owner has not applied for a no-sale event venue permit;
- the venue owner provides documentation that the municipality in which the venue is located has reached its liquor license quota;
- the venue owner provides documentation showing, and the division confirms, that the venue meets the definition of a qualifying event venue and has been in operation for 12 months; and,
- the venue owner provides notice to the division within 60 days after the bill's effective date that the owner is applying for a “Class B” license and is not seeking a no-sale event venue permit.

The Division must act on an application for certification within 30 days of the application. A municipality may issue for a certified venue an above-quota “Class B” license under this quota exception only if the license application is received by approximately six months after the bill’s effective date. If a “Class B” license issued under this quota exception is revoked or not renewed, the municipality may not reissue the license.

CLASSIFICATION OF HARD SELTZERS

The Department has informally communicated to industry stakeholders that it believes hard seltzers are intoxicating liquors unless they contain malt and hops.³ Specifically, the Department considers hard seltzers not containing malt and hops to be wine – a type of intoxicating liquor – because these hard seltzers are made from sugar which is an agricultural product.

³ “Alcohol beverages” are defined in current state law to include fermented malt beverages and intoxicating liquor. Wis. Stats. § 125.02(1). “Intoxicating liquor” includes both distilled spirits and wine.

“Fermented malt beverages” means in current law any beverage made by the alcohol fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing 0.5 percent or more of alcohol by volume. Wis. Stat. § 125.02(6).

“Intoxicating liquor” means in current law all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5 percent or more of alcohol by volume, which are beverages, but does not include “fermented malt beverages”. Wis. Stat. § 125.02(8).

“Wine” means in current law products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits or other agricultural products, imitation wine, compounds sold as wine, vermouth, cider, perry, mead and sake, if such products contain not less than 0.5 percent nor more than 21 percent of alcohol by volume. Wis. Stat. § 125.02(22).

“Distilled spirits” is not defined in current law.

The classification of hard seltzer – whether it is a fermented malt beverage or intoxicating liquor – is difficult given Wisconsin’s current statutory definitions. On one hand, sugar-based hard seltzers do not contain malt, and thus lack one of the key components of being a fermented malt beverage. On the other hand, sugar-based hard seltzers do not clearly meet the definition of intoxicating liquors because they are fermented, do not use fruit, and are not distilled.

Given the lack of a clear definition and the need to fit hard seltzers somewhere into the regulatory framework, the Wisconsin alcohol beverage industry has generally adopted a more contextual and functional interpretation. Under such an interpretation, brewed-sugar hard seltzers – despite not containing malt – are more like fermented malt beverages than intoxicating liquors including wine.

Under the proposal, the Wisconsin statutory definition of fermented malt beverages would be modified based on a revised definition of “beer” used in the Code of Federal Regulations:

“Fermented malt beverages” means any beer, ale, porter, and other similar fermented beverages (including sake and similar products) of any name or description 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 including rice, grain of any kind, bran, glucose, sugar, and molasses, if such products contain not less than 0.5 percent nor more than 21 percent of alcohol by volume.

PRE-MIXED COCKTAILS

Under current law, “Class B” retail licensees are not allowed to prepare pre-mixed batches of cocktails containing distilled spirits.

Under the proposal, a “Class B” retail licensee will be prepare, store and dispense pre-mixed cocktails under certain conditions. Those conditions include:

- 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 for more than 48 hours;
- if the mixed drink is stored in or dispensed from a container exceeding 1.75 liters in volume (bulk container), the bulk container does not exceed 5 gallons in volume and is properly labeled;
- the retail licensee has purchased the intoxicating liquor from a wholesaler;
- the licensee has complied with the current law prohibition against refilling liquor bottles or possessing refilled liquor bottles and has also not stored the mixed drink in or dispensed the mixed drink from a wine bottle; and,
- the licensee has complied with any other applicable state or federal food safety regulation and also with any federal alcohol regulation.

Under the proposal, the Division must prepare the form of the label to be used by “Class B” licensees for bulk containers in which mixed drinks are stored or from which they are dispensed. This form must require the licensee to disclose on the label that the container holds a batch of

premixed drinks and the date and time the batch was prepared; the “expiration date” of the batch (the date and time that is 48 hours after the batch was prepared); the words “contains alcohol”; the name of the person who prepared the batch; and the ingredients of the batch, unless the label contains a recipe title and the recipe, with a complete ingredient list, is maintained on the licensed premises and available for inspection.

May 23, 2023
29366340.2