

# DOR on Tap

## An Alcohol Industry Update

November 2021 | AIU 010

It's amazing to think that two years have passed since the first edition of the *DOR on Tap* industry update was posted. When we started this newsletter, our goal was to build trust and ensure fairness and transparency through proactive communication by providing information that was useful and interesting to industry leaders, local clerks, and policy stakeholders. To help ensure we are meeting this goal, we would like to hear your feedback. Please let us know your thoughts by completing the three-question survey linked below.

<https://forms.office.com/g/afqEbANmEv>

Cheers,

Tyler Quam, Special Agent in Charge  
A&TEU | Wisconsin Department of Revenue

### Legislative Update

[2021 Senate Bill 285/Assembly Bill 250](#) – This bill makes several changes related to laws enforced by the Department of Revenue, including:

- Licenses to sell cigarettes, tobacco products, or vapor products
- Publishing a list of retail licenses
- Criminal history search fees
- Tax return information disclosure
- Lottery provisions
- Possession of alcohol vapor devices
- Penalties for evading excise taxes and unlawful possession of cigarettes
- Alcohol beverage permit reapplication
- Possession of a still
- Sales suppression devices and phantom ware

[2021 Assembly Bill 71/Senate Bill 57](#) – This bill allows most alcohol beverage retailers to sell alcohol beverages online and over the phone and deliver the alcohol beverages to the customer or to have the alcohol beverages delivered to the customer by an independent third-party delivery service.

[2021 Assembly Bill 70/Senate Bill 56](#) – This bill allows for remote orders of alcohol beverages and the customer picks them up on the licensed premises.

[2021 Assembly Bill 364](#) – This bill modifies the applicable penalty under certain circumstances, when an alcohol beverage retailer purchases alcohol beverage from a source other than a wholesaler, in violation of current law. The bill also eliminates restrictions on the maximum period of credit that a wholesaler may extend to a retailer in connection with the purchase of alcohol beverages.

### Resources & News

[Wisconsin Department of Revenue Website](#)

[Wisconsin Department of Revenue Alcohol Beverage Landing Page](#)

[Operator's \(Bartender's\) License – Training](#)

[Federal TTB \(Alcohol and Tobacco Tax and Trade Bureau\)](#)

[Wisconsin Department of Agriculture, Trade and Consumer Protection](#)

[Wisconsin Department of Health Services](#)

[Wisconsin Department of Justice](#)

[League of Wisconsin Municipalities](#)

## Important Update

DOR updated [Publication 302](#), *Wisconsin Alcohol Beverage and Tobacco Laws for Retailers*.

Updates include stylistic and organizational changes to make guidance easier to read, along with additional info on the following topics.

- Liquor Sales Limits
- Vapor Products
- Music Festivals
- Permit Listings
- False Information Penalty

See other alcohol beverage publications and fact sheets on DOR's [Alcohol Beverage](#) web page.



## Wholesaler Permit Fee Increasing

The Wisconsin Fermented Malt Beverage Wholesaler Permit fee is increasing to \$2,000 per year, effective January 1, 2022. This change affects new permits issued on or after January 1, 2022 and renewals that occur on or after January 1, 2022. Currently, the Wisconsin Fermented Malt Beverage Wholesaler Permit is a \$1,200 per year. This fee is billed for a two-year period.

## Wine of the Month Club Subscription – A Great Gift Idea?

There are numerous different Wine of the Month Clubs. Some specialize in imported wines, some have wines from one specific state or a specific winery, and a few specialize in value-oriented wines. These plans vary from monthly, bi-monthly, and quarterly deliveries of wine. Many clubs are designed to bring wines to customers that are not available for purchase at local establishments.

Wisconsin law allows the direct shipping of wine from a winery to a consumer via a Direct Wine Shipper's permit ([sec. 125.535\(3\), Wis. Stats.](#)). These permits may be issued to those who manufacture and bottle wine on one of the following premises:

1. A permitted Wisconsin liquor manufacturer/rectifier
2. A permitted Wisconsin winery
3. A winery holding a license, permit, or other authorization issued to the winery by any state from which the winery will ship the wine into Wisconsin
4. The holder of a federal basic winery permit

Question: Are Wine of the Month Clubs operating legally?

Answer: In order to operate legally, the Wine of the Month Clubs' wines must all be shipped from a business that holds a Wisconsin Direct Wine Shipper's permit. The wines must also be shipped directly from the winery to the consumer.

Question: Is it legal for a business to purchase or obtain wines from others and ship those wines to consumers in Wisconsin?

Answer: No. The wine must be shipped, manufactured, and bottled by a business holding a Direct Wine Shipper's permit and who qualifies under one of the four requirements listed above. A Direct Wine Shipper's permit does not authorize wine to be shipped directly to consumers from a public warehouse; the permit authorizes wine to be shipped directly from the winery's premises.

Question: How does someone know if a business has the proper permit to ship wine to Wisconsin consumers?

Answer: Permits can be verified by checking the liquor permits list published on DOR's website. The list is updated monthly and can be found here: [DOR Wisconsin Liquor Permit Listing](#)



## Public Warehouse Permits

The Department of Revenue issues "Public Warehouse" permits to customers who store alcohol beverages at a public warehouse. The permit is applied for and held by the entity that owns the alcohol beverages, not the entity that may own the warehouse space. If proper separation exists between the premises, Public Warehouse permits can be issued to more than one entity owning alcohol beverages stored at the same address/building. Applicants for a Public Warehouse permit must hold a permit from DOR to manufacture or wholesale alcohol beverages.

A Public Warehouse permit authorizes the storage of alcohol beverages. It does not authorize the sale of any alcohol beverages. Wineries that hold a Direct Wine Shipper permit cannot ship directly to consumers from a public warehouse. Wine direct shipments must be made from the winery premises.

Question: If a winery runs out of a specific wine that a customer wishes to purchase but has more inventory at a public warehouse, may the winery staff ask the customer to meet them at the Public Warehouse to sell the wine there?

Answer: No. Sales cannot take place at the Public Warehouse. The sale must take place at the location where the winery holds a retail license.

Question: May the holder of a retail alcohol beverage license (other than a manufacturer of alcohol beverages) obtain a Public Warehouse permit?

Answer: No. Retailers cannot hold a Public Warehouse permit.

Applicable statute: [sec. 125.19, Wis. Stats.](#)

## An Old Fashioned Mix Up

In August 2021, DOR's Alcohol & Tobacco Enforcement Unit received a complaint that a restaurant and tavern in Dane County was serving pre-mixed cocktails on tap.

DOR agents visited the business to conduct a licensed premises inspection. While behind the bar, agents observed a tap column with four taps on it. Only one of the four taps appeared to be operational and was labeled with a tap handle that indicated it was an Old Fashioned cocktail mix. Agents followed the tap line to the walk-in cooler and discovered a small keg connected to the line. The 18-liter keg bore a hand-written label stating it contained an Old Fashioned mix.

After speaking with one of the owners of the business, agents confirmed that the tavern and restaurant had properly purchased bottles of liquor from their wholesaler but used the liquor to pre-mix an Old Fashioned cocktail and place it into kegs. The kegs were then pressurized and hooked to a tap line so that the cocktails could be served to customers from a tap. The hand-written label on the keg indicated the cocktail had been mixed months prior to the agents' visit.

Agents explained to the business owner that the practice of pre-mixing cocktails and bottling or keging the cocktails is considered rectifying under Wisconsin alcohol beverage laws. Only those holding a valid Wisconsin rectifier's permit may engage in that activity.

Additionally, Wisconsin alcohol beverage laws and regulations prohibit retailers from selling or possessing distilled spirits in a container larger than 1.75 liters. Wisconsin law also sets forth labeling requirements for all containers of intoxicating liquor sold in Wisconsin.

Labeling regulations exist to protect and inform consumers of the content of their beverages. Strict labeling requirements helps promote responsible consumption and informs the consumer of the amount of alcohol they may be consumed. Restrictions on container sizes helps provide uniformity across the industry and reduce over-consumption.

## Clerk's Corner: Ordinary Ordinances

Wisconsin alcohol beverage laws describe several instances where a municipality can, and where they must, pass an ordinance prior to taking certain actions. The following list highlights several instances where municipal ordinances should be considered, along with the related statutory references.

Required Ordinances – Municipalities must pass an ordinance to:

- Establish a fee for an operator's license. This is also the fee for a temporary operator's license, [sec. 125.17\(3\) Wis. Stats.](#)
- Designate a municipal official to issue provisional operator's licenses, [sec. 125.17\(5\)\(a\)1. Wis. Stats.](#)
- Establish the fee and designate the municipal official who will issue provisional retail licenses, [secs. 125.185\(1\) and \(3\) Wis. Stats.](#)

Optional Ordinances – Municipalities may pass an ordinance to:

- Allow municipal officials and employees to sell fermented malt beverages without a retail license in a public park through an ordinance, resolution, rule, or regulation [sec. 125.06\(6\) Wis. Stats.](#)
- Allow local law enforcement to authorize a Class "B" beer or "Class B" liquor licensee to allow underage individuals to be present in a room where alcohol is not sold or served on a specific date, [sec. 125.07\(3\)\(a\)8. Wis. Stats.](#)
- Prescribe forfeitures or license suspension/revocation for violations of Wisconsin's alcohol beverage laws or additional regulations that do not conflict with state law, [sec. 125.10\(1\) Wis. Stats.](#)
- Regulate contests or competitions for judging and tasting of homemade wine and fermented malt beverage, [sec. 125.10\(1\) Wis. Stats.](#)
- Prohibit consumption of fermented malt beverage on a pedal pub, [sec. 125.10\(5\)\(a\) Wis. Stats.](#)
- Designate a municipal official to issue operator's licenses, [sec. 125.17\(1\) Wis. Stats.](#)
- Establish standards for provisional licenses, [sec. 125.17\(5\)\(a\)1. Wis. Stats.](#)
- Issue and establish fees and standards for manager's licenses, [secs. 125.18\(1\) and 125.68\(1\), Wis. Stats.](#)
- Impose more restrictive sales hours for off-premises sales of fermented malt beverages for both Class "A" and Class "B" beer licensees, [sec. 125.32\(3\)\(d\) Wis. Stats.](#)
- Allow "Class B" liquor licensees to sell liquor in the original package for off-premises consumption in any quantity, [sec. 125.51\(3\)\(b\) Wis. Stats.](#)
- Designate a premier economic development district, [sec. 125.51\(4\)\(u\)2. Wis. Stats.](#)
- Impose more restrictive sales hours for off-premises sales of liquor in the original, unopened package, container, or bottle for both "Class A" and "Class B" licensees, [sec. 125.68\(4\)\(b\) Wis. Stats.](#)
- Prohibit wine sampling by "Class A" licensees, [sec. 125.06\(13\)\(b\), Wis. Stats.](#)

## Alcohol in Food Products

Question: Are foods containing alcohol regulated by Wisconsin law?

Answer: Chapter 125 of the Wisconsin Statutes regulates alcohol beverages. If a food product that contains alcohol is not fit for beverage purposes, then it is generally not regulated under Chapter 125 of the Wisconsin Statutes. At the federal level, these foods are regulated by the Food & Drug Administration (FDA) rather than the Alcohol & Tobacco Tax & Trade Bureau (TTB).

Question: Can alcohol be used as an ingredient in non-beverage food products?

Answer: Generally, yes. As long as the food is properly labeled, and it is not otherwise unsafe or adulterated, then alcohol can be used as an ingredient in non-beverage food products.

Question: What are the labeling requirements for non-beverage foods that contain alcohol?

Answer: If alcohol is part of the food composition/formula, then it must be included on the label as an ingredient. Ingredients listed on food labels are always in descending order, by weight/volume. If alcohol is a part of other ingredients (i.e., flavor), and it is less than 0.5 percent by volume, then it is considered an incidental ingredient and does not need to be specifically listed. For more information on food labeling, see [FDA Food Labeling Guidance](#) and [ATCP 70.26\(7\) of the Wisconsin Administrative Code](#).

## Contact Us

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## Applicable Laws and Rules

This document provides statements or interpretations of Wisconsin statutes and administrative rules enacted as of November 1, 2021. Laws enacted and in effect after this date, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to this date that is contrary to the information in this document is superseded by this document, according to sec. 73.16(2)(a), Wis. Stats.