

# DOR on Tap

## An Alcohol Industry Update

February 2022 | AIU 011

Happy New Year and welcome to 2022! Toward the end of each calendar year, the Department of Revenue (DOR) typically reviews guidance documents and publications to update them with any needed changes. Recently, we revised [Publication 302, Information for Wisconsin Alcohol Beverage and Tobacco Retailers](#). This publication includes information on licenses and permits, prohibited activities, underage regulations, cigarettes and tobacco products, vapor products, and video gambling. The updates made to this publication include:

- Reorganization of the publication contents
- Law changes related to off-premises sales of liquor, vapor products tax implementation, underage persons at music festivals, and providing false information on alcohol beverage license/permit applications
- Information about online posting of DOR permit holders

Please check out our new and improved *Publication 302*!

DOR also recently updated [BT-136, Fermented Malt Beverages Permit Application](#). Changes to this form include:

- Update to the biannual fee for a fermented malt beverage wholesaler permit
- Corrections/improvements to the form instructions

Finally, in our November 2021 edition of *DOR on Tap*, we provided a link to a survey about our newsletter. Unfortunately, we became aware of a technical error with that link. The error has now been corrected, so we are asking once again for our readers to participate in our short survey about DOR on Tap at <https://forms.office.com/g/afqEbANmEv>.

Cheers,

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



## Information for Wisconsin Alcohol Beverage and Tobacco Retailers

Includes information on:

- Licenses and permits
- Prohibited activities
- Underage persons and minors
- Cigarette and tobacco products
- Vapor products
- Video gambling

Publication 302 (11/21)

## 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](#)

## 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
- 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.

## 0 for 3

In December 2021, DOR Alcohol and Tobacco Enforcement Unit agents conducted an inspection of the licensed premises of a convenience store in southwestern Wisconsin. An agent had received information that the convenience store was selling bottles of wine without a license to do so. The convenience store held a Class "A" retail license which authorized the business to sell only fermented malt beverages. Agents were able to verify during the inspection that wine was available for sale and that the store held no licenses for the sale of intoxicating liquor. All wine that was located in the convenience store was seized as contraband. In speaking with the owner of the business, agents learned that wine was invoiced and sold to the convenience store by a Wisconsin liquor wholesaler.

A follow-up investigation was conducted with the involved wholesaler. The investigation revealed that the wholesaler did not verify if the convenience store held the proper retail license for the sale of intoxicating liquor. Further, it was discovered that the wholesaler entered into an illegal practice with a Wisconsin winery. Additional investigation with the winery showed that the winery solicited and facilitated their own sales and paperwork with retailers (including the involved convenience store) and would forward the information to the wholesaler to create an invoice for the wine so that it appeared the wine was sold by the wholesaler to the retailers. The winery also delivered the wine directly to the retailer, which is a violation of Wisconsin law.

The involved parties were provided with information on how to comply with the law. The parties were also advised that any such illegal conduct in the future may result in the referral of criminal charges and may include additional penalties such as the revocation of state permits and municipal retail licenses for all parties involved.

Wisconsin's three-tier system for alcohol beverages production, distribution, and sale exists for the benefit of the public health and welfare and Wisconsin's economic stability. This system also provides for effective statewide regulation and collection of state taxes on alcohol beverage sales. Wisconsin relies on a three-tier system as a means of checks and balances between producers, wholesalers, and retailers. The responsibilities and self-regulation of the members in these tiers is an integral part of ensuring industry equality. This case represents an example of the types of illegal activities that can arise when the barriers within the three-tier system are eroded.

## Clerk's Corner: License Revocations, Suspensions, and Non-Renewals

With license renewal season just around the corner, some municipalities may be facing difficult decisions when considering revocation, suspension, or non-renewal of existing alcohol beverage retail licenses. Just like for an original license application, state law describes a specific procedure that municipalities must follow before taking any of the above actions. The steps for a revocation or suspension are summarized below from sec. [125.12\(2\)](#), Wis. Stats.

- 1) **Complaint** – Any resident of a municipality may file a written complaint with the clerk alleging at least one of the following:
  - A violation of Chapter 125 or a municipal regulation conforming to the chapter
  - A disorderly or riotous, indecent, or improper house
  - Serving alcohol beverages to known habitual drunkards
  - The license holder does not qualify for the license
  - Violations involving certain controlled substances
- 2) **Summons** – Once the complaint is filed, the municipality will issue a summons requiring the license holder to appear before the municipality for a hearing.
  - The summons must be signed by the clerk and include a copy of the complaint
- 3) **Hearing** – The municipal governing body will meet to determine if the complaint is true and, if so, take the appropriate consequence.
  - If the license holder denies the complaint, both the license holder and the complainant may produce witnesses, cross-examine witnesses, and be represented by counsel.
  - If the license holder does not appear for the hearing, the governing body will assume the complaint is true.
  - The clerk must give the license holder notice of each suspension and revocation.
- 4) **Effect** – If the license is revoked, the previous license holder may not have any new license granted for 12 months or receive any refund for the revoked license fee.
- 5) **Judicial Review** – The decision of any municipality to revoke, suspend, or non-renew a license may be reviewed by a county circuit court.

### Non-renewals

Municipalities intending not to renew an expiring license may only do so for the reasons listed in (1) above. The governing body will send a notice to the license holder indicating the reason(s) why the license will not be renewed and offer an opportunity for the hearing described in (3).

Failure to follow the steps outlined above may be a violation of procedural due process.

## Clerk's Corner II

Every municipality that authorizes retail sales of alcohol beverages must issue license certificates – a physical document containing the licensing information. DOR does not prepare license certificate templates. Instead, each municipality must determine what their licenses will look like. Below is a list of the minimum essential information that should appear on all alcohol beverage license certificates.

- County and municipality issuing the license
- License holder's legal name
- Name of the agent, if the licensee is a corporation or LLC
- Premise description and address
- Type of license(s) and corresponding fee(s)
- Issue and expiration dates
- Clerk's signature

For assistance crafting the language to use on license certificates, the [Wisconsin Town Law Forms](#) offer samples for each license type. After following the link above, navigate to [Chapter 125, Wis. Stats.](#), for various alcohol beverage form samples. Each form is written to be adapted to meet the specific needs of each municipality.

Note: Once issued, each retail license must be framed and displayed so the general public can easily view it.

## Liquor Salesperson Permits

A liquor salesperson's permit (permit to solicit for future sales) must be obtained by each person who is working as a salesperson, agent, or other representative of an intoxicating liquor manufacturer, rectifier, winery, or wholesaler soliciting orders for future delivery of intoxicating liquor in Wisconsin.

DOR issues "permits to solicit for future sales" which authorize the permittee ([sec. 125.65\(1\)](#), Wis. Stats.) to do the following:

- Solicit orders and engage in the sale of intoxicating liquor for delivery at a future date
- Give a sample of a brand of intoxicating liquor to a "Class A" licensee who has not previously purchased that brand from the permittee

Qualifications to obtain a liquor salesperson's permit:

- Hold a valid Business Tax Registration Certificate
- Not have an arrest or conviction record that substantially relates to the circumstances of the job or licensed activity (See [Chapter 111](#), Wis. Stats., for more information)
- Be at least 18 years of age

A liquor salesperson must always have their permit within their possession while soliciting orders or selling liquor. Samples of intoxicating liquor carried by a permitted salesperson must be tax paid product. Retail sales by a liquor salesperson are prohibited.

## Form AB-121: Liquor / Wine Salesperson's Permit Application

Many wholesalers submit permit applications on behalf of salespersons they are hiring. DOR often receives more than one salesperson's permit application with a single check from the wholesaler to cover all the permit fees.

Each salesperson's permit application must be processed separately as the permit is issued to each individual, not the wholesaler. When submitting multiple permit applications, the wholesaler should submit a separate check with each application. If one permit application out of a group submission takes longer to process or is denied, separate checks will ensure the fastest processing of the other permit applications.

Use the current permit application posted on our website: [AB-121](#), *Liquor / Wine Salesperson's Permit Application and Instructions*

## Product Return Q & A

Question: May a retailer accept returns of alcohol beverages from a consumer?

Answer: No, returns of alcohol beverages from a customer to a retailer are prohibited. Once a consumer has purchased alcohol beverages from a retailer, that consumer is now the owner of that product and any transfer of those alcohol beverages from the consumer back to the retailer would constitute a "sale" as defined in [sec. 125.02\(20\)](#), Wis. Stats. Retailers may only purchase alcohol beverages via bona fide sale from certain alcohol beverage permit holders, which an individual consumer would not hold. Since there is no legal way for the sale to occur, the retailer cannot accept a return of the product.

Question: Can the retailer issue a refund for alcohol beverages?

Answer: Wisconsin alcohol beverage laws do not prohibit retailers from refunding the customer money or any thing of value, as long as the product is not returned.

## 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 February 24, 2022. 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.