

# DOR on Tap

## An Alcohol Industry Update

November 2022 | AIU 014

In this edition of DOR On Tap, our last of 2022, I want to highlight two important items: the department's improved [Alcohol Beverage Complaint form](#), and reminders about the upcoming holiday season.

The department improved the online Alcohol Beverage Complaint form used to report alcohol beverage, cigarette, tobacco products, vapor products, and video gambling violations. Among other items, the improved form contains additional check boxes for common violations and allows individuals to request anonymity or confidentiality. Submissions are sent directly to the Alcohol & Tobacco Enforcement Unit for review and follow up. We appreciate and depend upon citizens to alert us about any alleged violations of law in Wisconsin.

As the holiday season approaches, we receive a lot of questions and complaints about seasonal businesses providing alcohol beverages to the public. Sometimes alcohol beverages are given free to potential customers (e.g., men's night at the jewelry store and every shopper may enjoy a beer while they shop), and other times they are given to paying customers (e.g., purchase a hayride and get a free beer; or every Christmas tree purchase comes with a free shot of brandy). Whether the alcohol beverages are given away to customers, or they are sold to customers as part of the sales price of a product or service, these activities are illegal unless the appropriate retail alcohol beverage license is held by the business. Wisconsin law prohibits retail establishments from selling, transferring, or allowing consumption at their place of business while open to the public without holding the appropriate retail alcohol beverage license.

In addition, during the gift-giving season, many individuals choose to give gifts of alcohol beverages. Oftentimes, these gifts involve rare or hard to find brands. Wisconsin law requires the sale of alcohol beverages be made face-to-face at a physical licensed premises. Therefore, individuals may not purchase alcohol beverages for delivery to their residence. An exception to this requirement is the purchase of wine from a permitted direct wine shipper, where the wine is shipped directly to an individual in Wisconsin. The Department posts a [list of intoxicating liquor permittees](#) (including wine direct shippers) online. There are no exceptions to the face-to-face sales requirement for fermented malt beverages (beer) or intoxicating liquor other than wine (spirits). These products cannot legally be purchased online or otherwise shipped directly to an individual in Wisconsin. Fortunately, consumers can find a wide range of brands of beer, wine, and spirits at the thousands of great producers and retailers right here in Wisconsin!

Cheers,

Tyler Quam

### Contact Us

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TO DOR ALCOHOL BEVERAGE NEWS

# Three Cheers for Three Tiers

## Methods of Alcohol Regulation 101

Many people in the alcohol beverage industry have heard of the three-tier system, but not everyone knows the origins, or why it is the preferred method of regulation in the United States.

After 14 controversial years, prohibition ended in the United States with the passage of the 21<sup>st</sup> Amendment to the United States Constitution. Alcohol beverage regulation was delegated to states and local governments. John D. Rockefeller Jr. commissioned a study to identify best practices to regulate alcohol beverages at the state level. The study, *Toward Liquor Control*, concluded that regulatory structures should not increase demand for alcohol beverages and should guard against bootlegging and consumer exploitation. Two proposals were suggested, but all states opted to use the "regulation by license" model with some states also choosing a hybrid model by adopting certain elements of the "authority" plan.

### Modern Three-Tier System

All states have adopted some version of the three-tier system of alcohol beverage regulation, based on the "regulation by license" model discussed in *Toward Liquor Control*. The alcohol beverage industry, under the three-tier system, is separated into three levels, with no crossover interest between tiers. This means industry members cannot have an interest in more than one of the tiers. For example: a brewery cannot own a tavern; a distiller cannot also own a liquor wholesale/distribution business; or a distributor/wholesaler cannot also own a liquor store. Industry members must choose a tier to operate within and can only operate as a member of that tier. The separation between industry tiers helps ensure efficient tax collection, reduces the incentive for over consumption by eliminating tied houses, increases consumer choice, and provides law enforcement more control to protect public health and safety.

Some states choose to monopolize a tier (e.g., distribution tier or retail sale of liquor) of the industry by controlling that tier through a state-controlled enterprise. These states are called "control" states. States that regulate alcohol beverages entirely through the licensing of privately-owned business enterprises are called "open" states.

### Wisconsin's Three-Tier System

Wisconsin regulates alcohol beverages as a three-tier "open" state. The state authorizes producers and wholesalers through state-issued permits. Municipalities authorize retail establishments through local licensing. There are many exceptions to the three-tier system in Wisconsin. For example, most producers are authorized to sell beverages they produced at retail to consumers. Some small producers are allowed to self-distribute products or do so through cooperatives.

## Methods of Alcohol Regulation Toward Liquor Control

### REGULATION BY LICENSE

Industry divided into producers OR retailers  
Businesses only can be one or the other  
System is overseen by a licensing board  
Pro: eliminates tied houses

### AUTHORITY PLAN

Retail tier is owned and managed by the state  
State buys alcohol from producers and sells directly to the public  
System is overseen by a licensing board  
Pro: eliminates profit incentive

## The Three Tier System

### PRODUCERS

Make beer, liquor, or wine

### DISTRIBUTORS

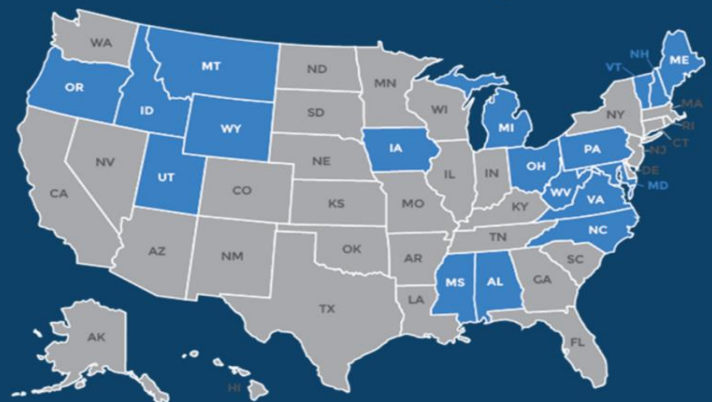
Buy alcohol from manufacturers to sell to retailers

### RETAILERS

Sell liquor, beer, or wine to consumer

## MAP OF CONTROL STATES

National Association of Alcohol Beverage Control States



## Wine Not?

A "Class A" retailer in Waukesha County was recently convicted of selling alcohol beverages to underage persons as a result of an investigation by agents in the DOR Alcohol & Tobacco Enforcement Unit. The investigation exposed the business's illegal business model, which involved sales made online and off-premises at personal residences.

Agents conducted or facilitated several undercover purchases of wine from the business's website. One purchase was delivered directly to an agent's home. Three other purchases were made by underage individuals working with the agents. The purchases were delivered by a representative of the business directly to the underage persons' residences.

Agents also inspected the retailer's licensed premises, which uncovered a second "Class A" premises connected to the initial premises in question. During the inspection, agents found that invoices for purchases and sales of alcohol beverages for both businesses were kept only on one premises. In addition, large quantities of alcohol beverages were not stored on the appropriate premises, and the purchases were not made from permitted wholesalers. Over 4,000 bottles of wine were confiscated for these violations.

During the inspection, agents also uncovered sales invoices from both businesses indicating that alcohol beverages were delivered directly to consumers. Sales made by phone, email, or online and delivered to consumers at a location other than the licensed premises is a violation of Wisconsin alcohol beverage laws. In addition, many sales invoices indicated that employees of the businesses left the packages containing alcohol beverages outside of the homes when the recipient was not there.

DOR agents interviewed the authorized agents of the businesses, both of whom admitted to making illegal sales of alcohol beverages. Charges were presented to the Waukesha County District Attorney's office, and the business was found guilty on three counts of selling alcohol beverages to underage individuals.

It is illegal for retailers to make online sales of alcohol beverages for delivery off the retailer's licensed premises. It is also illegal for any person or business to sell alcohol by phone, email, or online for delivery to consumers in Wisconsin, except wine shipped directly from a winery that holds a direct wine shippers' permit from the department. Sales of alcohol beverages must be made face-to-face on the retail licensee's premises, which strengthens efforts to prevent sales to underage or intoxicated persons. We appreciate creativity in expanding businesses in Wisconsin, but business models cannot be in violation of Wisconsin alcohol beverage laws. If you are unsure whether your alcohol beverage business model is legal in Wisconsin, please do not hesitate to contact us at [DORAlcoholTobaccoEnforcement@wisconsin.gov](mailto:DORAlcoholTobaccoEnforcement@wisconsin.gov).

## Closing Time: You Can't Stay Beer

Commonly referred to as "bar time," all Wisconsin alcohol beverage retailers must close at certain times of night according to state or local laws. The specific time each retailer must close depends on the type of retail license held.

### Class B and C Licenses (bars and restaurants)

- Must close from 2 a.m. until 6 a.m. Monday through Friday but may stay open until 2:30 a.m. on Saturday and Sunday morning.  
**Note:** Certain businesses, like some hotels and restaurants, bowling centers, movie theaters, painting studios, indoor golf and baseball facilities and indoor horseshoe-pitching facilities, curling clubs, golf courses and golf clubhouses, may stay open after these hours for their regular business, but may not sell or allow consumption of alcohol beverages.
- May not sell alcohol beverages for off-premises consumption between midnight and 6 a.m. These hours are subject to further municipal restrictions and could vary by city, town, or village.
- May stay open all night on New Year's Eve (not required to close on New Year's Day (January 1))
- May stay open until 3:30 a.m. on the first day of Daylight Savings in March

### Class A Licenses (liquor, grocery, and convenience stores)

- May not sell fermented malt beverages (beer) between midnight and 6 a.m., unless further restricted by municipal ordinance. Such ordinances may vary by city, town, or village.
- May not sell intoxicating liquor, including wine and cider, between 9 p.m. and 6 a.m., unless further restricted by municipal ordinance. Such ordinances may vary by city, town, or village.
- Class "A" (beer) licensees may remain open beyond the hours described above to conduct other business.

Other license types, like temporary retail licenses or "Class B" winery licenses, may have different closing hours. See secs. [125.32\(3\)](#) and [125.68\(4\)](#), Wis. Stats., for further details on closing hours.

## Applicable Laws and Rules

This document provides statements or interpretations of Wisconsin statutes and administrative rules enacted as of November 14, 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.

## Seized Liquor = Books for Kids

DOR's agents from the Alcohol and Tobacco Enforcement Unit (ATEU) may seize contraband alcohol beverages, while investigating criminal violations of Wisconsin's alcohol beverage laws and regulations. What happens after an agent seizes alcohol beverages, and what does this have to do with books for kids?

First, reports and other legal paperwork are written by the agents to document the seizure. It is the responsibility of the agent to maintain a chain of custody for all items seized as they may be part of a criminal proceeding. The ATEU maintains secure facilities throughout the state to store the seized alcohol beverages. Seized items are held for periods of time ranging from 90 days to several years depending on the complexity and length of criminal proceedings.

Once the seized alcohol beverages are no longer held for legal proceedings, they can be disposed of. Disposition of seized alcohol beverages is prescribed by sec. 125.14, Wis. Stats., which allows DOR to either destroy, sell to the highest bidder, or give seized alcohol beverages to law enforcement for use in other criminal investigations.

Seized fermented malt beverages are often destroyed by DOR due to expiration dates and freshness concerns, including all open containers of seized alcohol beverages. All factory-sealed containers of intoxicating liquor are sold as an entire lot to the highest bidder through a bidding process. The ATEU typically administers four or five of these sales each year, and all properly licensed liquor retailers and permitted wholesalers are eligible to place a bid on the entire lot. There is no minimum bid, and the person with the highest offer receives the entire lot of alcohol beverages for sale at the time, typically between 1,000 and 2,000 bottles. In fiscal year 2022, the ATEU sold 13,246 bottles of intoxicating liquor.

All proceeds from these sales are deposited into the Common School Fund. All Wisconsin school districts receive an annual distribution of funds from the Common School Fund. These funds (also known as Library Aid) are used to purchase library books and other instructional materials. The Common School Fund is a significant source of funding for school libraries in Wisconsin. In fiscal year 2022, the ATEU contributed more than \$59,000 to the Common School Fund from sales of seized contraband alcohol beverages.

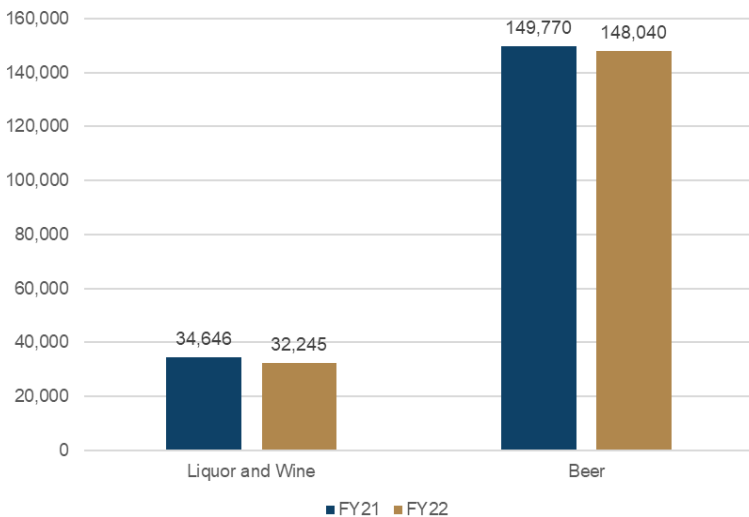
If you would like more information on the sale of seized alcohol beverages and how to place a bid, contact us at [DORAlcoholTobaccoEnforcement@wisconsin.gov](mailto:DORAlcoholTobaccoEnforcement@wisconsin.gov).

## Tax Collections and Production Volume

### FY 21 vs FY 22

Alcohol beverage production and tax collection was consistent from FY21 to FY22. If you are interested in more alcohol beverage data and statistics, DOR offers [interactive data sets](#) that can be a useful tool to learn more about tax collections, production, and more!

Liquor and Wine vs Beer Production (gallons)  
FY21 and FY22



Liquor and Wine vs Beer Tax Collections  
FY21 and FY22

