

# DOR on Tap

## An Alcohol Industry Update

May 2023 | AIU 016

Summer is right around the corner and warmer weather is upon us! It is a busy time of year for retail licensees and municipal clerks as license renewals are due and temporary events become commonplace.

There are several updates I wish to inform readers about in this edition of DOR on Tap. First, the department is working on updates to retail alcohol beverage license applications forms after receiving good feedback from municipalities. More information will be forthcoming as we finalize the application forms. Our hope is that the new forms will be more user-friendly and streamlined than the current versions.

Second, I wanted to remind municipal clerks that reporting of retail licenses issued in your municipality is due by July 15 of each year. Reports must be submitted electronically. More information can be found on our [Liquor License Report](#) webpage.

Finally, please review our [alcohol beverage common questions](#) for answers to our most common inquiries. We recently updated these common questions, so if you haven't recently browsed these, take a look!

Cheers,  
Tyler Quam  
ATEU | Wisconsin Department of Revenue

### Legislative Update

[Senate Bill 130](#) / [2023 Assembly Bill 127](#) (Rep. Duchow/ Sen. Stroebel) 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. The bill also allows for remote orders of alcohol beverages to be picked up on the licensed premises.

[2023 Senate Bill 262](#) (Sen. Jacque / Rep. Mursau) This bill prohibits possession of an open container of alcohol on an ATV or UTV when the vehicle is on a highway, ATV trail, or other established ATV corridor that is open to the public.

[2023 Senate Bill 268](#) (Sen. Wanggaard / Rep. Spiros) This bill expands the definition of fermented malt beverages, requires DOR to publish a list of retail licensees online, prohibits possession of alcohol vapor mist machines, requires denied applicants to wait six months before reapplying for an alcohol beverage permit, and requires alcohol beverage permit applicants to pay for criminal history search fees.

[2023 Senate Bill 279](#) / [Assembly Bill 286](#) (Sen. Stafsholt / Rep. Green) This bill allows individuals who are at least 14 years old to carry alcohol beverages from a person allowed to serve alcohol beverages to a customer not seated at a bar on a Class "B," "Class B," or a "Class C" premises.

## Dear Friend...Can I Store Liquor At Your Store?

The Alcohol and Tobacco Enforcement Unit (ATEU) received a citizen complaint regarding illegal gambling at a convenience store in Brown County. In March 2023, ATEU special agents investigated the Class "A" and "Class A" premises that is authorized to sell fermented malt beverages and intoxicating liquor in the original packages for consumption off the premises.

Agents found two employees at the store, neither of which had an operator's license or any valid form of identification. Alcohol beverage sales were temporarily stopped, and agents requested assistance from local law enforcement. An officer from the local police department issued municipal citations to the store owner for failure to have a licensed operator present and supervising sales of alcohol beverages.

As the investigation continued, agents found cases of intoxicating liquor in a back room which had delivery information showing the liquor had been sold and delivered to a different retailer in Brown County. The store owner said invoices existed for these products but was not able to produce any invoices. Agents were told that the store sometimes re-uses empty boxes, so the labels were probably just incorrect or old. Agents informed the store owner that the cases were sealed boxes of liquor which had not been opened or re-used. In another attempt to provide an explanation, the store owner suggested that the liquor distributor delivered the wrong boxes of liquor to the wrong store, indicating that it must have been an error by the wholesaler. Agents explained to the store owner that this store is on a separate delivery route than the store indicated on the labels, so the odds of an error in delivery were slight. Finally, the store owner admitted that a friend who owns a different convenience store had asked to keep some liquor at the premises due to limited space.

Agents explained that storing liquor for another business is not allowed, even for friends. State law prohibits possession of intoxicating liquor at a retail premises which is not authorized for sale at that location, and which has not been purchased from a permitted liquor wholesaler by that licensee for that location. Agents further explained that even stores with mutual ownership cannot split liquor deliveries or transport them between stores. All retail licensees must make intoxicating liquor purchases for that store only and maintain the inventory at that licensed premises. Agents confiscated 107 bottles of liquor which were not properly purchased by or invoiced to that store location.

Agents also found three video gambling machines hidden in a bathroom at the store and noticed two more machines outside in the parking lot. Store employees explained they were in the process of removing the machines from the property when agents arrived. "Contraband" stickers were affixed to the gambling machines and employees were told that they should remove the bathroom machines also. Agents returned to the store about a month later and found five illegal video gambling machines in operation on the sales floor. "Contraband" stickers were again affixed, and a removal order issued. This time, the store owner permanently removed the illegal video gambling machines.

The operation of video gambling machines at a business that does not have a "Class B" or Class "B" license allowing customers to drink alcohol beverages on the premises is a violation of Wisconsin law that could result in a felony offense.



### Contact Us

608.264.4573

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## Clerks' Corner: General Licensing Process

Alcohol beverage license renewal time has already begun in most municipalities. Licenses, except those issued by a municipality in Milwaukee County, expire on June 30. State law requires a specific process be followed when an application is received. Below is a general outline for this process.

- 1. Application Forms** - New businesses must submit an original retail license application (AT-106) and a renewing licensee must complete a renewal application (AT-115). Include the following forms with each application, if applicable:
  - Supplementary Questionnaire (AT-103 for each agent, officer, member, partner, or individual owner) as required by the municipality.
  - Appointment of Agent (AT-104) if the business is an LLC or corporation.
  - Any other documents or information the municipality may need to make a licensing determination.
- 2. Waiting Period** – Applications for original and renewal retail alcohol beverage licenses must be received by the clerk 15 days prior to the board granting the license.
- 3. Publication** - The municipal clerk must publish each application for a Class “A” beer, Class “B” beer, “Class A” liquor, “Class B” liquor or “Class C” wine license.
  - The publication shall include the name and address of the applicant, the kind of license applied for and the location of the premises to be licensed.
  - The newspaper utilized for publication shall be one that is published daily, except that a weekly newspaper may be utilized if a daily newspaper is not published in the municipality.
  - The publication shall be printed in a daily newspaper on 3 successive occasions, or if a weekly newspaper is utilized, it shall be printed at least once.
  - At the time the application is filed, the applicant shall pay to the clerk the cost of publication as determined under sec. [985.08](#), Wis. Stats.
  - There is no statutory timeline for publication, but DOR generally suggests publishing about 7 days before the board review in step 5.
- 4. Fees** – Retail licenses may not be issued until the applicant pays the applicable license fees.
  - Cities and villages may not require their applicants to pay fees more than 15 days prior to the license issue date.
  - Towns may not require their applicants to pay fees more than 30 days prior to the license issue date.
- 5. Board/Council Review** – The applicant will go before the municipal board or council to review the application.
  - The applicant must meet the minimum qualifications to hold the license described in sec. [125.04\(5\)](#), Wis. Stats.
  - Municipalities generally have broad authority when considering new license applications and may consider factors beyond the minimum qualifications, such as business plans, parking issues, and law enforcement access concerns, provided the municipality does not discriminate.
- 6. Issuance** – If granted by the governing body, the clerk will issue the alcohol beverage license document to the new licensee. Alcohol beverage license documents may vary in appearance as they are prepared by each municipality.

## ALCOHOL BEVERAGE LICENSING PROCESS

### 1 APPLICATION FORMS

Businesses must submit either AT-106 or AT-115. Include AT-103 for all members of the business entity and AT-104 if applicable.

### 4 BOARD/COUNCIL REVIEW

Applicants must go before the municipal board or council to review the application.

### 2 WAITING PERIOD

Applications for new and renewal alcohol beverage licenses must be submitted to the clerk 15 days prior to granting the license.

### 5 FEES

Retail licenses shall not be issued until the applicant pays the appropriate fees.

### 3 PUBLICATION

Original and Renewal Applications must be published in a local newspaper.

### 6 ISSUANCE

If granted by the municipal governing body, the clerk will issue the alcohol beverage license certificate to the new licensee.

## Guest Column: Wisconsin Department of Administration

### Wisconsin Division of Gaming Charitable Gaming in Wisconsin

The Division of Gaming's Office of Charitable Gaming is responsible for the licensing and regulation of raffles and bingos conducted by charitable organizations in Wisconsin. Our regulatory responsibility under chapter 563, Wis. Stats., is to protect the public interest and the integrity of raffles and bingos in the state. We accomplish these goals by issuing renewable raffle and bingo licenses to certain qualified nonprofit/charitable organizations, monitoring the regulatory compliance of bingo and raffle operations by auditing and inspecting licensed organizations, and providing educational outreach to interested parties. We annually issue approximately 12,000 raffle licenses and license approximately 300 bingo organizations.

Raffle licenses can only be granted to local religious, charitable, service, fraternal or veterans' organizations or any organization to which contributions are deductible for federal or state income tax purposes. The organization must be in existence for at least one year prior to applying for a license. "Raffles" under Wisconsin law include traditional drawings of tickets from containers, as well as calendar raffles and rubber duck races.



Bingo licenses can only be granted to certain qualified bona fide organizations that have been in existence for at least three years and cannot be issued to the state or any political subdivision of the state.

It is important to emphasize that only non-profit/charitable organizations, not businesses or individuals, licensed by our office can legally conduct raffles and bingos in Wisconsin. Even if a business or individual is holding an event with the intent to donate the proceeds to a charity or an individual in need, it may not conduct a raffle, bingo, or any other game of chance. All other types of chance-based games including card games, dice games, paddlewheels, square boards, sports boards, golf ball drops, and Queen of Hearts/Progressive raffles are not legal, regardless of whether the organization is licensed or not.

Many complaints we receive relate to the conduct of raffles, bingos, and other games of chance by individuals, taverns, and other businesses that do not meet the statutory requirements to obtain a charitable bingo/raffle license under Chapter 563. These complaints are often received from licensed organizations whose fundraising efforts are undermined by organizations conducting illegal gaming. The Division encourages reporting of illegal gaming activity and makes referrals to appropriate law enforcement and other agencies when appropriate. Illegal gaming in Wisconsin has a financial impact on legal operators and can undermine public confidence in the integrity of legal gaming in the state.

Please visit our website at: [DOA-Charitable Gaming](https://www.doa.wisconsin.gov/gaming) for more information.

By Joe Gastel, Office of Charitable Gaming Director

Wisconsin Department of Administration  
Division of Gaming

## Shipping Wine Directly to Wisconsin Consumers

A Wisconsin Wine Direct Shipper's permit allows for shipment of wine from the manufacturing winery **directly** to the consumer.

Wisconsin law has very specific reporting requirements regarding shipments of wine directly to consumers (sec. [139.035\(1\)](#), Wis. Stats.) for any person holding a wine direct shipper's permit (sec. [125.535](#), Wis. Stats.).

- Permit holders are required to report all shipment information on Schedule AB-135 which must be filed with Form AB-130, *Wisconsin Distilled Spirits, Cider, and Wine Tax Return*.
- These forms are filed electronically through our online portal, My Tax Account, or by a department approved XML schema, and are due every quarter on or before the 15<sup>th</sup> day of the next month following the close of the calendar quarter.
- The excise taxes imposed on the wine under sec. [139.03\(2n\)](#), Wis. Stats., may be paid with the return. Interest accrues if not paid by the due date of the return.

The required information on Form AB-135 is as follows:

- Sold To: Name of the person purchasing the wine for shipment into or out of Wisconsin.
- Sold To Address: Address of the person purchasing the wine for shipment into or out of Wisconsin.
- Sold To Birthdate: Birthdate of the person ordering the wine
- Shipped To Same Address: Checkbox if product was shipped to the "Sold To" address
- Shipped To: Name of the person receiving the wine (if different from the person listed on the Sold To line)
- Shipped To Address: Address of the person receiving the wine (if different from the person listed on the Sold To line)
- Shipped To Birthdate: Birthdate of the person receiving the wine (if different from the person listed on the Sold To line)
  - *NOTE: Both persons must be of legal drinking age.*
- Invoice Number
- Invoice Date
- Total Invoice Price: Total of all products shipped on the invoice, less shipping and handling charges.
- Total Liters: Total liters shipped into or out of Wisconsin per product type: Wine 14% or less, Wine over 14%, Cider 7% or less

A person holding a Wisconsin Wine Direct Shipper permit is also required to collect and remit Wisconsin sales tax on all sales of wine to Wisconsin consumers. According to sec. [139.035\(3\)](#), Wis. Stats., "No wine may be shipped directly to an individual in this state by a person holding a direct wine shipper's permit under sec. [125.535](#), Wis Stats., unless the tax imposed under secs. [77.52](#) or [77.53](#), Wis Stats., is paid on the sale of such wine."

If you have questions about the Wine Direct Shipper's permit or filing Form AB-130, please contact the Excise Tax Unit at 608 266-6701 or [DORExciseTaxpayerAssistance@wisconsin.gov](mailto:DORExciseTaxpayerAssistance@wisconsin.gov)

## Cruisin' for a Brew Sin: Q&A on "Mobile Bars"

### Do I need a license to sell alcohol beverages?

Yes. No person may make retail sales of alcohol beverages without holding the appropriate license or permit. "Sale" includes any shift, device, scheme, transaction, or the sale for future delivery of alcohol beverages.

### Is there a mobile license allowing trucks or trailers to move around making sales at various locations?

No, municipalities issue retail alcohol beverage licenses for specific premises on real property (i.e., permanent, fixed locations). These licenses are not mobile; they do not travel with the business from place-to-place. Sales must occur on a licensed premises, with the buyer and seller both physically present at the time of sale.

You may see mobile trailers delivering and dispensing beer at private events, like weddings. This is legal activity if no sales of alcohol occur at the private event, and the alcohol beverages were legally purchased by the event host at a licensed premises. [Fact Sheet 3108](#), *Catering Alcohol Beverages*, includes additional details on legally dispensing alcohol beverages at a private event.

### Is any license needed if I am only serving and not selling?

A business offering bartending services must determine if they are providing bartending services at a location that holds a retail alcohol beverage license. The sale or service of alcohol beverages at a public place requires the seller and location to have a retail alcohol beverage license. An operator's (bartender's) license is not required to dispense alcohol beverages for a private gathering at an unlicensed venue. See [Fact Sheet 3104](#), *Operator's Licenses*, for more information on bartender requirements.

### What about brewers selling at parks, festivals, and similar events?

Permitted brewers have a unique retail authorization in Wisconsin law that no other alcohol beverage license or permit holder enjoys. Brewers may establish an off-site retail outlet, which allows them to sell and sample their fermented malt beverages away from the brewery premises.

Before making any off-site sales, a brewer must contact the department to request approval for an upcoming event. As part of its review, the department contacts the municipality and verifies the brewery will not be violating any ordinances by selling at the event. Brewers do not need any retail license from the municipality to make these sales.

Breweries attending recurring events must advise the department of each date they intend to sell fermented malt beverages at their off-site outlet. The location of the off-site retail outlet can change, but a brewer cannot have more than one outlet at any given time.

## License to Sell: Who Needs a Seller's Permit in Wisconsin?

In Wisconsin, retail sales of alcohol beverages are subject to Wisconsin sales and use tax, unless an exemption applies. Retailers in Wisconsin must register with the department for a seller's permit and identify each business location where retail sales are made. Retailers may [apply online](#) or submit [Form BTR-101](#), *Application for Wisconsin Business Tax Registration*. Seller's permits are not transferable.

All municipal-issued Class A, Class B, and Class C retail alcohol beverage licenses require a seller's permit for collecting sales tax on retail sales. In addition, many department-issued alcohol beverage permits require a seller's permit for collecting sales tax on retail sales (e.g., brewery, direct wine shipper, public facility, etc.)

## License to Sell: Who Needs a Seller's Permit in Wisconsin? Continued

If starting a business that will make retail sales of alcohol beverages, retailers must provide their seller's permit number on the license application submitted to the municipality ([Form AT-106](#), *Original Alcohol Beverage Retail License Application*).

### *Limited Liability Companies that Operate a Retail Establishment*

Limited Liability Companies (LLCs) with a single owner may choose for federal and state income tax purposes to be taxed as a corporation or be disregarded as an entity separate from its owner.

For sales tax purposes, an owner of a disregarded LLC may choose to either register and file sales tax returns under the LLC's name and federal employer identification number (FEIN) or under the owner's name and tax identification number (e.g., social security number).

For alcohol beverage purposes, the LLC should be the applicant, regardless of whether the LLC or the owner registers and files sales tax returns.

### *No Seller's Permit Required*

Registration for a seller's permit is not required if all retail sales are exempt from Wisconsin sales and use tax. A retailer must obtain and keep sales tax [exemption certificates](#) from purchasers to prove that sales are exempt from tax. Examples include:

- wholesaler makes all sales to retailers for resale
- all sales are shipped outside Wisconsin
- all retail sales are of sacramental wine to a Wisconsin religious organization that holds a certificate of exempt status number from the department

### *Nonprofit Organizations*

Nonprofit organizations may hold temporary events during the year and qualify for the occasional sales exemption (i.e., no sales tax is due) if they do not exceed both standards #1 and #2 below, and if standards #3 and #4 apply:

1. the organization has events and makes sales on 75 days or less during the year
2. the organization's taxable sales are \$50,000 or less during the year
3. the organization does not hold or is not otherwise required to hold a seller's permit
4. if the organization holds an event in which an admission fee is charged, the aggregate payments made to entertainers does not exceed \$50,000

If the occasional sales exemption applies, a nonprofit organization is not required to hold a seller's permit. Therefore, a nonprofit organization may obtain a retail alcohol beverage license even though they may not be required to have a seller's permit and collect sales tax. See [Publication 206](#), *Sales Tax Exemptions for Nonprofit Organizations*, for more details. If the owner chooses to file sales tax returns under the disregarded LLC's name, and owns more than one disregarded LLC, a separate sales tax return must be filed by each disregarded LLC.

## Applicable Laws and Rules

This document provides statements or interpretations of Wisconsin statutes and administrative rules enacted as of May 23, 2023. 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.