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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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IM-2024-05

### BREWERS AND BREWPUBS IN WISCONSIN

Brewers and brewpubs are part of the first tier in Wisconsin's three-tier structure for regulating the alcohol beverages industry. As part of that structure, state law generally requires that alcohol beverages be produced by an authorized manufacturer, such as a permitted brewer or brewpub, before they may be distributed by an authorized wholesaler and sold by a retailer to consumers, with certain exceptions. A person must obtain a brewer's or brewpub permit from the Division of Alcohol Beverages (DAB), a division of the Department of Revenue (DOR), to manufacture fermented malt beverages ("beer") in Wisconsin.<sup>1</sup> [ss. [125.02 \(2\)](#), [125.04 \(1\)](#), [125.29](#), and [125.295](#), Stats.]<sup>2</sup>

While brewpubs and brewers may be indistinguishable to consumers, they differ in several ways, including the number of possible locations, limits on manufacturing and self-distribution, and the manner of making retail sales. Wisconsin has been home to breweries since prior to statehood.<sup>3</sup> In 2007, brewpub permits were created with the intention of allowing certain beer manufacturers that operate restaurants with more than two locations to sell their own beer at each location.<sup>4</sup> This information memorandum provides an overview of the differences between brewer and brewpub permits, including changes made with the enactment of 2023 Wisconsin Act 73 that took effect on May 1, 2024.

### GENERAL STATE AND FEDERAL PERMIT REQUIREMENTS

Under Wisconsin law, brewers and brewpubs must obtain a permit for their premises. A permit lasts for two years. An applicant must submit a permit application form to DAB and meet certain minimum qualifications. For example, as will be discussed in more detail below, a person may not hold certain cross-tier interests or both a brewer and brewpub permit. [ss. [125.04](#), [125.29 \(1\)](#), and [125.295](#), Stats.]

A brewer or brewpub permit is required to manufacture beer for sale or transportation.

Brewers and brewpubs, like all alcohol beverage manufacturers, are also subject to the Food Safety Code, which is enforced by the Department of Agriculture, Trade, and Consumer

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<sup>1</sup> A permit is not required for the making of homemade beer, or homebrewing, if the homebrewer does not receive compensation, the beer is not offered for sale, and the homebrewer makes less than 100 gallons of beer in a year (or 200 gallons if the person lives in a household with two or more persons). The beer can be consumed by the homebrewer, friends, and family at any private location where the possession and consumption of alcohol is permissible. [s. [125.06 \(3\)](#), Stats.]

<sup>2</sup> All references to the statutes are to the 2023-24 statutes, as affected by 2023 Wisconsin Act 73, except as otherwise noted. For more information on the provisions related to alcohol beverages in Act 73, see Legislative Council, *Changes to the Regulation of Alcohol Beverages Under 2023 Wisconsin Act 73*, [Information Memorandum](#) (December 2023).

<sup>3</sup> Wisconsin Historical Society, [Brewing and Prohibition](#) (last accessed April 30, 2024).

<sup>4</sup> See [2007 Wisconsin Act 20](#) and Colin Fly, *Proposed Law Has State Brewers Foaming in Anger*, Wisconsin State Journal, July 11, 2007.

Protection (DATCP). The Food Safety Code imposes several requirements, such as a requirement to hold a food processing permit on any premises where alcohol beverages are manufactured or bottled for sale.<sup>5</sup> [s. [97.29](#), Stats.]

Brewers and brewpubs also must comply with federal requirements, such as filing a notice and obtaining approval from the Alcohol and Tobacco Tax and Trade Bureau (TTB), a bureau within the U.S. Department of Treasury; registering with the Food and Drug Administration; filing a brewer's bond; and complying with labeling requirements.<sup>6</sup> Under federal law, both types of permittees are regulated as manufacturers of beer, subject to the same requirements.

## AUTHORIZED ACTIVITIES

While both types of permits authorize the production of beer, brewer and brewpub permits differ in the activities authorized to be conducted relating to manufacturing, making retail sales to consumers, and distributing to retailers. A brewpub group may have more locations than a brewer, but brewpubs are subject to additional limits for manufacturing and distributing their beer, and must obtain municipal approval through a Class "B" beer retail license for a restaurant on the brewpub premises.

One of the changes in Act 73 applicable to both brewers and brewpubs is a change to the definition of "fermented malt beverages" to include most products recognized as beer by TTB. Thus, products like hard seltzers may be produced under a brewer or brewpub permit. [s. [125.02 \(6\)](#), Stats.]

### Activities Authorized for Brewers

#### Manufacturing

A brewer's permit authorizes the manufacturing of beer and certain activities related to manufacturing, including the following: (1) bottling,<sup>7</sup> packaging, possessing, and storing beer on the brewer's premises; (2) transporting beer between the brewer's premises and a permitted warehouse, full-service retail outlet, off-site retail outlet, or other premises for which the brewer holds a permit;<sup>8</sup> (3) selling or delivering beer from the brewer's premises to a permitted beer wholesaler; and (4) transporting and delivering beer, in any state of packaging, that has been manufactured by the brewer to another permitted brewer and the receipt of the beer by the other brewer. [s. [125.29 \(3\)](#), Stats.]

Act 73 specifies the manner in which a brewer may produce beer through an arrangement with another brewer by means of contract production, alternating proprietorship, or licensing agreement, and further specifies certain requirements for and consequences of such an arrangement. These arrangements must be established by written agreement between the brewers. Generally, those arrangements are the following:

- **Contract production arrangements.** A "contract producer" brewer manufactures, bottles, or labels the beer, which is purchased from the contract brewer by the "recipe producer" brewer or brewpub or the "out-of-state recipe supplier." The beer produced under a contract

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<sup>5</sup> For more information, see DATCP's website on food safety.

<sup>6</sup> For more information on federal requirements, see TTB, [Beer Industry](#).

<sup>7</sup> A food processing plant license is required for any facility that bottles beer. [s. [97.29](#), Stats.]

<sup>8</sup> An alcohol beverages warehouse permit authorizes a permittee to store and warehouse alcohol beverages on the warehouse premises. [s. [125.19](#), Stats.] A brewpub may not hold an alcohol beverage warehouse permit. [s. [125.295 \(2\) \(a\) 6. f.](#), Stats.]

production arrangement counts toward the recipe producer's production volume, except it may not be considered for purposes of determining the recipe producer's full-service retail sales authority, as discussed below. The recipe producer is considered the producer for purposes of taxation and reporting to the DAB.

- Alternating proprietorship arrangements. A “host producer” brewer provides its production facility to a “guest producer” brewer for the guest producer to use to produce the guest producer's beer. The beer produced under an alternating proprietorship counts towards the production volume of the guest brewer, and the guest producer is considered the producer for purposes of taxation and reporting to the DAB.
- Licensing agreements. A brewer enters into a written licensing agreement with a licensor authorizing the brewer-licensee to use the licensor's trademark or name if the brewer-licensee is entirely responsible for producing the beer and for all related processing steps and regulatory requirements.

Under Act 73, a brewer entering into a contract production arrangement, alternating proprietorship arrangement, or licensing agreement does not act as an agent for or in the employ of another with respect to certain provisions of current law. [s. [125.21](#), Stats.]

## **Distribution to Retailers**

In order to maintain the three-tier structure of Wisconsin's alcohol beverages regulations, brewers are generally prohibited from selling their beer directly to retailers and may only distribute beer through a permitted beer wholesaler. The brewer and beer wholesaler must have a written agreement that is exclusive for the brand in a particular designated sales territory and that specifies the precise geographic area of the wholesaler's designated sales territory.<sup>9</sup> [ss. [125.29 \(3m\) \(a\)](#) and [125.34](#), Stats.]

Some brewers, however, have a limited ability to self-distribute. Generally, a brewer that manufactures 300,000 or fewer barrels of beer per year may self-distribute its beer to retailers in original unopened packages or containers. These brewers are sometimes referred to as “craft” brewers because of their smaller size. Additionally, a brewer of any size may also self-distribute beer for up to a year if the authorized wholesaler is unable to do so for any reason that is not the result of an action by the brewer, such as the discontinuation of the wholesaler's distribution rights, the wholesaler's bankruptcy, or criminal prosecution of the wholesaler. [s. [125.29 \(3m\)](#), Stats.]

## **Retail Sales to Consumers**

A brewer's permit allows the retail sale of beer produced under the brewer's permit from the brewer's premises. Additionally, under Act 73, any brewer that has produced at least 250 barrels of beer in any of the three preceding calendar years may engage in full-service retail sales from the brewer's premises and may, with the approval of the municipality and DAB, operate between one and three full-service retail outlets.

Full-service retail sales means retail sales of beer or intoxicating liquor (wine and distilled spirits, “liquor”) for on-premises or off-premises consumption, and the provision of taste samples of beer or liquor. The production thresholds for operating full-service retail outlets are as follows: (1) one outlet for a brewer that has produced between 250 and 2,500 barrels of beer in any of the three preceding calendar years; (2) two outlets for a brewer that has produced

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<sup>9</sup> For more information on beer wholesalers, see Legislative Council, [Beer and Liquor Wholesalers](#), Information Memorandum (April 2024).

between 2,500 and 7,500 barrels of beer; and (3) three outlets for a brewer that has produced more than 7,500 barrels. Thus, a brewer that meets the production threshold may sell beer or liquor under its permit, without obtaining a retail license, though a municipality may prohibit a brewer from selling intoxicating liquor from a full-service retail outlet. [s. [125.29 \(7\)](#), Stats.]

To establish a full-service retail outlet, a brewer must obtain the approval of both the municipality in which the full-service retail outlet will be located and DAB. The municipality's approval must be based on the same standards and criteria that the municipality has established by ordinance for the evaluation and approval of retail license applications. DAB must approve an application for an outlet, and may not revoke that approval, unless the brewer has violated a provision of ch. 125, Stats., related to full-service retail outlets. Additionally, upon notice to DAB, a brewer may relocate a full-service retail outlet to another location in the state. One location may be relocated without limitation on frequency; any other location may be moved to a new location once per calendar year.<sup>10</sup> [s. [125.29 \(7\)](#), Stats.]

Prior to Act 73, a brewer's permit allowed the retail sale of beer at an off-site retail location established by the brewer, in addition to the brewer's premises. Under Act 73, only brewers that do not qualify for establishing a full-service retail outlet may operate an off-site retail outlet. A brewer that is not eligible to engage in full-service retail sales may only sell beer produced under the brewer's permit, and may no longer sell beer produced by other Wisconsin brewers. [See s. 125.29 (3) (g), 2021-22, Stats., and s. [125.29 \(3\) \(e\) and \(f\)](#) and [\(7\) \(h\)](#), Stats.]

Finally, a brewer may operate a restaurant on the brewery premises, at an off-site retail outlet established by the brewer, and at any full-service retail outlet established by the brewer. [s. [125.29 \(6\)](#), Stats.]

## Activities Authorized for Brewpubs

### Manufacturing

A brewpub permit allows the following activities related to the manufacturing of beer, including: (1) bottling beer manufactured on the brewpub premises; (2) possessing and storing beer; (3) selling or delivering beer to a permitted beer wholesaler; (4) transporting beer manufactured on the brewpub premises between the brewpub group's brewpubs and Class "B" beer premises; and (5) transporting and delivering beer, in any state of packaging, that has been manufactured by the brewpub to another permitted brewpub and the receipt of the beer by the other brewpub. Additionally, brewpubs are restricted in the amount of beer they may manufacture. A brewpub group may manufacture a maximum of 20,000 barrels of beer per year. [s. [125.295](#), Stats.]

Prior to the enactment of Act 73, brewpubs could only engage in the manufacture of beer if the entire manufacturing process occurred on the premises of the brewpub group; a brewpub was not allowed to engage in contract production. Act 73 eliminated the requirement that all beer manufacture occur on the brewpub's premises, provided that if the manufacture occurs off the brewpub's premises, it occurs pursuant to contract production agreement. Specifically, a brewpub may engage in contract production with another brewpub, with an out-of-state recipe supplier, or with a brewer, where the brewer is the contract producer and the brewpub is the recipe producer. [ss. [125.21 \(2\) and \(3\)](#) and [125.295 \(2\) \(a\) 2.](#), Stats.]

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<sup>10</sup> For more information on full-service retail sales, see Legislative Council, *Retail Sales by Alcohol Beverage Producers*, [Issue Brief](#) (April 2024).

## **Distribution to Retailers**

A brewpub's ability to distribute beer is similar to that of a brewer, but more limited in the amount of beer that may be self-distributed. A brewpub group may sell beer in original unopened packages to a beer wholesaler for the wholesaler to distribute the brewpub's beer. The brewpub may also self-distribute up to 2,000 barrels of its beer per calendar year to retailers; any amount of the brewpub's beer beyond 2,000 barrels must be distributed by a beer wholesaler. For a brewpub group, the 2,000 barrel limit applies to the entire brewpub group. As with brewers, the brewpub and beer wholesaler must have an exclusive written agreement for the brand in a particular designated sales territory. [ss. [125.295 \(1\) \(f\)](#) and [\(g\)](#) and [125.34 \(3\)](#), Stats.]

## **Retail Sales to Consumers**

As previously mentioned, a brewpub must hold a Class "B" beer retail license for, and operate a restaurant on, the brewpub premises. A Class "B" beer retail license authorizes the sale of beer for on- or off-premises consumption. A brewpub may also hold a "Class B" liquor license or a "Class C" wine-only license for the premises of the brewpub's restaurant. From that premises, the brewpub must also sell beer manufactured by a brewer or brewpub other than the brewpub group. A brewpub also may sell refillable containers of 24 ounces of volume or more with beer that is manufactured on the premises and filled at the customer's request. These sales are commonly made in 64 ounce refillable glass bottles, commonly referred to as "growlers."<sup>11</sup> [s. [125.295 \(1\) \(c\)](#) and [\(h\)](#) and [125.295 \(3\)](#), Stats.]

Unlike brewers, a brewpub may operate up to six retail locations as part of a brewpub group, where all brewpubs share membership with the brewpubs in the group and are, among other requirements, considered a single taxpayer for federal tax purposes. For a brewpub group, each brewpub location must satisfy the requirements of holding a Class "B" beer retail license and operating a restaurant on the premises. A brewpub may not, however, establish a full-service retail outlet. [ss. [125.02 \(2p\)](#), [125.29 \(2\) \(a\)](#), and [125.295 \(2\) \(a\) 6.](#), Stats.]

## **INTEREST RESTRICTIONS AND "TIED-HOUSE" LAW**

As was noted, Wisconsin's three-tier system is premised on the idea that separating alcohol beverage manufacturers, wholesalers, and retailers reduces problems such as bootlegging, the ownership or control of retailers by breweries, and the incentive to over-serve consumers. Wisconsin's "tied-house" law and restrictions on cross-tier interests help maintain those tiers by generally prohibiting brewers and brewpubs from holding any interest in another tier of the beer industry or providing anything "of value" to beer retailers.

### **Cross-Tier Interest Restrictions**

Act 73 established consistent cross-tier interest restrictions. It generally prohibits a brewer or brewpub from holding any interest in a distribution permittee or a retail licensee or permittee, except for any retail license held by a brewpub for the brewpub's premises.<sup>12</sup> It also generally prohibits any "restricted individual" of a brewer or brewpub from holding any interest in a

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<sup>11</sup> For more information, see TTB [Beer FAQs](#), B9.

<sup>12</sup> A distribution permittee is a beer or liquor wholesaler. A retail licensee or permittee is a Class "A", Class "B", "Class A", "Class B", and "Class C" licensee; Class "B" or "Class B" permittee; and no-sale event venue permittee. Act 73 also specifies certain permissible interests. [s. [125.20 \(1\)](#), Stats.]

distribution permittee or a retail licensee or permittee, unless certain conditions are met.<sup>13</sup> [ss. [125.20 \(2\)](#), [125.29 \(2\) \(a\)](#), and [125.295 \(2\) \(a\) 6.](#), Stats.]

## **“Tied-House” Law**

Both brewers and brewpubs are subject to Wisconsin’s “tied-house” law, which restricts the dealings between the manufacture and retail tiers. A tied-house is a brewery-owned or brewery-controlled bar or tavern and was common prior to Prohibition.

Wisconsin’s tied-house law generally prohibits brewers and brewpubs from providing a Class “B” beer licensee or permittee with anything “of value,” such as furniture, equipment, or money.<sup>14</sup> By restricting the ability of a brewery to control a retailer, the Legislature intended to “prevent manufacturers and wholesalers from acquiring complete or partial control of specific Class ‘B’ retailers, directly by owning them or indirectly by creating financial or moral obligations.” [61 Op. Att’y Gen. 69 (1972).]

Brewers and brewpubs are subject to Wisconsin’s “tied-house” law, which generally prohibits providing things of value to retailers.

The law provides for several exceptions, however, to this general rule. Specifically, a brewer or brewpub may provide any of the following to a Class “B” beer licensee or permittee:

- Signs, clocks, or menu boards with an aggregate value of up to \$2,500.
- Beer tap handles.
- Signs made from paper, cardboard, plastic, or vinyl for placement inside the premises.
- “Usual and customary commercial credit” for beer industry products.

A brewer or brewpub also may sell any of the following to a Class “B” beer licensee or permittee:

- Advertising matter, nonmechanical coolers, and tavern supply items, at fair market value.
- Equipment to preserve and maintain sanitary dispensing of beer, at fair market value.
- Dispensing equipment, such as beer storage boxes or tapping equipment, if sold at fair market value or maintained for fair consideration for cash or credit of up to two years.
- Consumable merchandise intended for resale.

Finally, a brewer or brewpub may do any of the following:

- Purchase advertising and other services and rights for a fair consideration from a corporate Class “B” licensee or permittee, if the Class “B” beer licensee or permittee is a professional sports team.
- Enter into a landlord-tenant relationship with a Class “B” retailer if specified requirements are satisfied, including that the landlord has no control over or day-to-day involvement in the retailer’s business.
- Contribute money or other things of value to benefit certain nonprofits that conduct festivals.

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<sup>13</sup> A restricted individual is any of the following: (1) a person identified on a manager’s license or who works or acts in a managerial capacity for a permittee or licensee; (2) a person serving as an officer, director, member, manager, or agent of a corporation or limited liability company holding a permit or license; or (3) a person who holds more than a 10 percent ownership interest in a permittee or licensee. [s. [125.20 \(1\)](#), Stats.]

<sup>14</sup> The law also applies to the relationship between a beer wholesaler and a retailer.



- Contribute money or other things of value to or purchase advertising from an institution of higher education, if unrelated to the institution's sale of beer.
- Purchase advertising for a fair consideration from a bona fide national or statewide trade association that derives its principal income from membership dues of Class "B" beer licensees.
- Purchase advertising from a person who does not hold an alcohol beverages license and who conducts sweepstakes, contests, or promotions on the premises of a Class "B" beer licensee or permittees that sell the brewer or brewpub's products.
- Conduct sweepstakes, contests, or promotions on the premises of Class "B" beer licensees or permittees who sell the brewer or brewpub's products.
- Purchase products from a Class "B" beer licensee or permittee.
- Provide reasonable business entertainment to a Class "B" beer licensee or permittee by providing tickets, food and beverages, and ground transportation for sports events or concerts, up to a \$500 value.
- Provide taste samples at a trade show, conference, convention, or business meeting of a retailer's trade association held on retail premises.
- Provide taste samples at a beer-tasting event on retail premises, if the brewer or brewpub charges a fee and the samples are provided by a brewer or brewpub or its representatives.

[s. [125.33](#), Stats.]

## RESTRICTIONS AND AUTHORIZED ACTIVITIES BY PERMIT TYPE

The following table provides an overview of whether certain types of activities are authorized for brewers or brewpubs.

Type of Activity	Brewer	Brewpub
<i>Limit on manufacturing?</i>	No production limit.	Yes; may manufacture up to 20,000 barrels per year and all manufacturing must occur on premises except as noted below.
<i>May engage in contract brewing?</i>	Yes, through contract production arrangement (as contract brewer or recipe brewer), alternating proprietorship arrangement (as host brewer or guest brewer), or licensing agreement.	Yes, but may only engage in contract production; may not engage in alternating proprietorship arrangement or licensing agreement.
<i>Able to distribute directly to retailers?</i>	No, unless the brewer manufactures fewer than 300,000 barrels per year.	May self-distribute up to 2,000 barrels to retailers per year. Any other distribution must be through permitted beer wholesaler.
<i>Able to make retail sales of own beer from premises?</i>	Yes, for on- or off-premises consumption.	Yes, for on- or off-premises consumption. Must hold Class “B” beer retail license and operate restaurant from premises.
<i>Maximum number of locations?</i>	Up to four (brewery premises and up to three full-service retail outlets), depending on production volume.	One per permit, but brewpub group may hold up to six permits.
<i>Able to engage in full-service retail sales?</i>	Yes, if production threshold is met; may engage in full-service retail sales from brewery premises and between one and three full-service retail outlets.	No.
<i>Required to obtain Class “B” beer retail license from municipality?</i>	May not hold a Class “B” beer retail license. Must obtain municipal approval for any full-service retail outlet.	Yes.
<i>Subject to tied-house law?</i>	Yes.	Yes, but must hold Class “B” beer retail license for premises.
<i>Subject to cross-tier interest restrictions?</i>	Yes.	Yes, but may also hold “Class B” liquor or “Class C” wine retail license for restaurant on the brewpub premises.

This information memorandum was prepared by Tom Koss, Staff Attorney, on May 1, 2024.