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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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IM-2024-17

### WINERIES IN WISCONSIN

Wineries 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 manufactured by an authorized producer, such as a winery, before they may be distributed by an authorized wholesaler and sold by a retailer to consumers, though the statutes allow certain exceptions to this system. As part of the first tier of that structure, in order to manufacture wine, a person must obtain a winery permit, a manufacturer’s permit, or a rectifier’s permit from the Division of Alcohol Beverages (DAB), a division of the Department of Revenue (DOR).<sup>1</sup> [ss. [125.04 \(1\)](#), [125.52 \(1\)](#), and [125.53 \(1\)](#), Stats.]

In addition to certain related activities, a winery permit allows the manufacture of wine—that is, any product obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits or other agricultural products, imitation wine, compounds sold as wine, vermouth, cider, perry, mead, and sake, if those products contain between 0.5 percent and 21 percent of alcohol by volume. State law classifies wine, like distilled spirits, as a type of intoxicating liquor (“liquor”). [s. [125.02 \(8\)](#) and [\(22\)](#), Stats.]

Although they are part of the first tier of the three-tier structure, wineries may also engage in certain distribution and retail sales activities. Those activities include operating as part of a small winery cooperative wholesaler, for wineries that qualify; direct wine shipping; and engaging in certain retail activities, such as selling the winery’s wine to consumers from its production premises and, for wineries that qualify, engaging in full-service retail sales from up to three locations. This information memorandum discusses state law related to the manufacture of wine under a Wisconsin winery permit, including changes made with the enactment of 2023 Wisconsin Act 73.<sup>2</sup>

### GENERAL STATE AND FEDERAL PERMIT REQUIREMENTS

Under Wisconsin law, a winery must obtain a permit for its premises. A permit lasts for two years. To obtain a permit, an applicant must submit a permit application form to DAB and meet certain minimum qualifications. For example, a winery permit generally may not be issued to any person who holds an alcohol beverage retail license, a fermented malt beverages (“beer”) or

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<sup>1</sup> State law does not require a permit for making homemade wine if the person does not receive compensation, the wine is not offered for sale, and the person makes less than 100 gallons of wine in a year (or 200 gallons if the person lives in a household with two or more persons). The wine may be consumed by the person, friends, and family at any private location where the possession and consumption of alcohol is permissible. [s. [125.06 \(3\)](#), Stats., and [27 C.F.R.s. 24.75](#).]

<sup>2</sup> 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).

liquor wholesaler's permit, or a no-sale event venue permit. [ss. [125.04](#), [125.20](#), and [125.69\(1\)\(b\)](#), Stats.]

Wineries, like all alcohol beverage manufacturers, are also subject to the Food Safety Code, which is enforced by the Department of Agriculture, Trade, and Consumer 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>3</sup> [s. [97.29](#), Stats.]

Wineries must also comply with various federal requirements, such as obtaining authorization 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 bond; and complying with labeling requirements.<sup>4</sup>

## AUTHORIZED ACTIVITIES

### Manufacturing Activities

A winery permit authorizes the manufacture and bottling of wine on the premises covered by the permit, along with certain other activities related to the production of wine. Specifically, a winery permit authorizes the following:

- The manufacture and bottling of wine on the premises for sale to permitted liquor wholesalers.
- The possession and mixing or blending of liquor to produce wine.
- The sale or transfer, in bulk or any state of packaging, of wine to other wineries, manufacturers, and rectifiers.
- The receipt of liquor from other wineries, manufacturers, or rectifiers, in bulk or any state of packaging, for purposes of further manufacturing, bottling, and storage.
- The transport of wine between the winery premises and any depot, warehouse, or full-service retail outlet maintained by the winery or other premises for which the winery holds a permit.

[s. [125.53\(1\)\(a\)](#), Stats.]

Among other changes to Wisconsin's alcohol beverage chapter, 2023 Wisconsin Act 73 specifies the manner in which a winery may produce wine through an arrangement with another party by means of contract production, an alternating proprietorship, or a licensing agreement. Under Act 73, these arrangements must be established by written agreement between the parties.<sup>5</sup> Those arrangements are the following:

- **Contract production arrangements.** A "contract producer" manufactures, bottles, or labels the wine, which is purchased from the contract producer by

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<sup>3</sup> For more information, see DATCP's [website](#) on food safety.

<sup>4</sup> For more information on federal requirements, see TTB, [Getting Started in the Wine Industry](#), TTB, [Wine Industry](#), and TTB, [Cider Resources](#).

<sup>5</sup> DAB has indicated that further rules on production arrangements are forthcoming. [See DAB, [Common Questions | 2023 Wisconsin Act 73. Contract Production Permitting and Returns](#), accessed October 22, 2024.]

the “recipe producer” or “out-of-state recipe supplier.” The wine produced under a contract production arrangement counts toward the recipe producer’s production volume, except the wine may not be considered for purposes of determining the recipe producer’s retail sales authority (i.e., full-service retail authority discussed below). The recipe producer is considered the producer for purposes of taxation and reporting to DAB.

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

[s. [125.21](#), Stats.]

## Distribution to Retailers and Small Cooperative Wholesalers

In order to maintain the three-tier structure of Wisconsin’s alcohol beverages regulations, wineries are generally prohibited from selling their wine directly to retailers, and may only distribute wine through a permitted liquor wholesaler. The winery and liquor wholesaler must have a written agreement that establishes a sales area for a particular brand. [ss. [125.53](#) and [125.54](#), Stats.]

However, certain wineries—those that, at certain times, are designated as small wineries—may organize as part of a cooperative that holds a cooperative wholesaler’s permit. The principal purpose of a small winery cooperative wholesaler must be to sell and distribute wine manufactured, blended, or mixed, and also bottled, by its members. A small winery cooperative wholesaler’s permit authorizes the sale and distribution of wine to retailers and other permitted wholesalers.

Between October 1 and December 31, 2008, DOR was authorized to issue up to six liquor wholesalers’ permits to small winery cooperatives. To qualify, a small winery was required to hold a direct shipper’s permit and be certified by DOR as a small winery. Small wineries that qualified could organize cooperatives and collectively hold a cooperative wholesaler’s permit. After obtaining a permit, a small winery cooperative wholesaler may purchase wine on consignment from its members for resale to retailers and other wholesalers. [s. [125.545](#), Stats.]

Act 73 increases the production limit for a winery to be designated as a small winery from 25,000 to 50,000 gallons of wine in a calendar year, extends the authority to small manufacturers and rectifiers, and re-opens the small cooperative wholesaler application period for six months. It retains the limit of six total cooperative wholesaler’s permits, but allows DAB to issue new cooperative wholesaler’s permits and renew existing wholesaler’s permits from January 1, 2025, to July 1, 2025.

## Retail Sales to Consumers

Under Act 73, a winery may make retail sales and provide taste samples from its premises of wine produced under its permit. Any winery that meets certain production thresholds may also make full-service retail sales from the winery’s premises and may, with the approval of the

municipality and DAB, operate between one and three full-service retail outlets. Several other retail sales opportunities are unique to wineries, such as the ability to engage in direct shipping to consumers.

## Retail Sales From Premises

Act 73 made significant changes to the ability of wineries and other producers to engage in retail sales, including allowing producers that meet certain production thresholds to make full-service retail sales.

Prior to the enactment of Act 73, a winery permit did not allow any retail sales unless the winery held a retail license. A winery could be issued either one “Class A” liquor retail license or one “Class B” liquor retail license for the winery premises or other real estate owned by the winery, if the winery was capable of producing at least 5,000 gallons of wine per year in no more than two locations. A “Class B” liquor retail license issued to a winery only authorized the retail sale of wine. Additionally, a winery that was issued a “Class B” liquor license was required to be closed for retail sales between the hours of 9:00 p.m. and 8:00 a.m. [See ss. [125.51 \(1\) \(a\)](#) and [\(3\) \(am\)](#), [125.53 \(1\)](#), and [125.68 \(4\) \(c\) 3m.](#), 2021-22 Stats.]

A winery may sell its wine to consumers from its premises. Additionally, a winery that meets certain production thresholds may make full-service retail sales from its premises and up to three full-service retail outlets.

Under Act 73, any winery may make retail sales and provide taste samples from its premises of wine that has been manufactured or bottled by the winery on the winery premises or on other premises of the winery, for on-premises or off-premises consumption. Additionally, a winery that has produced at least 1,000 gallons of wine in any of the three preceding calendar years may make full-service retail sales from its premises. Full-service retail sales means retail sales of beer and liquor, for on-premises or off-premises consumption, or the provision of taste samples of beer or liquor, or any combination of these activities. The authority to make retail sales from the winery’s premises, including full-service retail sales for wineries that qualify, is granted by virtue of holding a winery permit.<sup>6</sup> Act 73 also allows a winery to operate a restaurant on the winery premises and at any full-service retail outlet, discussed in more detail below, established by the winery. [s. [125.53 \(3\) \(a\)](#) and [\(3\) \(e\)](#), Stats.]

Act 73 also established closing hours for retail sales from a winery’s premises and full-service retail outlets to match those applicable to retailers in the municipality. A winery may not sell alcohol beverages for on-premises consumption during the closing hours applicable to a Class “B” beer licensee. These hours are generally between 2:30 a.m. and 6:00 a.m. on Saturday and Sunday and 2:00 a.m. and 6:00 a.m. the rest of the week. Likewise, a winery may not sell alcohol beverages for off-premises consumption during the hours in which a Class “B” beer licensee in that municipality may not make retail sales for off-premises consumption. These hours are between midnight and 6:00 a.m., unless the municipality has enacted an ordinance that imposes more restrictive hours. [ss. [125.32 \(3\)](#) and [125.53 \(4\)](#), Stats.]

Under Act 73, wineries and other producers that qualify may make full-service retail sales, which is the sale of beer and liquor, for on-premises or off-premises consumption, and the provision of taste samples of beer or liquor.

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<sup>6</sup> DAB also requires producers to indicate their production quantity by submitting a form, [AB-105](#), and obtain DAB approval. [DAB, [Common Questions | 2023 Wisconsin Act 73. Full-Service Retail Sales for Producers](#), accessed October 22, 2024.]

## **Retail Sales From Full-Service Retail Outlet**

A winery that may make full-service retail sales from its premises may also establish between one and three full-service retail outlets and may make full-service retail sales from those locations, subject to the approval of the municipality in which the outlet is located and DAB. Thus, a winery that meets the production threshold may sell beer or liquor under its permit, though a municipality may prohibit a winery from selling distilled spirits or beer from a full-service retail outlet.

The production thresholds for operating full-service retail outlets are as follows: (1) one outlet for a winery that has produced between 1,000 and 5,000 gallons of wine in any of the three preceding calendar years; (2) two outlets for a winery that has produced between 5,000 and 25,000 gallons; and (3) three outlets for a winery that has produced more than 25,000 gallons. [s. [125.53\(3\)\(b\)](#), Stats.]

To establish a full-service retail outlet, a winery 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 producer has violated a provision of ch. 125, Stats., related to full-service retail outlets. Additionally, upon notice to DAB, a producer 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>7</sup> [s. [125.53\(3\)\(d\)](#) and [\(g\)](#), Stats.]

## **Retail Sales From Fairgrounds**

A winery may make retail sales and provide taste samples as provided by law on county or district fairgrounds, if the fair association obtains a temporary "Class B" license and the wine sold or provided as taste samples is purchased from a liquor wholesaler. [ss. [125.51\(10\)](#) and [125.53\(1\)\(b\)](#), Stats.]

## **Taste Samples at Conference on "Class B" Premises**

A winery may also provide free taste samples on the premises of a "Class B" licensee to persons attending a trade show, conference, convention, or similar business gathering that is held on those premises of a bona fide national or statewide trade association that derives income from the membership dues of "Class B" licensees. Taste samples may not be furnished at more than two such events of any one trade association per year. [s. [125.70](#), Stats.]

## **Direct Wine Shipping**

A direct wine shipper's permit allows the shipment of wine directly to an individual in Wisconsin, subject to various restrictions. The recipient must be of the legal drinking age, acknowledge receipt of the wine shipped, and not be intoxicated at the time of delivery.

Wineries in Wisconsin and other states may ship wine directly to consumers in Wisconsin by obtaining a direct wine shipper's permit.

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<sup>7</sup> For more information on full-service retail sales, see Legislative Council, *Retail Sales by Alcohol Beverage Producers*, [Issue Brief](#) (April 2024).

A direct wine shipper's permit may be issued to any person who manufactures and bottles wine on premises covered by any of the following:

- A manufacturer's or rectifier's permit issued by DAB.
- A winery permit issued by DAB.
- A winery license, permit, or other authorization issued to the winery by any state from which the winery will ship wine into this state.<sup>8</sup>
- A federal basic permit for a winery.

Containers of wine shipped to an individual in this state by a direct wine shipper's permittee must be clearly labeled to indicate that the package may not be delivered to an underage person or to an intoxicated person. No individual may resell, or use for a commercial purpose, wine that was shipped by a direct wine shipper's permittee. Also, no individual in Wisconsin may receive more than 108 liters of wine annually that was shipped by a direct wine shipper. [s. [125.535](#), Stats.]

Act 73 made changes to direct wine shipping to require delivery by a common carrier and allow the use of a fulfillment house.<sup>9</sup> Beginning January 1, 2025, wine may only be transported or delivered into Wisconsin by a common carrier that obtains a permit from DAB. Once permitted, a common carrier may transport into or deliver within Wisconsin wine on behalf of a permitted direct wine shipper or permitted fulfillment house; a common carrier may not transport or deliver any other alcohol beverages. [ss. [125.22](#), [125.23](#), and [125.535 \(7\)](#), Stats., and [DOR on Tap](#), August 2024.]

This information memorandum was prepared by Tom Koss, Staff Attorney, on October 28, 2024.

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<sup>8</sup> A winery that is located in another state must also meet certain additional requirements, such as appointing a registered agent in Wisconsin and submitting to DAB a copy of any authorization issued by the state from which the out-of-state winery will ship wine into Wisconsin or the winery's federal basic permit.

<sup>9</sup> A fulfillment house permit authorizes services for the warehousing, packaging, order fulfillment, and shipment of wine produced by and belonging to a permitted direct wine shipper. Note that prior to January 1, 2025, wine may not be shipped directly to a consumer by a business that does not hold a direct wine shipper's permit. For example, wine may not be shipped directly to a consumer from a public warehouse. [[DOR on Tap](#), November 2021.]