



## WISCONSIN LEGISLATIVE COUNCIL STUDY COMMITTEE MEMORANDUM

TO: MEMBERS OF THE STUDY COMMITTEE ON ALCOHOL BEVERAGES ENFORCEMENT

FROM: Melissa Schmidt, Senior Staff Attorney

RE: Department of Revenue's Statutory Authority and Requirements Related to Wisconsin's Alcohol Beverages Chapter

DATE: July 16, 2018

The Joint Legislative Council's Study Committee on Alcohol Beverages Enforcement is directed, in part, to review the structure and staffing of the Department of Revenue's (DOR) efforts to enforce Wisconsin's alcohol beverages laws found in ch. 125, Stats. (hereinafter, "Alcohol Beverages Chapter"). This memorandum provides members of the Study Committee with an overview on the explicit statutory authority and requirements that DOR has to administer and enforce the Alcohol Beverages Chapter.

### **BACKGROUND: WISCONSIN'S ALCOHOL BEVERAGES CHAPTER (THREE-TIER LAW)**

The Alcohol Beverages Chapter is commonly referred to as Wisconsin's "three-tier law" because it regulates the three tiers, or categories, of the alcohol beverages industry. Very generally, the three tiers of regulated entities in Wisconsin are: (1) manufacturers; (2) wholesalers (or distributors); and (3) retailers. Unless a specific exception applies, all sales of alcohol beverages must occur through this three-tier system, from manufacturers to wholesalers to retailers to consumers. The Legislature has articulated its intent to regulate alcohol beverages through a three-tier regulatory system, as well as policy reasons for doing so, in the statutes.

[The Alcohol Beverages Chapter] shall be construed as an enactment of the legislature's support for the 3-tier system for alcohol beverages production, distribution, and sale that, through uniform statewide regulation, provides this state regulatory authority over the production, storage, distribution, transportation, sale, and consumption of alcohol beverages by and to its citizens, for the benefit of the public health and welfare and this state's economic

stability. Without the 3-tier system, the effective statewide regulation and collection of state taxes on alcohol beverages sales would be seriously jeopardized. It is further the intent of the legislature that without a specific statutory exception, all sales of alcohol beverages shall occur through the 3-tier system, from manufacturers to wholesalers holding a permit to retailers to consumers. Face-to-face retail sales at licensed premises directly advance the state's interest in preventing alcohol sales to underage or intoxicated persons and the state's interest in efficient and effective collection of tax. [s. 125.01, Stats.]

## **DOR'S STATUTORY AUTHORITY TO REGULATE AND ENFORCE ALCOHOL BEVERAGES**

Current law provides DOR with regulation and enforcement authority over the three tiers of the alcohol beverages industry, as well as the authority to regulate and enforce the taxation of alcohol beverages found in ch. 139, Stats. (hereinafter, "Alcohol Beverages Taxation Laws"). [ss. 73.03 (24), 125.14, 125.145, and 139.08 (1) and (3), Stats.] This statutory authority includes the following authority: (1) alcohol beverages rule promulgation; (2) permit issuances; (3) creation of forms and a booklet for alcohol beverages retailers; (4) inspection of licensed or permitted premises and enforcement actions; (5) approval of responsible beverage server training courses; (6) certification of small winery status for purposes of small winery cooperative wholesalers; and (7) receipt of retail licensee and wine collector information. This section briefly describes the statutory authority for each of these activities.

### **Alcohol Beverages Rule Promulgation**

The statutes authorize DOR, in furtherance of the effective control of alcohol beverages, to promulgate rules that are consistent with the Alcohol Beverages Chapter. [ss. 125.03, 125.19 (1), 125.275 (3), 125.61 (3), 125.62 (3), and 125.63 (3), Stats.]

The statutes also require DOR to promulgate certain rules. For example, DOR is required to promulgate rules that do the following:

- Provide for the registration of wine collectors and establish standards of eligibility for registration as a wine collector. The rules must also specify the form and manner that a wine collector must use when providing DOR with notice that the collector is making certain sales of wine to another wine collector. [s. 125.03 (1) (b), Stats.]
- Administer and enforce the statutory requirements placed upon beer wholesalers and liquor wholesalers. The statutes require the rules to contain specific information, such as the minimum requirements for beer wholesaler and liquor wholesaler warehouse facilities on premises described in the permit and for periodic site inspections by DOR of the warehouse facilities. [ss. 125.28 (5) (e) and 125.54 (7) (d), Stats.]
- Ensure strict compliance with the brewpub permit requirements. [s. 125.295 (5), Stats.]

- Administer and enforce the small winery cooperative wholesaler permit requirements. [s. 125.545 (6) (b), Stats.]

DOR rules related to fermented malt beverages (“beer”) are found in ch. Tax 7, Wis. Adm. Code. Rules related to intoxicating liquor (distilled spirits and wine, hereinafter, “liquor”) are found in ch. Tax 8, Wis. Adm. Code.

### **Manufacturer, Wholesaler, and Retailer Permit Issuances**

In Wisconsin, municipalities (cities, villages, towns) are generally authorized to issue licenses to retailers to sell the applicable alcohol beverages to consumers. DOR is authorized to issue permits to manufacturers and wholesalers, and under limited circumstances, permits to retailers. DOR is only authorized to issue permits to retailers when explicitly authorized to do so by statute. DOR is authorized to issue all of the following alcohol beverages permits:

- Alcohol beverages warehouse permits. [s. 125.19, Stats.]
- Class “B” beer retail permits to the following entities that meet specific statutory criteria: (1) sports clubs; (2) vessels that have a mooring place in the state; and (3) certain tribes. [s. 125.27, Stats.]
- Industrial beer permits. [s. 125.275, Stats.]
- Beer wholesaler permits. [s. 125.28, Stats.]
- Brewers permits. [s. 125.29, Stats.]
- Brewpub permits. [s. 125.295, Stats.]
- Out-of-state beer shippers’ permits. [s. 125.30, Stats.]
- “Class B” liquor permits to the following entities that meet specific statutory criteria: (1) sports clubs; (2) concessionaires at public facilities or airports; (3) vessels that have a mooring place in the state; and (3) certain tribes. [s. 125.51 (5), Stats.]
- Manufacturer permits, rectifier permits, or manufacturer and rectifier combination permits. [ss. 125.52 and 125.55, Stats.]
- Winery permits. [s. 125.53, Stats.]
- Direct wine shippers’ permits. [s. 125.535, Stats.]
- Liquor wholesaler permits. [ss. 125.54 and 125.545 (3), Stats.]
- Sacramental wine permits. [s. 125.56, Stats.]
- Out-of-state liquor shippers’ permits. [s. 125.58, Stats.]
- Wholesale alcohol permits to sell ethyl alcohol of 190 proof or more. [s. 125.60, Stats.]
- Medicinal alcohol permits. [s. 125.61, Stats.]

- Industrial alcohol permits. [s. 125.62, Stats.]
- Industrial wine permits. [s. 125.63, Stats.]
- Liquor wholesaler salesperson permits. [s. 125.65, Stats.]

### **Creation of Forms and a Booklet for Alcohol Beverages Retailers**

As previously discussed, the legislative intent of the Alcohol Beverages Chapter includes the statement that the three-tier system have uniform statewide regulation. [s. 125.01, Stats.] To assist in the uniform issuance of licenses and permits, the statutes require DOR to create application forms for alcohol beverages licenses and permits, as well as a simplified application form for the renewal of each kind of license or permit. Regarding initial application forms, the statutes specify information that all application forms must require an applicant to provide. Examples of the information that the initial application form must require applicants to provide include: (1) the history of the applicant that is relevant to the applicant's fitness to hold an alcohol beverages license or permit; (2) the premises where the alcohol beverages will be sold or stored; and (3) the identity of corporate officers and agents if the applicant is a corporation. [s. 125.04 (3) (a) – (b), Stats.]

DOR must make one copy of each kind of license application that it prepares available to each municipality. In addition, all application forms, including tax forms used by entities holding an alcohol beverages permit, are available on DOR's website.<sup>1</sup> [s. 125.04 (3) (c), Stats.]

DOR is also required to create a booklet that explains the state statutes and rules relating to the retail sale of alcohol beverages and provide this booklet, at cost, to municipalities. This booklet must be written concisely in language which is clearly understood by those required to utilize it. [s. 125.045, Stats.] The booklet prepared in accordance with this requirement is *Wisconsin Alcohol Beverage and Tobacco Laws for Retailers*, Publication 302, DOR (12/2016). DOR also prepares additional sources of information for retailers, as well as manufacturers and wholesalers, including answers to frequently asked questions, reference reports, as well as a booklet that explains alcohol beverages taxation laws for manufacturers and wholesalers, *Alcohol Beverage Tax Information*, Publication 303, DOR (01/2016).<sup>2</sup>

### **Inspection of Licensed or Permitted Premises and Enforcement Actions**

Current law provides peace officers, defined to include duly authorized DOR employees, with the authority to inspect the premises and examine the books, papers, and records of any brewer, brewpub, manufacturer, bottler, rectifier, wholesaler, or retailer to determine whether

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<sup>1</sup> All application and renewal forms applicable to retail licensees, are available on DOR's website at: <https://www.revenue.wi.gov/Pages/Form/alcohol-Home.aspx>. All permit application and renewal forms, as well as forms for purposes of filing taxes, are available on DOR's website at: <https://www.revenue.wi.gov/Pages/Form/excise-Home-b.aspx>.

<sup>2</sup> All of DOR's publications, reference reports, and answers to frequently asked questions are available on DOR's website at: <https://www.revenue.wi.gov/Pages/Businesses/Liquor.aspx>.

the person is complying with the Alcohol Beverages Chapter.<sup>3</sup> [ss. 125.14 (1) and 139.08 (3), Stats. See also ss. 125.33 (2) (a) and (d) and 125.51 (5) (c) 1., Stats.]

DOR also has the authority to do all of the following:

- Arrest without warrant, any person committing a violation of the Alcohol Beverages Chapter, in his or her presence.
- Confiscate alcohol beverages owned, possessed, kept, stored, manufactured, sold, distributed, or transported in violation of alcohol beverages laws under the Alcohol Beverages Chapter (or the Alcohol Beverages Taxation Laws), and all personal property used in connection with alcohol beverages.
- Receive alcohol beverages and other personal property that has been confiscated, and upon conviction for a violation of the Alcohol Beverages Chapter (or the Alcohol Beverages Taxation Laws), disposing or selling the property or alcohol beverages as authorized under current law.
- Revoke, suspend, or refuse to renew an alcohol beverages permit, after notice and an opportunity for hearing.
- Revoke an alcohol beverages license or permit for failure to keep complete and accurate records required under current law.
- File a complaint against an alcohol beverages retail licensee with the clerk of circuit court in the jurisdiction where the licensed premises is situated, alleging that the license should be suspended or revoked, as provided under current law.
- Request that DOJ represent the state or assist a district attorney in prosecuting any case arising under the Alcohol Beverages Chapter.
- Represent the state in prosecutions for violating certain requirements placed upon liquor wholesalers.<sup>4</sup>

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<sup>3</sup> In the Alcohol Beverages Chapter, a “peace officer” means a sheriff, undersheriff, deputy sheriff, police officer, constable, marshal, deputy marshal, or any employee of DOR or the Department of Justice (DOJ) authorized to act under the chapter. [s. 125.02 (12), Stats.]

<sup>4</sup> These requirements, found in s. 125.54 (7) (a) and (b), Stats., include the following: (1) wholesalers must be capable of warehousing intoxicating liquor; (2) liquor sold by the wholesaler must be physically unloaded at the wholesaler’s premises described in the permit, or at any warehouse premises for which the wholesaler has a permit prior to being delivered to a retail licensee or permittee or another wholesaler; (3) wholesalers must annually sell and deliver liquor to at least 10 retail licensees or permittees that do not have any direct or indirect interest in each other or the wholesaler; and (4) liquor retail licensees or permittees may not receive a benefit from a violation of any of the first three requirements.

- Receive notice from a court that it has ordered the suspension of an alcohol beverages license or permit for a violation of alcohol beverages restrictions relating to underage persons under s. 125.07 (1) (a), Stats.

[ss. 125.07 (1) (b) 4., 125.12 (1), (4), (5), and (6), 125.14, 125.145, 125.15, 139.11 (1), and 139.25 (9), Stats.]

### **Approval of Responsible Beverage Server Training Courses**

Current law generally requires that an applicant for an alcohol beverages license or permit must, within the two years prior to the date of application, have successfully completed a responsible beverage server training course before being issued the license or permit.<sup>5</sup> The responsible beverage server training must be provided by either: (1) a technical college district that conforms to curriculum guidelines specified by the technical college system board; or (2) a comparable training course that is approved by either DOR or the Department of Safety and Professional Services (DSPS). [ss. 125.04 (5) (a) 5. and 125.17 (6) (a), Stats.] As such, any responsible beverage server training course not offered by a technical college district must be approved by DOR or DSPS. The list of courses offered by either a technical college district or approved by DOR is available on DOR's website at: <https://www.revenue.wi.gov/Pages/Training/alcSellerServer.aspx>.

### **Certification of Small Winery Status for Purposes of Small Winery Cooperative Wholesalers**

Current law authorizes a small winery cooperative wholesaler that was organized between October 1 and December 31, 2008, to distribute wine produced by its members to retailers and other liquor wholesalers through a liquor wholesaler's permit. In order to be a member of a small winery cooperative wholesaler, the winery must be certified as a "small winery." One of the requirements for membership in a small winery cooperative wholesaler is that the winery is certified by DOR as a "small winery," which is valid for one year. DOR is required to certify any winery seeking to become a member of, or maintain its membership in a small winery cooperative wholesaler, if all of the following apply:

- If the winery produces and bottles less than 25,000 gallons of wine in a calendar year.
- Holds a direct wine shipper's permit.
- Submits any other information that DOR determines is necessary to certify that the winery is operating as a small winery and is eligible for membership in a cooperative wholesaler.

[s. 125.545 (6) (a) 2., Stats.]

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<sup>5</sup> This training requirement does not apply to an applicant who held, or an agent appointed and approved under state law, of a corporation or limited liability company that held, within the past two years, a retail license or permit or a manager's or operator's license. [s. 125.04 (5) (a) 5., Stats.]

In making this certification, DOR must also classify the winery as either an in-state or out-of-state winery. DOR must also refuse to certify any winery that cannot demonstrate that it holds all of the necessary permits for operations or that DOR finds is otherwise not in compliance with the laws of the state. [s. 125.545 (6) (a) 3. and 4., Stats., and s. Tax 8.05, Wis. Adm. Code.]

### **Receipt of Retail Licensee and Wine Collector Information**

Current law requires that certain information from municipalities and wine collectors<sup>6</sup> be submitted to DOR. For example, municipal clerks that issue retail licenses must submit by July 15 annually, a list containing names, addresses, and trade names of each person holding an alcohol beverages retail license issued by that municipality, as well as the type of license held, and if the person holding the license is a corporation or limited liability company, the name of the appointed agent. DOR receives this information and acts as a central database for the collection of retail licenses issued by municipalities. [s. 125.04 (4), Stats., and Gary, Aaron, *Alcohol Beverages Regulation in Wisconsin*, ch. 3 p. 145 (State Bar of Wisconsin, PINNACLE 2016).]

Regarding information that wine collectors must submit to DOR, a wine collector may sell without a retail license, manufacturer-sealed bottles or containers of wine held by the selling collector for at least eight years, if the selling wine collector files a written notice of the sale with DOR. The notice that the selling wine collector must submit to DOR must contain all of the following information: (1) the date and location of the sale; (2) the date that the wine was originally purchased by the selling collector; (3) a description of the transaction, listing the quantity and price of the wine to be sold; and (4) the name and address of an agent, consignee, lienor, or broker that is contracted to sell the wine by the selling collector, and a copy of any contract entered into between the selling collector and the agent, consignee, broker, or lienor. [ss. 125.02 (23), 125.06 (11m), Stats., and s. Tax 8.03 (3), Wis. Adm. Code.]

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<sup>6</sup> A "wine collector" means an individual who collects and holds, or intends to collect and hold, manufacturer-sealed bottles or containers of wine and is registered with DOR as a collector of wine. [s. 125.02 (23), Stats., and s. Tax 8.03 (2), Wis. Adm. Code.]