

DOR on Tap

An Alcohol Industry Update

February 2024

Uneventful. Boring. Ordinary. Business as usual. Routine. Slow. Monotonous.

These are NOT words I would use to describe the past couple of months at DOR. No, the past couple of months have been fast-paced, action-packed, dynamic, busy, and sometimes a bit overwhelming. However, it has also been focused, goal-oriented, and productive.

On December 6, 2023, Governor Evers signed 2023 Wisconsin Act 73 into law. This legislation makes significant changes to Chapter 125 of the Wisconsin Statutes, better known as Wisconsin's alcohol beverage laws. The Act has some effect on every tier of the alcohol beverage industry (producers, wholesalers, and retailers). From alcohol mist machines to axe-throwing facilities, producers making full-service retail sales to "Class C" wine license changes, event venues to statewide operator's permits, and everything in between. There is something for everyone in Act 73.

In addition to a wide variety of regulatory changes for industry members, Act 73 also creates, as of May 1, 2024, a Division of Alcohol Beverages within DOR. Our team has been working tirelessly, not only on implementing alcohol beverage law changes, but also on the transition and creation of the new division.

In this edition of DOR on Tap, we are dedicating the entire content to Act 73 changes. We understand there are a lot of questions and uncertainty surrounding some of the changes ahead. We hope that the content in this newsletter will provide useful information and clarity on certain items.

Finally, we have set up a new email address for the upcoming Division of Alcohol Beverages. If you have questions or concerns about Act 73, we encourage you to contact us at: DORAlcohol@wisconsin.gov.

Cheers,

Tyler Quam

Applicable Laws and Rules

This document provides statements or interpretations of Wisconsin statutes and administrative rules enacted as of February 23, 2024. 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 Guidance issued prior to this date that is contrary to the information in this document is superseded by this document, according to sec. 73.16(2)(a), Wis.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.

SUBSCRIBE

To DOR Alcohol Beverage News



Contact Us

(608) 264-4573 | DORAlcohol@wisconsin.gov



2023 Wisconsin Act 73 New Permits

New permits and reports created by 2023 Wisconsin Act 73 are as follows:

Fulfillment House: Authorizes an entity to handle logistics or shipping services of wine on behalf of a wine direct shipper permittee.

Cost: \$100 annually.

Reporting: Monthly reporting of the manufacturer, consignor, consignee, shipment date, type and quantity of the alcohol beverages, and parcel tracking number of all shipments of alcohol beverages in the previous month.

Effective Date: January 1, 2025

(secs. 125.02(6d), 125.23, 125.535(7), 125.68(10)(a) and (b), Wis. Stats.)

Common Carrier: Authorizes transport or delivery of wine shipped to individuals in Wisconsin on behalf of a wine direct shipper or fulfillment house permittee.

Cost: \$1,000 annually.

Reporting: Monthly reporting of the manufacturer, consignor, consignee, shipment date, type and quantity of the alcohol beverages, and parcel tracking number of all shipments of alcohol beverages in the previous month.

Effective Date: January 1, 2025

(secs. 125.22 and 125.535(7), Wis. Stats.)

Operator's Permit: Operator's permits are essentially operator's licenses, issued by the Division of Alcohol Beverages, that are valid in all Wisconsin municipalities.

Cost: Established by the division.

Effective Date: January 1, 2025

(sec. 125.175, Wis. Stats.)

No-Sale Event Venue: Allows the property owner of an event venue to rent or lease their venue for events where beer and/or wine are consumed for up to 6 days per calendar year.

Cost: Established by the division.

Effective Date: January 1, 2026

(sec. 125.24, Wis. Stats.)

An Old Fashioned Fix Up

New Laws Related to Batch Cocktails

In the [November 2021 edition of DOR on Tap](#), an article titled, "An Old Fashioned Mix Up" addressed the illegality of retailers pre-mixing batch cocktails. [2023 Wisconsin Act 73](#) changes current law to legalize and regulate this practice. These law changes become effective May 1, 2024.

Beginning May 1, 2024, "Class B" (liquor) retailers may, on their licensed premises, prepare, store, and dispense premixed drinks of liquor if they comply with the following regulations:

- The liquor used in the premixed drink was purchased and obtained from legal sources (i.e. permitted Wisconsin wholesalers).
- The premixed drink is provided to the customer in a container that is not bigger than 72 ounces.
- The premixed drink is not stored or dispensed from a wine bottle or reused liquor bottle.
- The premixed drink is not stored in a container for more than 48 hours prior selling it to a customer.
- The bulk container used to dispense or store the premixed drink is not bigger than 5 gallons.
- The container used to prepare, store, and/or dispense the premixed drink is labeled with the following information:
 - the container holds a batch of premixed drinks
 - the date and time the batch was prepared
 - following the words, "expiration date," the date and time that is 48 hours after the batch was prepared
 - the words, "contains alcohol"
 - the name of the person who prepared the batch
 - the ingredients of the batch, or the recipe title if the ingredient list is kept somewhere on the licensed premises and is available for inspection
 - any other information the Division of Alcohol Beverages requires by rule

Clerk's Corner: HOLD the Barrel

Updates Coming Soon to Municipal Alcohol Beverage License Forms

Additional impacts of [2023 Wisconsin Act 73](#) include changes to requirements for retail licenses issued by municipalities. Nearly all alcohol beverage licensing and permitting forms prepared by the department are being updated at this time. For this reason, the department is asking all clerks to wait to send renewal licensing forms until new forms are published on the department's website.

The department is prioritizing updates to municipal forms that must be completed by April. The Department began updating these forms last fall before passage of Act 73 and sent the updates around for comment from municipal clerks late last year. We will continue to take those comments into consideration as we develop the new forms. In order to meet municipal timelines for adoption of the forms, another round of comments won't be possible. However, the Department always appreciates feedback from our municipal partners, so please feel free to share your concerns at any time.

We recognize the difficulty this brings to municipal clerks, especially around a spring election. We appreciate your patience and flexibility as we implement the significant law changes and hope this early communication will ensure continuity of service for all impacted industry members.

State law does not require a municipality to send out a physical copy of alcohol beverage license renewal forms. Municipalities that send out electronic versions of these forms, or those that direct applicants to the versions on the department's website, may have more flexibility to adapt to these and future changes.

News: As required by Act 73, the department published an online listing of all [active alcohol beverage retail licenses](#) reported by municipalities. Municipalities may submit updates to their active licensing report (AT-827) at any time, and such changes are reflected on the department's website soon after submission. Keeping this list accurate may avoid unnecessary inquiries for your municipality.

Thank you again for your patience and flexibility. We appreciate the partnership we have with municipal clerks across the state and look forward to continuing to strengthen the relationship during and after the transition to the Division of Alcohol Beverages.

Production Agreements

2023 Wisconsin Act 73 legalized several types of production agreements. A description of each type of agreement follows. All production agreements legalized under the Act are effective May 1, 2024. Further, the contract production declaratory ruling issued by the department in 2023 will no longer apply. The department anticipates that the new Division of Alcohol Beverages will engage in rulemaking to clarify important regulatory steps for executing production agreements under the new law.

	Contract Production Agreements	Alternating Proprietorship Agreements	Licensing Agreements
Parties	Out-of-state recipe supplier or a recipe producer and a contract producer	Guest and host producer	Licensor and producer
Consideration provided for	The production, labelling, or bottling of alcohol beverages.	Use of space and equipment. Staff may also be provided.	Production of alcohol beverages bearing the name/trademark of the licensor.
Responsible party for reports and taxes under Chapter 139, Wis. Stats.	Out-of-state recipe supplier or recipe producer	Guest producer	Producer
Who accounts for the production volume?	For full-service retail authorizations: neither party. For taxes, self-distribution, and coop wholesale purposes: recipe producer	Guest producer	Producer

Full-Service Retail Sales for Producers

[2023 Wisconsin Act 73](#) authorizes eligible producers (manufacturers/rectifiers, wineries, and breweries) to make full-service retail sales at their production premises and at an off-site retail outlet. "Full-service retail sales" means sales of fermented malt beverages or intoxicating liquor for on-premises or off-premises consumption, or the provision of taste samples of fermented malt beverages or intoxicating liquor, or any combination of these activities.

For a producer to be eligible to make full-service retail sales, they must produce a certain volume of alcohol beverages, determined by the type of producer (see below). Additional production volume will earn the producer additional full-service retail outlets if approved by the Division of Alcohol Beverages, with a maximum of three off-site, full-service retail outlets. The maximum number applies to the producer regardless of the number and type of producer permits held by the producer. Production volumes are determined by the aggregate volume of alcohol beverages produced on all production premises operated by the producer. Additionally, contract production and alternating proprietorship agreements have a specific effect on production volumes.

The following apply to all full-service retail sales locations for all producers:

- Producers must apply for and receive approval from the Division of Alcohol Beverages to engage in full-service retail sales at a specific premises.
- Producers must also receive approval from the governing municipality for any off-site, full-service retail outlet. Municipalities must approve using the same standards and criteria that the municipality has established by ordinance for the evaluation and approval of retail license applications.
- Municipalities can limit the scope of alcohol beverages offered for sale at an off-site, full-service retail outlet, but only with respect to alcohol beverages that are not of the same type as those made by the producer.
- Alcohol beverages sold at a full-service retail location, other than those made by the producer, must be purchased by the producer from a permitted Wisconsin wholesaler or a self-distributing brewer or brewpub.
- Licensed operator (bartender) requirements apply in the same way that they do for retail licensed premises.
- Closing hours are the same as that of Class B licensed premises.
- Off-site, full-service retail outlets are subject to revocation by the Division for violations of Wisconsin law.

Production Volume Requirements for Brewers

In at least one of the three preceding calendar years, a brewer must produce at least:

- 250 barrels of fermented malt beverages to be eligible for full-service retail sales at their brewery premises.
- 250 but less than 2,500 barrels of fermented malt beverages to be eligible for one off-site, full-service retail outlet.
- 2,500 but less than 7,500 barrels of fermented malt beverages to be eligible for two off-site, full-service retail outlets.
- 7,500 barrels of fermented malt beverages to be eligible for three off-site, full-service retail outlets.

Production Volume Requirements for Wineries

In at least one of the three preceding calendar years, a winery must produce at least:

- 1,000 gallons of wine to be eligible for full-service retail sales at their winery premises.
- 1,000 but less than 5,000 gallons of wine to be eligible for one off-site, full-service retail outlet.
- 5,000 but less than 25,000 gallons of wine to be eligible for two off-site, full-service retail outlets.
- 25,000 gallons of wine to be eligible for three off-site, full-service retail outlets.

Production Volume Requirements for Manufacturers and Rectifiers

In at least one of the three preceding calendar years, a manufacturer/rectifier must produce/rectify at least:

- 1,500 liters of intoxicating liquor to be eligible for full-service retail sales at the manufacturer/rectifier premises.
- 1,500 but less than 5,000 liters of intoxicating liquor to be eligible for one off-site, full-service retail outlet.
- 5,000 but less than 35,000 liters of intoxicating liquor to be eligible for two off-site, full-service retail outlets.
- 35,000 liters of intoxicating liquor to be eligible for three off-site, full-service retail outlets.

Taste Sampling

One of the many changes in 2023 Wisconsin Act 73 is the provision of taste samples by producers of alcohol beverages. Changes include:

Full-service retail outlets

Prior to Act 73, a producer's retail authorizations varied significantly depending on the type of producer (i.e. winery, distillery, brewery). Effective May 1, 2024, these authorizations will be more consistent between the types of producers. Producers may give taste samples of any alcohol beverage they are authorized to sell at their full-service retail outlet(s). If a municipality limits the scope of alcohol beverages offered for sale, the provision of taste samples is also limited to that scope.

Samples on a licensed premises

Prior to Act 73, Wisconsin law prohibited some producers from offering taste samples on certain licensed premises. Under the new law effective May 1, 2024, a brewer may offer taste samples on Class "A" beer or Class "B" beer premises. Wineries, manufacturers, and rectifiers may offer taste samples on "Class A" liquor, "Class B" liquor, and "Class C" wine premises. These taste samples are restricted as described below:

- Samples must be provided free of charge
- No more than two samples of fermented malt beverages per person per day; each sample cannot be more than three fluid ounces
- No more than two samples of wine per person per day; each sample cannot be more than three fluid ounces
- No more than one sample of distilled spirits per person per day; the sample cannot be more than one half fluid ounce
- Samples may be provided only between the hours of 11 a.m. and 7 p.m.
- Samples may not be provided to underage persons
- Samples must either be purchased from a permitted wholesaler or produced on the producer's premises, brought by the producer, and removed by the producer after the sampling event

All samples must be served by licensed operators (bartenders) or servers under the immediate supervision of a licensed operator, the licensee, or an agent of a corporation or LLC licensee. This applies to samples given at a production premises, full-service retail outlet, or licensed premises.

2023 Wisconsin Act 73 Round Up

This issue of DOR on Tap is dedicated to 2023 Wisconsin Act 73, which was signed into law by Governor Evers on December 6, 2023. In addition to the items we've already discussed in this edition, the Act contains many small changes to alcohol beverage regulations throughout Chapter 125 Wis. Stats, including the following:

- Alcohol beverage mist machines are illegal.
- Closing hours are extended for on-premises retail license holders during the Republican National Convention in July 2024.
- The definition of fermented malt beverages mirrors the federal definition in 27 CFR Part 25.
- Axe-throwing facilities are allowed to hold Class "B" and "Class B" retail alcohol beverage licenses.
- Allows a person to transport up to 10 gallons of homemade wine or beer into Wisconsin for purposes of participating in a competition or exhibition that complies with Wisconsin law.
- If a permit is revoked by the division, the applicant may not reapply for the permit for 6 months after the date of revocation.
- Brewpub production and self-distribution limits are increased to 20,000 and 2,000 barrels, respectively.
- The fines for possessing beer not purchased from a permitted wholesaler are consistent with the fines for liquor not purchased from a wholesaler.
- "Class C" Wine-Only licenses may be issued to any person otherwise qualified to hold an alcohol beverage license. The business does not need to be a restaurant to hold this license type.
- A person may hold any number of manufacturer, rectifier, and intoxicating liquor distributor permits.

2023 Wisconsin Act 73 Round Up Continued

- Wine direct shipper permits authorize the shipment of wine that has been manufactured or bottled by the permittee.
- Wholesaler permits may be transferred to any location within Wisconsin.
- Alcohol beverage retail licenses may be transferred between municipalities within the same county.
- Permit fees are \$500 unless otherwise provided by law, or a fee was already established.
- Allows small manufacturers to join cooperative wholesalers, defines small manufacturers, increases production limits for small wineries and manufacturers and allows small cooperative wholesalers to apply to the division for permitting for a limited time.

Please see the chart below for a summary of the effective dates of key provisions from 2023 Wisconsin Act 73. The colors in the chart correspond to the industry tier impacted by each provision. For additional information on these and other items in 2023 Wisconsin Act 73, read the Legislative Council's [Act Memo](#) and [Information Memorandum](#).

23 WI Act 73 Provision	Effective Date	Impacted Industry Tier
Batch cocktails	May 1, 2024	Retail
Full-service retail sales	May 1, 2024	Producer
Production agreements	May 1, 2024	Producer
Interest restriction updates	May 1, 2024	All Tiers
Taste sampling	May 1, 2024	All Tiers
Updated closing hours for producers	May 1, 2024	Producer
Fermented malt beverage definition change	May 1, 2024	All Tiers
Axe-throwing facilities "other business" exemption	May 1, 2024	Retail
Penalties regarding FMB not purchased from wholesaler	May 1, 2024	Retail
"Class C" Wine-Only license authorized activities expansion	May 1, 2024	Retail
No limit on certain permits held	May 1, 2024	Producer, Wholesale
Wholesalers place-to-place permit transfer	May 1, 2024	Wholesale
Retail licenses transfer between municipalities in same county	May 1, 2024	Retail
Safe ride program information required to be available to industry members	May 1, 2024	Retail
Creation of the Division of Alcohol Beverages	May 1, 2024	All Tiers
Licensed operators at all industry businesses	May 1, 2024	Producer
Permit fee increase	January 1, 2025	Producer, Wholesale
Common Carrier Permit	January 1, 2025	Wine Direct Shippers
Fulfillment House Permit	January 1, 2025	Wine Direct Shippers
Operator Permit	January 1, 2025	Retail, Producer
No-Sale Event Venue Permit	January 1, 2026	No-Sale Event Venues