

DOR on Tap

An Alcohol Industry Update

August 2023

Spotlight on Staff

It is a pleasure to welcome you to the August 2023 edition of DOR on Tap, our 17th edition. Normally in this column you hear from Tyler Quam, our Special Agent in Charge of the Alcohol and Tobacco Enforcement Unit. In this edition, I wanted to introduce myself and share some exciting updates from my perspective as the editor of DOR on Tap.

I'm Ann DeGarmo, Excise Tax Specialist, at DOR. I have served in this role for just over a year in our Office of Technical Services. I followed Tom Ourada, who last served in this role. The role has changed since Tom left, but the mission remains the same: provide excellent customer service in the form of published guidance, including forms, instructions, publications, web content, and this newsletter on matters involving excise tax and regulation of alcohol beverages, and advise staff and management on policies and procedures. Like Tom, I came from the Secretary's Office. There, I worked closely with our Excise Tax Audit Unit and the Alcohol and Tobacco Enforcement Unit to keep the Secretary informed on alcohol beverage matters. I am humbled and honored to pick up where Tom left off and join the incredible team that works on alcohol beverage taxation and regulation. In addition to my role specializing on excise tax, I coordinate administrative rules and legislative work for the Income, Sales, and Excise Tax Division.

In June, I attended the [National Conference of State Liquor Administrators'](#) Annual Conference in Oklahoma City where I met alcohol beverage administrators of other states and members of the regulated community. Both control and open states participate in the organization, so there was a great deal of experience in the room. Topics of discussion at the conference included direct-to-consumer shipping, delivery, contract production, public health perspectives on alcohol beverage regulation, and more! The organization does an excellent job of providing balanced perspectives from regulators and the industry. By far, the greatest value was meeting and talking about issues with my regulator colleagues from other states. My key takeaway is that there is a lot of overlap in alcohol regulation issues across the country. I look forward to continued engagement with this organization and the opportunities for growth and collaboration that it provides.

Moving forward, I would love to hear from you. Please contact me if you have any ideas for articles or content for this publication. This publication was created as a way for all of you to hear directly from the department on alcohol beverage taxation and regulation, and we'd like the content to reflect material you're interested in.

Without further ado, please enjoy DOR on Tap, August 2023!

Best,

Ann DeGarmo

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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 to the customer or through 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](#) / [2023 Assembly Bill 260](#) (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](#) / [2023 Assembly Bill 273](#) (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](#) / [2023 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.

[2023 Senate Bill 332](#) / [2023 Assembly Bill 304](#) (Sen. LeMahieu / Rep. Vos) This bill creates a Division of Alcohol Beverages attached to DOR; changes retail authorizations for production tier businesses; creates fulfillment house; common carriers, operator's, and no-sale event venue permits; clarifies interest restrictions; and more.

New and Improved: Alcohol Beverage License Forms

After several months of discussion and deliberation among department staff and feedback from municipal clerks, new and improved [alcohol beverage license forms](#) are live on the DOR website.

Forms AT-[103](#), [106](#), and [115](#) were the first alcohol beverage license forms to be updated. Municipalities are required to use these updated forms or a replica of them for the licensing year beginning July 1, 2024.

The remaining license forms will be updated in the future to have similar formatting. Thank you to the retail industry members and municipal clerks that took time to provide feedback on these forms. It is our hope that the forms are clearer and easier for everyone to use.

If you have comments about or suggestions for the alcohol beverage license forms, please contact Ann DeGarmo at ann.degarmo@wisconsin.gov.

DOR Issues Declaratory Ruling Regarding Contract Production Agreements

As a result of a petition for declaratory ruling under sec. 227.41(5)(a), Wis. Stats., by City Brewing and Wisconsin Brewing Company, on May 11, 2023 the Department of Revenue released a [ruling](#) allowing contract production and alternating proprietorship agreements under Wisconsin law.

In the ruling, the department stated that rulemaking is required to ensure public safety, fairness across the industry, and proper tax payment.

The rulemaking process has begun. Scope Statement [SS 033-23](#) was approved by Governor Evers on May 18, and the department is writing the first draft of the rule. Once the first draft of the proposed rule order is released, there will be several opportunities for interested parties to provide feedback on the rule and participate in a public hearing. [Sign up for the Alcohol Beverage News and Administrative Rules listservs](#) to be the first to know about opportunities to engage in the rulemaking process.

We thank City Brewing and Wisconsin Brewing Company for a constructive and thoughtful discussion about this industry practice!

That's a Wrap: Fiscal Year 2023 Case Statistics

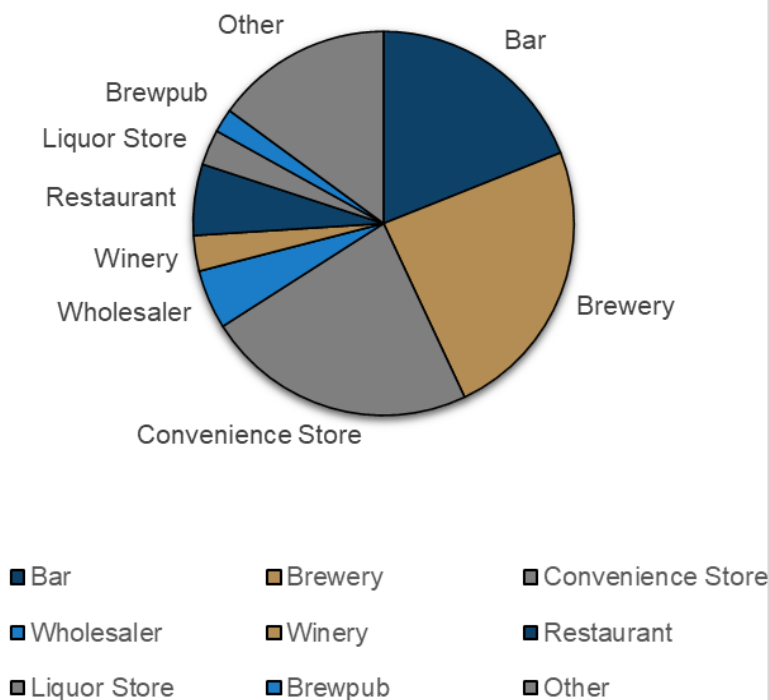
The following charts summarize investigations and permit application background checks for the fiscal year ending June 30, 2023, by the Wisconsin Department of Revenue's Alcohol and Tobacco Enforcement Unit. ATEU closed a total of 952 cases in fiscal year 2023.

For the third year in a row, breweries saw the most actions. Over 95% of brewery actions in fiscal year 2023 were related to permit application background checks and requests for approvals of offsite retail outlets. The remaining brewery actions were investigations.

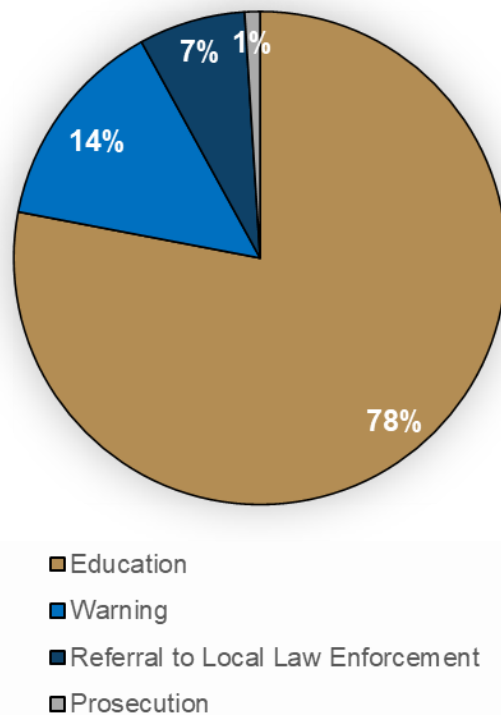
ATEU issued 6% more warnings over fiscal year 2022.

ATEU has been tracking referrals to local law enforcement for some time, but this is the first year we are including them in DOR on Tap. ATEU often partners with local law enforcement agencies on investigations and enforcement actions. Often, they are the best route to address a situation, particularly if the offender is a local licensee.

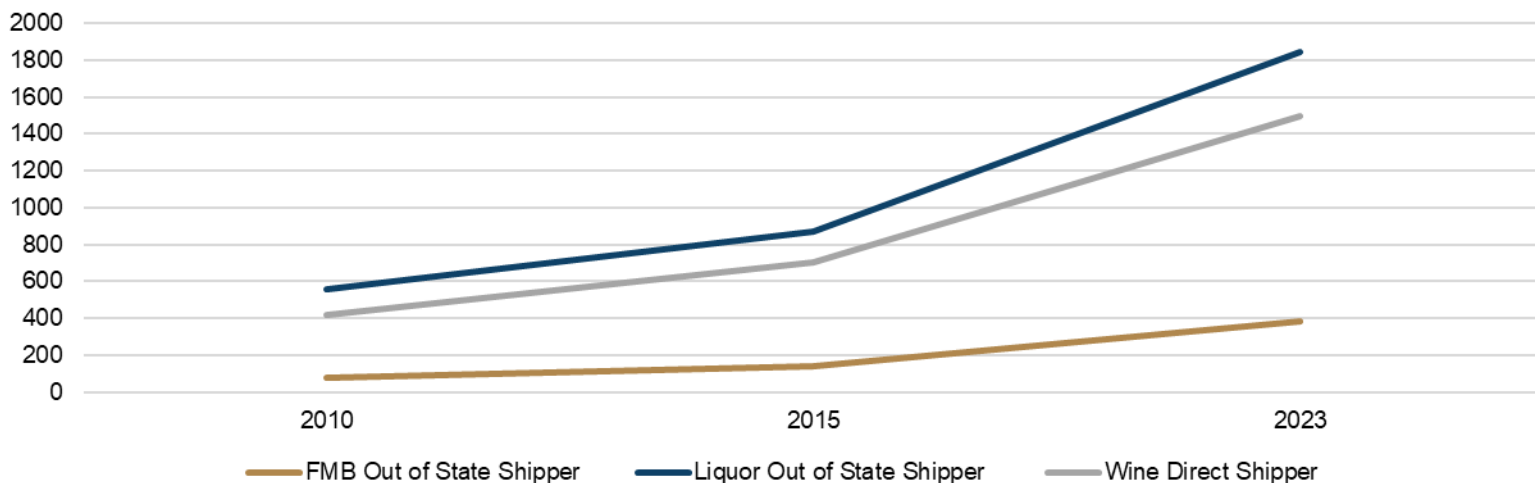
Actions by Business Type Fiscal Year 2023



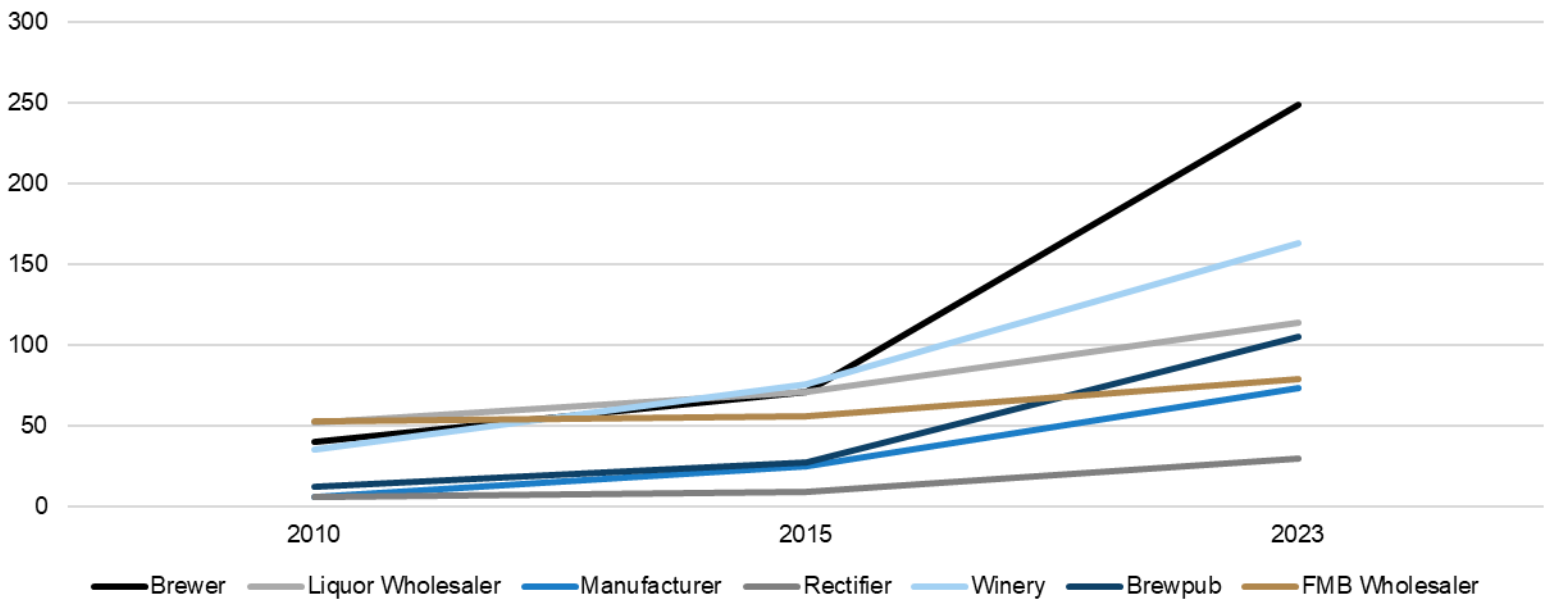
Investigation Outcomes Fiscal Year 2023



Number of Shipping Permittees Over Time



Number of In-State Permittees Over Time



Nuisance No More: Central Wisconsin Tavern License Revoked

In October 2022, special agents from DOR's Alcohol & Tobacco Enforcement Unit (ATEU) led an investigation with local officials and police in a central Wisconsin municipality that resulted in revocation of the business' retail alcohol beverage license.

The police department had many concerns about a tavern in their city. The business was drawing a significant amount of law enforcement resources because they were routinely cited for not having a licensed operator on the premises. Further, the business had an abundance of calls for service, including 911 hang-up calls and calls regarding fights. There were also concerns that the business owner's minor child was supervising day-to-day business operations without the presence of the business owner.

Special agents from DOR ATEU and the city police conducted an inspection of the licensed premises. Upon arrival, agents were met by a bartender that did not have a valid operator's license. The inspection uncovered 50 cartons of cigarettes in a freezer that were stamped with tribal tax stamps. The employees on duty stated that they sold packs of cigarettes to patrons of the business. Wisconsin law allows tribal-stamped cigarettes to be sold only on certain tribal properties. Additionally, the business did not hold a cigarette and tobacco retailer license from the city. Agents also discovered drugs and drug paraphernalia in an office on the licensed premises. All illegal contraband found on the premises was confiscated.

In March 2023, special agents received information that the owner was leasing the operation of the tavern, including the retail alcohol beverage license, to another individual. Agents visited the business again to follow up on this information. When agents arrived at the establishment, the business did not have a licensed operator on the premises. Agents also located a lease between the owner of the establishment and another party. Further, agents identified handwritten notes regarding leasing of the alcohol beverage license and operation of the business. A follow-up interview with the lessee confirmed that there was a lease agreement between the parties. Wisconsin law prohibits allowing another person to use one's retail alcohol beverage license. The law provides that the penalty for such a violation is revocation of the license.

In June 2023, the city held a special hearing to revoke the retail alcohol beverage licenses for the business. After testimony by special agents, the lessee, witnesses, and the Chief of Police, the governing body voted to revoke both the Class "B" fermented malt beverage license and the "Class B" intoxicating liquor license held by the business.

DOR prefers working with industry members and establishments by providing education and guidance, rather than enforcement action and penalties. However, where criminal activity happens on a licensed or permitted premises, particularly when activities are harmful to a community, DOR works with local law enforcement to end such activity.

Every Season is Festival Season in Wisconsin!

This article first appeared in the November 2019 Edition of DOR on Tap.

Beer festivals, wine tastings, and spirits of all kinds can be sampled...there are events of this sort nearly every weekend in some part of Wisconsin!

Organizers of these events should familiarize themselves with Wisconsin laws regarding alcohol beverage permits so that they are able to provide accurate information to each potential participant (manufacturers of fermented malt beverages (beer), distilled spirits and wine). We often hear from breweries, distilleries and wineries making plans to participate in these events, and they are shocked to find out that a state permit is required. An event organizer should communicate clearly regarding permit requirements with all potential participants to avoid last minute attempts to obtain a permit.

The organizer of an event where beer, wine, or spirits will be served is responsible for:

- Obtaining a retail alcohol beverage license from the municipality where the event will be held (contact the municipal clerk)
- Purchasing all beer, wine, or spirits from a Wisconsin wholesaler or self-distributing brewery or brewpub that holds a Wisconsin permit
- Providing licensed bartenders to serve the beer, liquor, or wine

Only the event organizer (i.e., the individual or entity with the retail license for the event premises) can make sales of alcohol beverages to customers at the event (regardless of whether the event organizer's sales are made on a per unit basis or by an admission fee to the event). Both the organizer and the industry participants may serve taste samples to attendees, provided that the organizer (the licensee) or a representative of the industry participant hold an operator's (bartender's) license from the municipality where the event will be held. To qualify for an operator's license, a person must:

- be at least 18 years old
- meet criminal record requirements, and
- have completed a responsible beverage server training course. Information on these courses can be found here: <https://www.revenue.wi.gov/Pages/Training/alcSellerServer.aspx>

Industry participants in these events must hold a current Wisconsin alcohol beverage permit.

Wisconsin companies holding one of the following permits may participate in beer, wine, and spirits festivals:

- Manufacturer
- Rectifier
- Winery
- Brewery
- Brewpub

Out of state breweries, distilleries, and wineries may only participate in these events after obtaining an Out-of-State Shipper permit from the Wisconsin Department of Revenue (sec. 125.30, Wis. Stats.).

- An out-of-state shipper of beer permit is applied for on Form BT-136 which can be found here: <https://www.revenue.wi.gov/DORForms/bt-136f.pdf>
- An out-of-state shipper of liquor permit (includes distilled spirits, wine, or cider) is applied for on Form AB-123 which can be found here: <https://www.revenue.wi.gov/DORForms/ab-123f.pdf>

Except for a self-distributing brewer or brewpub, all beer, wine, and spirits must be sold by the industry participant to a Wisconsin wholesaler, and then purchased from the wholesaler by the event organizer. It is not legal for an industry participant to bring their own alcohol beverage products directly to the event (secs. 125.33(9), 125.29(3m)(b), and 125.295(1)(g), Wis. Stats.).

The permit application should be submitted at least four to six weeks prior to the scheduled event to allow time for processing of the application. Additional information may be requested (requiring additional processing time) before the permit can be issued. The most common reasons for delays in issuing a permit are 1) a copy of the federal permit is not included with application, and 2) the contact name and phone number is left blank on the application.

Questions about state-issued alcohol beverage permits should be directed to the Wisconsin Department of Revenue Excise Tax Unit. Telephone: 608 266-6701 or Email: DORExciseTaxpayerAssistance@wisconsin.gov.

Clerk's Corner: Criminal History Check Q&A

Municipalities may not issue alcohol beverage licenses to applicants with disqualifying arrest or conviction records. For this reason, municipalities conduct criminal history background checks to ensure applicant qualification. The following are recent questions from municipalities answered by the department:

Q: How often is a municipality required to conduct background/criminal history checks?

A: State law does not specify a frequency or schedule that municipalities must adhere to for criminal history checks. Since municipalities may not issue licenses to disqualified applicants, some municipalities elect to conduct checks prior to issuing any license, such as when a new or renewal application is received.

Q: Who determines if a specific arrest or conviction record disqualifies the applicant?

A: As the issuing authority, the municipality will make this determination in accordance with state law. Consider consulting with the municipal attorney for assistance with interpreting and correctly applying the law.

Q: What resources are available to a municipality to assist with criminal history checks?

A: The [Wisconsin Circuit Court Access](#) website provides access to certain public records of the Wisconsin circuit courts free of charge. Information displayed is an exact copy of the case information entered into the circuit court case management system by court staff in the counties where the case files are located.

The Wisconsin Department of Justice allows users to access their Wisconsin Online Record Check System (WORCS) for a fee of \$7 per search.

Local law enforcement agencies may also assist the municipal governing body with this search or provide additional information from their records.

Q: What about applicants who do not reside in or only recently moved to WI?

A: Available arrest and conviction records and ways to access that information, vary from one state to the next.

A municipality can narrow its search parameters by asking the license applicant for information about previous addresses and convictions occurring outside of Wisconsin.

Q: What should we do if the criminal history check does not match the information supplied on the application?

A: This is up to the municipality as the licensing authority. If a municipal governing body or committee of a city council decides not to issue a new license, it shall notify the applicant for the new license of the decision not to issue the license. The notice shall be in writing and state the reasons for the decision.

A municipality may revoke a provisional license if they discover that the holder of the license made a false statement on the application.

Applicants may be prosecuted for submitting false statements and affidavits in connection with an application, and any person who knowingly provides materially false information on an application may be required to forfeit not more than \$1,000 if convicted.

Applicable Laws and Rules

This document provides statements or interpretations of Wisconsin statutes and administrative rules enacted as of August 17, 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.