

Alcohol License Issues

Just the Basics...

I. Topics to be covered

Types of licenses for sale of alcohol

- Fees
 - Quota issues on “Class B” Liquor Licenses
- Operators licenses
- License procedures
- Licensee Qualifications
- Other license issues

II. LICENSING BASICS

- LICENSE -- A license is a privilege granted by local authorities (City, Village or Town) to run a particular place for a particular time period.
- -may only "extend" premises with approval of governing body
- An alcohol license, like a drivers license, can only be used by the person (individual, partnership, corp., LLC) to whom it is issued.
- A municipality may refuse to issue licenses as long as it uses good judgment and doesn't discriminate (Rawn v Superior, 242 Wis 632)

II. LICENSING BASICS (CONT).

- State law 139.08(4) provides that licensed premises are subject to inspection at “all reasonable hours” – generally all open for business hours
- -inspection may include books, papers and records
- -refusal to permit inspection may result in suspension or revocation of license - s.139.08
- -inspection may be conducted by DOR, DOJ, sheriff, police, marshal or constables within respective jurisdictions

II. LICENSING BASICS (CONT).

- Individual or Partnership -- John Doe or John & Jane Doe (Actual persons)
- Corporation -- ABC Corporation (Must appoint an "Agent": Real person who is responsible)
- Limited Liability Company -- ABC LLC (Must also appoint an "Agent")

III. TYPICAL TYPES OF ALCOHOL LICENSES

- Class "A" Fermented Malt Beverage License - "away" - §125.25 Wis Stats
- "Class A" Intoxicating Liquor License – "away" - §125.51 Wis Stats
 - Note: Class A licenses are for off-premise consumption
- Class "B" Fermented Malt Bev License - "bar" - §125.26 Wis Stats
- "Class B" Intoxicating Liquor License – "bar" - §125.51 Wis Stats
 - Note: Class B licenses are for on-premise consumption, primarily

III. TYPICAL TYPES OF ALCOHOL LICENSES (CONT).

- “Class C” wine license (Sec. 125.51(3m)).
 - For sale of on-premises wine only, in restaurant.
- Restrictions on locations for “Class A” or “Class B” establishments (§125.68(3) Wis Stats.

(“Class B” for winery – wine only, not subject to quota; must be able to produce 5,000 gallons annually)

III. TYPICAL TYPES OF ALCOHOL LICENSES (CONT).

- Temporary Class "B" - Fermented beverage {Sec. 125.26(6)}
 - Commonly called "Picnic Licenses"
 - May only be issued to bona fide clubs, etc.
- Temporary "Class B" License (for wine only)
 - Limit two per 12 months; again bona fide clubs, etc. {Sec. 125.51 (10)}
- Class B Permits – Sports clubs, issued by state

IV. STATE REQUIREMENTS FOR ISSUING ALCOHOL LICENSES

- ✓ Municipalities may adopt additional criteria not in conflict with State law.
 - For example: No licensed establishments within 1,000 feet of school or park.
 - State restrictions on locations for "Class A" or "Class B" establishments - §125.68(3) Wis Stats.
- ✓ A municipality may refuse to issue or grant license for any reason that is not discriminatory or arbitrary and provided in writing to the applicant (Rawn v. Superior)
 - For example: We don't need another bar in our Town, Wisconsin.

V. ALCOHOL LICENSE APPLICATION PROCESS

State Required Steps:

1. Sworn application form filed with municipal clerk least 15 days in advance.
2. Municipal publication of application information in local newspaper.
3. Vote by municipal governing body.

V. ALCOHOL LICENSE APPLICATION PROCESS (CONT).

- Supplemental Class A License Application
- Supplemental Class B License Application
- Must contact the Town Supervisor, Neighborhood Association & Police Department Sector prior to the license approval or denial meeting

V. ALCOHOL LICENSE APPLICATION PROCESS (CONT).

There is no RIGHT to an alcohol license in Wisconsin, even if applicant is “qualified.”

VI. ALCOHOL LICENSE QUOTAS

Wisconsin imposes a quota on the number of “Class B” (taverns, bars restaurants licensed to sell distilled spirits for on-premises consumption) in each municipality, based “roughly” on population.

There is no STATE quota on the number of Class A liquor or beer licenses.

VI. ALCOHOL LICENSE QUOTAS (CONT).

There is no STATE quota on the number of Class B beer and Class C wine licenses.

A municipality may impose more restrictive limits on the number or type of alcohol outlets than the state does.

VII. FEES FOR ALCOHOL LICENSES (CONT.)

- Class "A" Fermented...Fee determined by the governing body... Sec. 125.25 (4)
- "Class A" Intoxicating...Fee is minimum of \$50 and maximum of \$500 per year... Sec.125.51(2)(d)
- Class "B" Fermented...Fee may not exceed \$100 per year...Sec. 125.26(3)
- "Class B" Intoxicating...Fee is minimum of \$50 and maximum of \$500 per year...Sec. 125.51(3)(e)
- Statutory range - no need to justify fees.

VII. FEES FOR ALCOHOL LICENSES (CONT).

- “Class C” Wine...Fee may not exceed \$100 per year....Sec. 125.51 (3m)
- Temporary Class “B” and “Class B”... shall be \$10 per license (except if both licenses for same event, the maximum may be \$10 per the event)
- Discussion on how and when to set license fees....
 - Set by town or village board
 - Set before beginning of licensing year
 - Statutory range - no need to justify fees.

VIII. QUOTA ON "CLASS B" INTOXICATING LICENSES.

Only State quota is on "Class B" intoxicating liquor licenses...maintained by municipality. Sec. 125.51 (4)

- Original Quota set as of Aug. 27, 1939
 - Greater of number issued in 1939 or one license per 500 people or fraction thereof
- Adjustments after 1939
 - Added for annexations to cities and villages
 - Added for "beer bar" conversions when age of drinking was reduced from 21 to 18 years old in 1970's
 - Special interest exceptions

VIII. QUOTA ON "CLASS B" INTOXICATING LICENSES (CONT).

- Revisions to "Class B" Quota 12/1/97
- Quota revised as follows:
 - All "Class B" granted or issued as of that date remain REGULAR "Class B" (regardless of ownership change)
 - Any licenses not issued as of 12/1/97 became RESERVE "Class B"...forever
 - Retained first three RESERVE but lost every other one after three

IX. EXCEPTIONS FROM QUOTA FOR LARGE FACILITIES

- If municipality is at maximum “Class B” licenses issued, Sec. 125.51 (4)(v) provides that the governing body may exceed the quota for following (among others):
 - A full-service restaurant that has a seating capacity of 300 persons or more
 - A hotel that has 50 or more sleeping rooms & either attached restaurant for 150 people or more or banquet room for 400 or more

X. EXAMPLE OF QUOTA AS OF 12/1/97

- Town of ABC “Class B” licenses
 - Before December 1, 1997
 - Had 1939 quota of 14 licenses
 - Had population of 750 people
 - Had issued 8 licenses
 - As of December 1, 1997
 - Retained 8 ‘regular’ “Class B” licenses
 - Retained first three reserve #9, #10 & #11; lost #12; retained #13; lost #14 for a total of four ‘reserve’ “Class B” licenses

X. EXAMPLE OF QUOTA AS OF 12/1/97 (CONT).

- Town of XYZ “Class B” Licenses
 - Before December 1, 1997
 - Had 1939 quota of 2
 - Had population of 350
 - Had not issued any “Class B” licenses
 - As of December 1, 1997
 - Retained two ‘reserve’ “Class B” licenses

X. EXAMPLE OF QUOTA AS OF 12/1/97 (CONT).

- Town of QRS
 - Before December 1, 1997
 - Had a 1939 quota of 5
 - Had a population of 650
 - Had issued 5 "Class B" licenses
 - As of December 1, 1997
 - Have no 'reserve' licenses available
 - Will only have a 'reserve' when town population increases 500 people more than population on 12/1/97 or 1150 people

XI. 'RESERVE' "CLASS B" LICENSES

- Key things to remember:
 - Once a 'reserve' always a 'reserve'
 - Once a 'regular' always a 'regular'
- Initial Issuance Fee for 'Reserve'
 - Minimum initial issuance fee in addition to the annual fee is \$10,000...Sec. 125.51 (3)(e)2.
 - May set higher minimum issuance fee
 - Discussion of "Economic Development Grant" to give back part of fee... - not sham ordinance.
 - Alexander v. City of Madison 247 Wis2d 576 (2001)

XII. OPERATOR'S AND OTHER LICENSES

Not everyone tending bar in Wisconsin needs to have a bartending license.

- Every licensed premises must have on the premises in the sales area **someone with an operator's license or privilege of an operator's license area.**
- Who has privilege?

XII. OPERATORS AND OTHER LICENSES (CONT).

- Commonly called “bartenders” licenses
- Sec. 125.17 governs issuance
- All licensed premises must either have licensee, the corporate agent, or a licensed operator on premises at all times of operation....
 - Except for “family privilege”....
 - “Immediate supervision”
- Fee for Operators License set by town/village board; may be for one or two year term...

XII. OPERATORS AND OTHER LICENSES (CONT).

Qualifications for “operators licenses”...

- {See Sec. 125.05 (5)(a) and (d) for these...}
- Must be 18 years of age
- Does not have an arrest or conviction record that “substantially relate”
- No need to be a resident of town/village or even of state
- Must have completed “Responsible Beverage Server Training Course” within past 2 years; or have been licensed - any place in Wisconsin within last two years. May be issued a provisional license while awaiting regular

XII. OPERATORS AND OTHER LICENSES (CONT).

Recommend that record checks be done on all license applicants including operators upon application and renewal

- Record checks may be done on line through Dept. of Justice website: <http://www.doj.state.wi.us/>
- Or, may do so by mail (see DOJ for info)
- Recommend delegating to the clerk the authority to issue provisional operators licenses (subject to board review)
 - See WTA Website for sample ordinance to delegate authority to clerk

XII. OPERATORS AND OTHER LICENSES (CONT).

General Licensing Procedures/§125.04 Wis Stats.

- State Application for Retail Licenses
 - Forms at DOR website: <http://www.revenue.wi.gov/>
- Time for filing application
 - At least 15 days before issuance
- Publication of notice of application
 - Once if weekly paper; 3 times if daily
- Exception from these for operators licenses... no state application for operators (or 15 day requirement or publication requirement; ditto for picnic beer < 4 days)

XII. OPERATORS AND OTHER LICENSES (CONT).

Qualifications for Licenses/§125.04(5) Wis Stats.

- For Class A, B and C licenses
 - Been a resident of Wisconsin for least 90 days
 - Does not have an arrest record or conviction record that substantially relates
 - Has attained 21 years of age
 - Has a sellers permit under Sec. 77.61 (11)
 - Has successfully completed a “Responsible Beverage Server Training Course” within last two years or has been licensed in Wisconsin within last two years
 - May obtain “provisional license” if enrolled in Training course, but not yet completed (operator license)
 - Provisional retail license – s. 125.185

XII. OPERATORS AND OTHER LICENSES (CONT).

Qualifications (cont).

- Issues For Corporations or LLC's
 - Agent must meet qualifications of individual
 - Corporation or LLC must meet other qualifications other than age, residency and training course requirements; Class C must be domestic LLC/corp
- Note if change in Corporate entity - it is a new and different entity subject to original application requirements

XII. OPERATORS AND OTHER LICENSES (CONT).

Transfers

- Sec. 125.04 (12)
 - (a) From one place to another location in the town or village, requires board approval and fee of \$10...
 - (b) From one person to another limited to transfer to licensee's spouse or personal representative upon death of licensee; and upon court ordered assignment to creditors
 - Note: if sale of business to new entity it requires an original application, not transfer under these sections....

XII. OPERATORS AND OTHER LICENSES (CONT).

Licenses to Another Person:

- Joe Smith sells bar to Bill White...
- Joe Smith, LLC sells bar to ABC, Inc.
- ABC, Inc. sells bar to Frank Black....

Example that **does not need** an “original application”: License to ABC, Inc....

Joe Smith that owns all the shares of ABC, Inc. sells all corporation shares to Bill White.... Will probably need change of agent....

XII. OPERATORS AND OTHER LICENSES (CONT).

Some Other Alcohol License Issues.

- No authority for a business (without a license) to give away complimentary alcohol even at a grand opening....
- Problem examples: beauty salons, barbershops, etc. may not give a complimentary drink to customers without appropriate license... see Sec. 125.04 (1); "consumption" – 125.09(1)
- **Your Questions on any Alcohol Issues?.....**

XII. OPERATOR AND OTHER LICENSES (CONT).

- A premises licensed to sell alcohol may not be open for business without a licensed operator being present.
- Only Exception: Class "A" beer license, during hours when alcohol sales prohibited by law.

XII. OPERATORS AND OTHER LICENSES (CONT).

- Anyone serving alcohol must have an operator's license or privilege of one,
OR
- Be under "immediate visual supervision" of someone who does have one (or has operator privileges). Actually be able to "supervise."

XII. OPERATORS AND OTHER LICENSES (CONT).

- A person must be at least 18 years old to sell/serve alcohol (can obtain operator license at age 18)
- An Operator's License is valid only within the municipality where issued.
- Can be used anywhere in that municipality.
- Issued to person, not the location.

XII. OPERATORS AND OTHER LICENSES (CONT).

Community criteria for Operators.

- Communities can establish specific internal criteria for operators, not in conflict with state statute.
- Conduct background checks prior to issuing operators' permits.

XII. OPERATORS AND OTHER LICENSES (CONT).

Ch. 125/Alcohol Beverage Laws.

- Defined by state statute
- Controlled on a local basis
- Liquor licenses issued by the municipality, typically, the Municipal Clerk

XII. OPERATORS AND OTHER LICENSES (CONT).

Municipalities Rule.

- When it comes to licensing alcohol, YOU RULE
- Municipality runs the show
- You make the rules - not in conflict with state law
- You issue, you revoke or suspend, you regulate

XIII. MUNICIPAL REGULATION.

Section 125.10.

- Any municipality may enact regulations incorporating any part of this chapter and may prescribe additional regulations for the sale of alcohol beverages, not in conflict with this chapter. The municipality may prescribe forfeitures or license suspension or revocation for violations of any such regulations. Regulations providing forfeitures or license suspension or revocation must be adopted by ordinance.

XIII. MUNICIPAL REGULATION (CONT).

- Examples for sale of liquor and beer:
 1. Restrict hours of sale (Class A only)
 2. Happy Hour restrictions.
 3. Quota on Number
 4. Type of businesses not issued to
- See MDK Inc. vs. Village of Grafton 345 F Supp 2952 (2004).

XIV. ORDINANCES

http://wilawlibrary.gov/topics_ordinances.php

Examples:

1. Village of Fox Point.
2. Town of Delevan
3. Town of Dunn
4. Nude dancing regulations and lawsuits.

See GM Enterprises vs. Town of St. Joseph 350 F3 631 (2003).

XV. STATE STATUTES.

<http://www.legis.state.wi.us/rsb/stats.html>

Chapter 125 Wis Stats – “Generic” Alcohol Laws

Chapter 139 Wis Stats – Inspection/Tax

S. 134.65 Wis Stats – Cigarette Licenses

XVI. §125.69 WIS STATS.

Class A's..... may not sell:

- Beer - Midnight to 6:00am
- Liquor - 9:00pm to 6:00am
- Municipalities MAY impose MORE restrictive hours
- Municipalities MAY NOT impose LESS restrictive hours

■ Class B's may not sell:

- Beer & Liquor 2:00am - 6:00am Monday - Friday
- Beer & Liquor 2:30am - 6:00am Sat. & Sun.
- To-go sales must cease at 12:00am (Sale v Carry out)
- Municipalities MAY impose MORE restrictive carryout hours

XVII. SEC. 125.12(2) WIS STATS

Complaints

- Any resident of a municipality issuing liquor licenses
- May file a sworn complaint w/city clerk
- Alleging one or more violations of Ch. 125
- Seeking license revocation or suspension

XVIII. SEC. 125.07(2) WIS STATS

Intoxicated Persons

- No person may sell, dispense or give away alcohol to an intoxicated person.
- No licensee may sell, vend, deal or traffic in alcohol to an intoxicated person.
- Fined not less than \$100 or more than \$500
- Or imprisoned for not more than 60 days, **or both.**

XIX. REVOCATION/SUSPENSION PROCESS (125.12 WIS STATS)

Initiated by a sworn written complaint **by any resident of the municipality**, including municipal officials with municipal clerk:

Alleges one or more of the following :

1. Violated Chapter 125 or municipal regulations adopting
2. Disorderly or riotous, indecent or improper house
3. Sold or given away alcohol to known habitual drunkards
4. Person does not possess the qualifications to hold license
5. Controlled substance violations

XIX. REVOCATION/SUSPENSION PROCESS (125.12(3) WIS STATS

- Nonrenewable requires the same steps as suspension or revocation.
- Revocation, non-renewal and suspension can be expensive and time consuming.
- Municipal criteria consistently applied to prevent problems later.

XIX. REVOCATION/SUSPENSION PROCESS (CONT).

- After complaint filed; summons issued to appear
- Licensee must appear before issuing body
- If licensee does not appear, license shall be revoked
- If licensee appears, hearing is held
- If complaint is TRUE, license shall be suspended not less than 10 days nor more than 90 days or revoked

XIX. REVOCATION/SUSPENSION PROCESS (CONT)

Hearing Procedure

- If the licensee appears & denies the complaint,
- Both complainant and licensee may produce witnesses, cross-examine witnesses and be represented by counsel
- A written transcript is provided licensee at his or her expense
- Check your local ordinance for procedure--if none, state statute controls

XIX. REVOCATION/SUSPENSION PROCESS (CONT).

Immunity for Serving to Underage Person Applies If:

- The underage person falsely represents they have attained the legal drinking age.
- The underage persons supports this representation with documentation.
- The alcohol beverages are provided in good faith reliance on the underage person's representation.
- The appearance of the underage person is such that an ordinary and prudent person would believe they were of legal drinking age.

XX. §125.07(1)(a) WIS STATS - PARENTAL EXCEPTION.

Sec. 125.07(1)(a)

- An underage person may legally be served alcohol provided:

Accompanied by his or her parent, guardian or spouse who has attained the legal drinking age (permissive, not mandatory) – doesn't cease at age 18

XXI. RETAINING PROOFS OF AGE

- A retailer may retain a document presented as proof of age for a “reasonable length of time” in a
- good faith effort to determine whether the person who presented the document is underage,

OR.....

XXI. RETAINING PROOFS OF AGE (CONT).

- A retailer may retain a proof of age to notify a law enforcement authority of a suspected violation of fake ID laws.

XXII. WHO CAN ALCOHOL BE SOLD TO?

If in doubt, a sale does NOT have to be made!

- - Alcohol may be sold to an underage person who is accompanied by a parent, guardian or spouse of legal drinking age.
- - An ID Register is another safeguard.

XXIII. WHAT ALCOHOL CAN BE SOLD?

- NON-ALCOHOL BEERS
- Products such as O'Douls, Sharps and others are not considered alcohol beverages under Wisconsin Law < .5%
- They may be sold to anyone.

XXIV. MORE ALCOHOL LAWS...

- No person may “sell” alcohol without holding the appropriate license. S. 125.04(1)
- No person may “give away” alcohol to evade any law relating to the sale of alcohol 125.67, 125.315
- Face to face on licensed premises – 125.272, 125.51(6)

XXIV. MORE ALCOHOL LAWS... (CONT).

- Wisconsin law defines “sale” or “sell” to include **ANY TRANSFER** of alcohol or any shift, scheme, device or transaction to obtain alcohol beverages
– s. 125.02(20)
- (Buying a cup, buying the mix, trespass fee)

XXIV. MORE ALCOHOL LAWS... (CONT).

- No owner or person in charge of a public place may permit the consumption of alcohol on the premises unless the person has an appropriate license or permit – 125.09(1)
- - Spas, Nail Salons serving wine without an alcohol license to customers while services are rendered
- - Furniture Stores/Jewelry Stores offering bottles of wine with purchase of new sofa; “Men’s Night” at jewelry stores w/beer

XXV. NUISANCE STATUTE (125.14 WIS STATS)

- Any building or place where alcohol beverages are
- sold/stored/ possessed without a valid permit or license
- or
- where persons are permitted to drink alcohol beverages in violation of alcohol laws is deemed a **public nuisance**,
- and may be closed until the activity in violation is abated.

XXVI. §125.07(7) WIS STATS – ID REGISTERS.

- Sec. 125.07(7) provides that every retail alcohol licensee **MAY** keep a book for the purpose of defense of proof of age.
 - (Was formerly required; no longer is)
May be used to record any suspect documentary proof of age
 - May be used to document any person alleging to be a parent, spouse
 - or guardian of an underage person
- IS NOT INTENDED AS A SUBSTITUTE FOR PROOF OF AGE!**

XXVII. §125.075 WIS STATS – LIABILITY FOR UNDERAGE SERVICES.

- §125.075(2) Wis Stats establishes felony for great bodily harm suffered by underage person served in violation of §125.075(1) Wis Stats.

XXVIII. CONTACT INFORMATION

- Roger Johnson
- WI Alcohol & Tobacco Enforcement Section
- Roger.Johnson@revenue.wi.gov
- 608-266-6757

Also contact the Wisconsin Towns' Association, (715) 526-3157 or League of WI Municipalities, (608) 267-2380