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# Municipal Law Newsletter

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## On Tap – Changes to Wis. Stat. Ch. 125 (Alcohol Beverage) Under 2023 Wisconsin Act 73

2023 Wisconsin Act 73 ushers in significant changes to the regulation of alcohol beverages. While the Act addresses many facets of Wisconsin's Alcohol Beverages Law, Wis. Stat. ch. 125, municipalities should be aware of the changes discussed below.[1]

**Effective December 8, 2023**

The Act reorganized state agency enforcement by creating the Division of Alcoholic Beverages (DAB) as a new subunit of the Department of Revenue (DOR).[2] All of DOR's regulation and enforcement authority over the manufacture, distribution, and retail sale of alcohol beverages was transferred to DAB on December 8, 2023. Within DAB there will be two separate bureaus—one for enforcement and another for legal services, permitting, and reporting.

**Effective May 1, 2024**

The Act increases the amount of time under Wis. Stat. § 125.04(3)(h) an applicant has to notify a licensing authority of any changed fact set out in an application from 10 days to 30 days. Under the Act, a changed fact includes any change in restricted investors under Wis. Stat. § 125.20(6)(a)5.

The Act broadens the definition of malt beverages (beer) to include any beverage recognized by the Federal Department of the Treasury as beer under 27 CFR part 25, except sake or similar products. This means gluten-free beer and hard seltzers, which were previously considered intoxicating liquor under Wisconsin law, will now be considered malt beverages.

The Act expands the ability of producers (brewers, wineries, manufacturers, and rectifiers) to make retail sales on the production premises. While the prior law allowed producers to engage in limited retail sales with varying requirements based on the type of producer, the Act creates a more uniform standard for retail sales applicable to all types of producers. Under the Act, any type of producer may sell their alcohol beverages from the production premises. The Act allows a producer to make retail sales of alcohol beverages that it manufactured on its premises or on other premises of the producer, for consumption on or off premises. A producer that meets specified production thresholds also may engage in full-service retail sales from the producer's premises.[3] The Act defines "full-service retail sales" as the sale of beer or liquor, for on-premises or off-premises consumption, and the provision of taste samples of beer or liquor. Because the Act allows certain producers to engage in full-service retail sales, it eliminates the option for a producer to also hold a retail license.

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## On Tap

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The Act allows producers to establish full-service retail outlets dependent on the producer's maximum production in any of the three previous calendar years. Producers that meet specified production thresholds may establish between one and three full-service retail outlets and make full-service retail sales from those premises.[4] A producer must obtain the approval of both the municipality in which the full-service retail outlet is located and DAB. Municipal approval must be based on the same standards and criteria that the municipality established by ordinance for the evaluation and approval of retail license applications. Municipalities may not impose requirements or restrictions on producers that it does not impose on retail licenses. Municipalities may limit the scope of alcohol beverages that the producer may offer for sale at the outlet, but only with respect to alcohol beverages that are not the same type as those produced by the producer.

The Act also allows producers to operate a restaurant on its premises and at any full-service retail outlet operated by the producer.

The Act establishes more uniform closing hours for retailers and producers by subjecting producers to the same closing hours that apply to a Class 'B" beer retailer in the municipality where the producer's premises or off-site retail location is located. Outside of these hours, producers are prohibited from selling alcohol beverages at retail for on-premises or off-premises consumption, providing taste samples, or allowing any member of the public or invited guest to be on the premises of the producer.

The Act changes the requirements to transfer a "Class B" liquor retail license from one municipality to another that has already met its quota for "Class B" licenses under Wis. Stat. § 125.51(4). Under the previous law, up to three "Class B" liquor retail licenses could be transferred from one municipality to a neighboring municipality that is contiguous or located within two miles. Under the Act, the requesting municipality and the transferring municipality need only be located in whole or in part in the same county.

Under the Act, "Class C" wine-only retail licenses are no longer required to be issued to a restaurant the sale of alcohol beverages accounts for less than 50% of gross receipts. The Act also allows a "Class C" wine-only retail license to be issued to a foreign corporation or LLC.

The Act allows a "Class B" liquor retailer to prepare, store, and dispense mixed drinks containing intoxicating liquor in advance of sale for consumption on premises or as a to go cocktail if all the following applies:

- Provided to the consumer in glass or container not exceeding 72 ounces.
- Not stored more than 48 hours prior to sale to the consumer.
- If stored or dispensed from a container exceeding 1.75 liters, the container does not exceed 5 gallons and complies with certain labeling requirements, including ingredients of the batch and expiration date.
- Liquor purchased only from a liquor wholesaler.
- Not stored or dispensed from a wine bottle and no refilling of original containers with alcohol.
- Compliance with any other applicable state or federal food safety regulation and federal alcohol regulation.

Under the Act, axe throwing facilities are excluded from the "other business" restrictions and underage persons on premises restrictions. The Act defines "axe throwing facility" to mean "an establishment that provides customers with a venue to engage in the activity of axe throwing and that either derives at least 51 % of its revenue from fees associated with axe throwing or maintains at the venue at least five axe throwing lanes."

**Effective January 1, 2025**

The Act creates a new operator's permit that is similar to an operator's license but is issued by DAB rather than a municipality. Unlike an operator's license, the new operator's permit is valid in all Wisconsin municipalities. DAB must issue an operator's permit to applicants who meet the same qualifications applicable to operator's licenses under Wis. Stat. § 125.04(5). DAB still needs to determine whether the operator's permit is valid for one or two years and what the permit fee will be.

**Effective January 1, 2026**

The Act contains significant changes to the requirements for the consumption of alcohol at public places and private events. While the previous law generally prohibited an owner, lessee, or person in charge of a public place from permitting the consumption of alcohol beverages on the property of the public place without an appropriate retail license or permit,[5] the law did not define "public place." Under the Act, an owner, lessee, or person in charge of a "public place" is prohibited from allowing the consumption of alcohol beverages on the property, unless the person has the appropriate retail license or permit, or a newly created no-sale event venue permit. Under the Act, a "public place" now includes event venues such as wedding barns, as the Act defines a "public place" to include a venue, location, open space, room, or establishment that is any of the following:

- Accessible and available to the public to rent for an event or social gathering;
- Held out for rent to the public for an event or social gathering; or
- Made available for rent to a member of the public for an event or social gathering.

Excluded from the definition of "public place" are rooms in a hotel/motel/bed and breakfast, short-term rentals with sufficient beds for all adult guests, campsites licensed by the Department of Agriculture, Trade, and Consumer Protection, tailgating for a professional or collegiate sporting event,

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and property within professional baseball park or local professional football stadium districts.

The Act creates a new "no sale event venue permit" to be issued by DAB. A "no-sale event venue permit" authorizes property owners to rent or lease property for use as an event venue where beer and wine are consumed up to six days per year and one day per month. A no-sale event venue permittee is authorized to:

- Allow a renter or lessee to bring their own beer and wine for service without charge.
- Allow guests of a renter or lessee to bring beer and wine for consumption without charge.
- Allow a renter or lessee to obtain temporary Class "B" and "Class B" licenses for an event to sell beer and wine. If 20 or more people, service must be performed by a licensed/permitted bartender.
- Allow a renter or lessee to contract with a caterer that holds a Class "B" and "Class B" licenses to provide beer and wine.

No-sale event venue permittees are prohibited from selling alcohol beverages or from allowing a person to possess distilled spirits at the event venue when used by a renter or lessee.

The Act creates a limited exception to allow a municipality to issue a "Class B" liquor license above the quota imposed by Wis. Stat. § 125.51(4). Only an event venue certified by DAB as meeting the criteria to be considered a "qualifying event venue" may take advantage of this limited exception. A "qualifying event venue" is real property that is rented or leased for use as an event venue for private events, and in the prior 12-month period at least five events were held with at least 50 guests in attendance and the venue owner received at least $20,000 in revenue from renting or leasing for these events. From January 1, 2026, to July 1, 2026, DAB must certify an owner of a "qualifying event venue" as eligible for the quota exception if all of the following apply:

- The venue has been in operation for the 12-month period immediately preceding the date of the application.
- The venue has not been a "Class B" liquor licensed premises in the preceding 12-month period immediately preceding the date of the application.
- The venue owner has not applied for a no-sale event venue permit.
- The venue owner provides documentation to DAB that the municipality in which the venue is located has reached its liquor license quota and is unable to issue a "Class B" liquor license to it.
- The venue owner provides documentation and DAB confirms the venue meets the definition of a qualifying event venue and has been in operation for the 12-month period immediately preceding the date of application.
- The venue owner provides notice to DAB by April 2, 2026, that the owner is applying for a "Class B" license and is not seeking a no-sale event venue permit.

A municipality may only issue an above-quota "Class B" liquor license under the quota exception if a license application is received by July 1, 2026. If an above quota "Class B" license is revoked or not renewed, a municipality may only reissue the license if all the following apply:

- The licensee sells or transfers ownership of the licensed premises or a business operated on the licensed premises.
- The license is surrendered or not renewed in connection with the sale or transfer of the property or business.
- The licensee continued to operate as a qualifying event venue as defined by the Act from the time of issuance until the time the license is surrendered or not renewed.
- The license is reissued for the same location.
- The applicant for reissuance of the license satisfies the requirements to hold the license.
- The applicant certifies to the municipality that the applicant will continue to operate the licensed premises as a qualifying event venue.

*— Eric Hagen*

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1 This article does not cover all the changes to Wis. Stat. ch. 125 under 2023 Wisconsin Act 73. Municipalities should check with their attorney for further information.

2 See Wis. Stat. § 15.433(2).

3 For a brewer, at least 250 barrels of beer in any of the three preceding calendar years. For a manufacturer or rectifier, 1,500 liters of liquor. For a winery, 1,000 gallons of wine.

4 One outlet for a brewer that produced at least 250 barrels of beer in a year, a winery that produced at least 1,000 gallons of wine in a year, or a manufacturer or rectifier that produced at least 1,500 liters of liquor in a year. Two outlets for a brewer that produced between 2,500 – 7,500 barrels of beer in a year, a winery that produced between 5,000 and 25,000 gallons of wine in a year, or a manufacturer or rectifier that produced between 5,000 and 35,000 liters of liquor in a year. Three outlets for a brewer that produced more than 7,500 barrels of beer in a year, a winery that produced more than 25,000 gallons of wine in a year, or a manufacturer or rectifier that produced more than 35,000 liters of liquor in a year.

5 Under the previous law, this prohibition does not apply to municipalities, buildings and parks owned by counties, regularly established athletic fields and stadiums, school buildings, campuses of private colleges at the place and time of an event sponsored by the private college, churches, premises at State Fair Park, or clubs. This exception is retained by the Act but renumbered from Wis. Stat. § 125.09(1) to § 125.09(1)(d).

## *EV Charging Bill Would Restrict Local Governments From Owning and Operating Charging Stations*

A bipartisan bill designed to unlock 78 million dollars in federal funds to support EV charging infrastructure has passed the Budget Committee unanimously. To obtain access to the funds, which were approved by the United States Department of Transportation in 2022, the legislature has until March 31st to approve and implement the legislation.

The proposed bill (LRB 2813/1) is primarily designed to exempt private businesses from being regulated by the State as public utilities by allowing owners of charging stations to sell electricity obtained from incumbent utilities on a dollar/kilowatt hour basis. To help defray the cost of road upkeep caused by the anticipated increase in electric vehicle usage, the proposed law would also impose a 3 cent per kilowatt hour excise tax on the electricity sold through charging stations (unless the charging station is located on a private residence).

A product of legislative compromise among a number of stakeholder groups, the proposed bill also includes a number of provisions designed to allow state agencies and local governments to participate in the EV infrastructure buildout, albeit with several important restrictions.

Specifically, the law would allow state agencies and local governments, including cities, towns, villages, counties, special purpose districts and school districts, to own and operate EV charging stations that utilize Level 1 and Level 2 chargers—if the electricity is made available to members of the public for free. Level 3 chargers may be utilized by state agencies and local governments only for their own fleets.

State agencies and local governments, however, would be allowed to lease or rent their property to private entities, who could then own and operate Level 3 chargers for sale.

A Level 1 charger converts alternating current (AC) to direct current (DC) and operates on electric circuits up to 120 volts; Level 2 chargers operate on circuits up to 240 volts. Level 3 chargers are the so-called DC "fast chargers."

Under the proposed law, municipally-owned utilities would not be subject to the restrictions otherwise imposed on local governments. Like investor-owned utilities, municipal utilities would be permitted to charge customers for electricity from EV charging stations on a dollar/kWh basis under rates approved by the Wisconsin Public Service Commission. The only caveat being that the municipal utility may not transfer revenues from the charging stations to the municipality's general fund and cannot subsidize the cost of the charging stations with tax revenue.

Although some legislators have expressed reservations about the excise tax and other aspects of the proposed law,

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## *Julia K. Potter Named Partner*

We are proud to announce that Attorney Julia K. Potter has been named partner. Julia, who has been with the firm for eight years, works primarily with the firm's municipal and real estate practice groups.

"Julia is a gifted and hardworking attorney who's passionate about working with our clients on a wide range of real estate, land use, business, energy, and municipal utility matters," says Attorney Richard Heinemann, chair of the firm's Municipal Law Practice Group. "We are thrilled to welcome her into the partnership."

In her practice, Julia assists municipalities, businesses, and individuals with legal issues involving real estate, land use, and municipal law—from drafting and negotiating purchase and sale agreements, easements, leases, and declarations to assisting clients with development issues, right-of-way regulation, tax increment financing, telecommunications siting, zoning changes and variances, conditional use permits, and all manner of disputes regarding real estate.

Outside of the office, Julia sits on the City of Fitchburg Zoning Board of Appeals and is a member of the Rotary Club of Madison – After Hours. She also teaches a course at UW-Madison for law students and urban planning graduate students about the law of land use controls. Julia is a member of the State Bar of Wisconsin and the American, Dane County, and Sauk County Bar Associations, as well as the American Planning Association.

Julia has been recognized by several industry publications for her contributions to the legal field. She was named an "Up and Coming Lawyer" by the Wisconsin Law Journal in 2018, listed in Super Lawyers®: Rising Stars (2021-Present), and listed in Best Lawyers®: Ones to Watch (2021-Present) in the areas of municipal law and land use and zoning law. Julia received her J.D., summa cum laude, from the University of Michigan Law School and her B.A., magna cum laude, from Brown University.

## *Municipal Airports Must Comply With New Law Requiring Improvements Owned by Private Citizens on Tax Exempt Land*

Many municipalities across the State of Wisconsin own municipal airports. Municipal airports can provide many benefits to a municipality and its residents, including creating jobs, providing recreation, and making the municipality an accessible and attractive place for economic development.

As a part of these benefits, municipalities often permit private individuals and businesses to own aircraft hangers at the airport for convenience. It is common practice that the municipality rents land to the private individual or business, who will then build a hanger. The building/improvements are then owned by the private individual or business, while the underlying land is owned by the municipality.

Up until this year, in the above situation, municipalities could tax the owners of the improvements as personal property.

In June of 2023, Wisconsin passed Wis. Stat. § 70.17(3), which requires manufactured and mobile homes, buildings, improvements, and fixtures on leased land, exempt land, or managed forest land to be assessed as real property. The new law applies to aircraft hangers owned by private individuals or businesses located in a municipal airport. Starting in 2024, the improvements (aircraft hangers) will be taxed as real property.

As a part of the new law, assessors must create separate tax parcels for the buildings, improvements, and fixtures and assess them as real property. The owner of the aircraft hanger will then receive a tax bill for the real property.

Many municipalities around the State have already or will have to go through this process, which is new to everyone. There has been some debate on what type of document is required to be executed and recorded to create these new tax parcels.

The Wisconsin Real Property Listers Association has come out with a proposed form titled "Building(s), Fixture(s), and/or Improvement(s) Document." Their document is drafted as a conveyance, where the municipality conveys the building, fixture, or improvement to the private individual or business. Because it is drafted as a conveyance, the document must be filed with a real estate transfer return, although will likely be exempt from a transfer fee. Depending on the number of privately owned hangers at an airport, the requirement to complete transfer returns for each hanger could be time-consuming.

Some municipalities have been successful in filing and recording a declaration or notice of ownership and being able to avoid the requirement to file a transfer return. The declaration or notice may be appropriate when the improvements are already owned by the private individual or business. However, this approach will be subject to the approval of the register of deeds in your county.

Any municipality that owns an airport must be proactive in creating these new tax parcels. Below is the text of the new law, Wis. Stat. § 70.17(3), for reference:

> Beginning with the property tax assessments as of January 1, 2024, manufactured and mobile homes, not otherwise exempt from taxation under s. 66.0435 (3), buildings, improvements, and fixtures on leased lands, buildings, improvements, and fixtures on exempt lands, buildings, improvements, and fixtures on forest croplands, and buildings, improvements, and fixtures on managed forest lands shall be assessed as real property. If buildings, improvements, and fixtures, but not the underlying land, are leased to a person other than the landowner or if the buildings, improvements, and fixtures are owned by a person other than the landowner, the assessor may create a separate tax parcel for the buildings, improvements, and fixtures and assess the buildings, improvements, and fixtures as real property to the owner of the buildings, improvements, and fixtures. The assessor may also create a tax parcel, as provided under s. 70.27, for buildings, improvements, and fixtures on exempt lands, buildings, improvements, and fixtures on forest croplands, and buildings, improvements, and fixtures on managed forest lands and assess the buildings, improvements, and fixtures as real property to the owner of the buildings, improvements, and fixtures. For purposes of this subsection, "buildings, improvements, and fixtures" does not include any property defined in s. 70.04.

*—Maximillian J. Buckner*

### EV Charging Bill Would Restrict Local Governments from Owning and Operating Charging Stations

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Senate Majority Leader Devin LeMahieu has expressed support for the bill, while Assembly Speaker Robin Vos has indicated "openness" to the idea, but skepticism about using federal dollars to spur development of EV infrastructure. Wisconsin is one of only two states that has not thus far passed legislation to utilize the federal money.

*—Richard A. Heinemann*

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# *Municipal Law Newsletter*

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If you have a particular topic you would like to see covered, or if you have a question on any article in this newsletter, feel free to contact any of the attorneys listed below who are contributing to this newsletter.

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| | | |
|---|---|---|
| Eileen A. Brownlee | 608-822-3251 | ebrownlee@boardmanclark.com |
| Maximillian J. Buckner | 608-283-1787 | mbuckner@boardmanclark.com |
| Anita T. Gallucci | 608-283-1770 | agallucci@boardmanclark.com |
| Brian P. Goodman | 608-283-1722 | bgoodman@boardmanclark.com |
| Eric B. Hagen | 608-286-7255 | ehagen@boardmanclark.com |
| Joseph J. Hasler | 608-283-1726 | jhasler@boardmanclark.com |
| Richard A. Heinemann | 608-283-1706 | rheinemann@boardmanclark.com |
| Paul A. Johnson | 608-286-7210 | pjohnson@boardmanclark.com |
| Lawrie J. Kobza | 608-283-1788 | lkobza@boardmanclark.com |
| Storm B. Larson | 608-286-7207 | slarson@boardmanclark.com |
| Liz Leonard | 608-283-7224 | lleonard@boardmanclark.com |
| Julia K. Potter | 608-283-1720 | jpotter@boardmanclark.com |
| Jared W. Smith | 608-286-7171 | jsmith@boardmanclark.com |
| Steven C. Zach | 608-283-1736 | szach@boardmanclark.com |


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