

First On Tap: Brewery Permit

Article #1 of Hopping on the Brewery Bandwagon Series

One of the essential steps to starting your brewery is obtaining the appropriate permits. Brewers are regulated under both state and federal laws. Wisconsin law permits a brewer to operate under either a brewer's permit or brewpub permit. This article provides an overview of the state process for obtaining a brewer's permit in Wisconsin. The series' next article will discuss the brewpub permit and the key differences between a brewpub permit and a brewer's permit.

A "brewer" includes any person who manufactures fermented malt beverages (e.g., beer) for sale or transportation, but does not include a person who holds a brewpub permit. In order to operate as a brewer in Wisconsin, a person must obtain a brewer's permit from the Wisconsin Department of Revenue. A corporation, partnership or limited liability company may also apply for and hold a brewer's permit. A brewer's permit is issued for a two-year period.

Among other things, the permit authorizes the sale of beer to wholesalers, and in certain limited circumstances, to retailers. A brewer that manufactures 300,000 barrels of beer or less in a calendar year (from all of the brewer's locations) may sell and transport its beer directly to retailers, if the brewer complies with certain additional requirements. To put this volume into perspective, one barrel equals 31 gallons, or about 331 twelve-ounce cans of beer. Three hundred thousand barrels equals over nine million gallons, or over 99 million cans of beer.

The permit also authorizes the brewer to make retail sales at the licensed premises of beer manufactured at the licensed premises (or manufactured at one of the brewer's other brewery premises) for on-site and off-site consumption. It also allows a brewer to provide free taste samples on the brewery premises, at an off-site retail outlet established by the brewer, and on Class A retail licensed premises (such as a grocery store), subject to sample size and hour restrictions.

Potential applicants should be aware of several key restrictions on obtaining a brewer's permit. These restrictions limit (1) what types of permits or licenses the applicant is allowed to already hold or acquire in the future; (2) to whom the applicant may sell its product; and (3) the ability of the applicant to have an

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ownership interest in a wholesaler. >p>The Department of Revenue may not issue a brewer's permit to a person (or entity) if that person holds any of the following licenses or permits:

1. Class A retail license;
2. Class B retail license;
3. Brewpub permit; or
4. Wholesaler's permit.

In addition, a brewer may not hold a restaurant permit at any locations other than the brewery premises and an off-site retail outlet established by the brewery. A brewer may, however, have an indirect interest in a Class B retail license for up to 20 restaurants, if the restaurants meet certain sales criteria and if no fermented malt beverages manufactured by the brewer are offered for sale in such restaurants.

Finally, with certain limited exceptions, a brewery cannot hold any ownership interest in a wholesaler.

Be aware that local regulations may further restrict your operations. For example, while breweries may be permitted to operate a restaurant under a brewer's permit, the brewery may be located on property with a zoning classification that prohibits or limits restaurant activities. We will explore these considerations later in this series in our article on choosing a location.

Navigating the permitting process may seem daunting, but don't let it "ale" you. If you have questions about the brewer's permit or the numerous brewery regulations, contact your Reinhart attorney or any member of the Real Estate Entitlements Group or Food and Beverage Group. Cheers.

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