



**WSSFC 2024**

**Substantive Law Track – Session 2**

# **Alcohol Laws and Other Unique Rules and Regulations**

***Presenters:***

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## About the Presenters...

**Collin F. Schaefer** is a partner in the law firm of Ogden Glazer + Schaefer. He received his undergraduate degree from Bradley University in International Business and Spanish, and his law degree from the University of Wisconsin. After graduation, Collin started practice in Dodge County before opening a solo firm in Cedarburg and eventually, merging his firm with Erin Ogden and Jeff Glazer of OgdenGlazer. At OG+S Collin's practice focuses on startups, securities, alcohol beverage licensing\permitting, trademarks and real estate. Collin is the past president of the Dodge County Bar Association, the Cedarburg Chamber of Commerce, and is a volunteer with Legal Action's Eviction Defense Project. Outside of the office, Collin enjoys spending time with his wife (Kim) and son (Noah), gardening, and hiking.

**Jeffrey M. Glazer** is a partner at Ogden Glazer + Schaefer where he manages the firm's food and beverage practice. He has worked with alcohol beverage companies for the past 15+ years and his practice encompasses all 4 tiers of the 3-tier system (don't forget the farmers that make the ingredients!!); OG+S represents a wide array of (farmers), manufacturers, wholesalers, and retailers. He has spoken at numerous events across the country on food and beverage issues and published frequently on topics relevant to the industry. Jeff was the founder of Madison Beer Review and Madison Craft Beer Week.

# FROM TAPS TO TOKES: A GUIDE TO WISCONSIN'S EVOLVING ALCOHOL AND HEMP LAWS (AND OTHER LEGAL ODDITIES)

By: Jeffrey M. Glazer & Collin F. Schaefer

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## Agenda:

1. **Overview of Major Alcohol Changes in Wisconsin**
2. **Hemp & Vapor Products Law Changes**
3. **Other Legal Oddities**
  - Fair Dealership Law
  - Minimum Markup Law/Unfair Sales Act

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## 1. Overview of Major Alcohol Changes in Wisconsin:

- **Changes at the Department of Revenue (DOR):**
  - Originally, alcohol permits and applications were handled by the same agents responsible for vapor products and motor fuel refunds.
  - A **new Division of Alcoholic Beverages** has been established within the DOR to streamline alcohol permit applications and oversee administration.
  - No additional funding has been provided for this new division, and rulemaking is still underway.
  - Emphasis on building **new relationships** with division staff.
- **List of Impactful Changes:**
  - **Winery Closing Hours:** Previously varied closing times, but the law now harmonizes hours to **2 AM** for all.
  - **Licensed Bartenders:** Now required at all alcohol-serving establishments, requiring bartending classes for everyone.
  - **Tasting Rooms:**
    - Alcohol manufacturers (e.g., wineries, breweries, distilleries) are now permitted to have **multiple tasting rooms**, depending on production volume.
    - Restrictions on the number of production locations have been **eliminated** for wineries and distilleries.
  - **Municipal Permit Exemptions:** Wineries no longer need municipal Class B permits.
  - **Increased Fees:** Breweries, brewpubs, and out-of-state shippers now face a \$500 fee, previously \$0.

- **Brewpub Production:** Brewpubs can now produce and self-distribute **double** the amount allowed under previous law.
  - **Definition Change:** The state definition of "**Fermented Malt Beverage**" has been adjusted to conform with the federal definition, allowing for beverages like seltzers to fall under this category.
  - **Class C License:** No restaurant requirement for this type of alcohol license.
  - **Batching Rules:** Bars can now pre-batch cocktails for up to **48 hours**.
  - **Re-Corking Eliminated:** No longer required for partially consumed wine bottles.
  - **Statewide and Countywide Licensing Changes:**
    - New **Statewide Operators Permit** introduced, along with **Countywide License Transfers**.
  - **Full-Service Retail (FSR):**
    - FSR provisions now apply to distillers (§125.52(4)), wineries (§125.53(3)), and brewers (§125.29(7)), depending on production volumes.
    - Producers can have up to **three external locations** (FSR outlets), exempt from liquor license quotas.
    - Municipal approval is required for off-premise FSR outlets but not for production premises.
    - AB-105 DOR form is used for approval.
  - **Wedding Barns Regulation Changes:**
    - Wedding barns are now classified as "**public places**," requiring municipal licensing, effective **January 1, 2026**.
    - These venues will need to comply with regulations for alcohol licensing, though there's a **two-year delayed effective date**.
    - The **Wisconsin Institute for Law and Liberty (WILL)** has a pending lawsuit challenging these provisions but **not** the licensing quota system.
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## 2. Hemp & Vapor Products Law Changes:

- **Hemp Production:**
  - **USDA** oversees hemp production permits, with Wisconsin's **Department of Agriculture, Trade and Consumer Protection (DATCP)** responsible for truth in labeling requirements.
  - FBI background checks are required, but there is **no separate processing permit**.
- **Vapor Products Law Changes:**

- **Vapor Distributor Permit:** All manufacturers of vapor products must apply for this permit using DOR form **CTP-129**.
  - The tax applies to liquids or substances sold as part of the vapor product, but **not to equipment or devices** sold separately.
  - Excise tax on vapor products is **\$0.05 per milliliter**.
- **Vapor Retailer Permit:** Retailers must apply using form **CTV-100**, issued by the municipality.
  - New regulations apply specifically to **electronic vaping devices**, which cover e-cigarettes, vape pens, and related accessories.
  - Retailers who already have a cigarette permit do **not** need a new one for vapor products.
- **Electronic Vaping Device Registry (2025):**
  - By **July 1, 2025**, manufacturers must certify compliance with U.S. FDA regulations.
  - Each manufacturer must submit a form listing all electronic vaping devices available in Wisconsin and pay a **\$500 fee per device**.
  - CBD vapor products are included, but the future of these products is uncertain due to **FDA regulations**.
- **CBD/THC in Food:**
  - The **FDA** does not approve CBD for use in food or vapor products/"adulterated food."
  - Despite the federal stance, many products are available for sale due to the **Farm Bill** and **non-uniform enforcement** across states.

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### 3. Other Legal Oddities:

- **Fair Dealership Law:**
  - This law protects dealers by preventing manufacturers from terminating dealership agreements without **good cause**.
  - Special rules apply to **brewery and spirits distributors**.
  - It's important to understand **Wisconsin case law** on the distinction between independent sales reps and dealers, and the **community of interest factors** that will impact whether or not the statute applies.
  - Important Resources:
    - [WisBar Article from Stafford Rosenbaum](#)
- **Minimum Markup Law (Unfair Sales Act):**

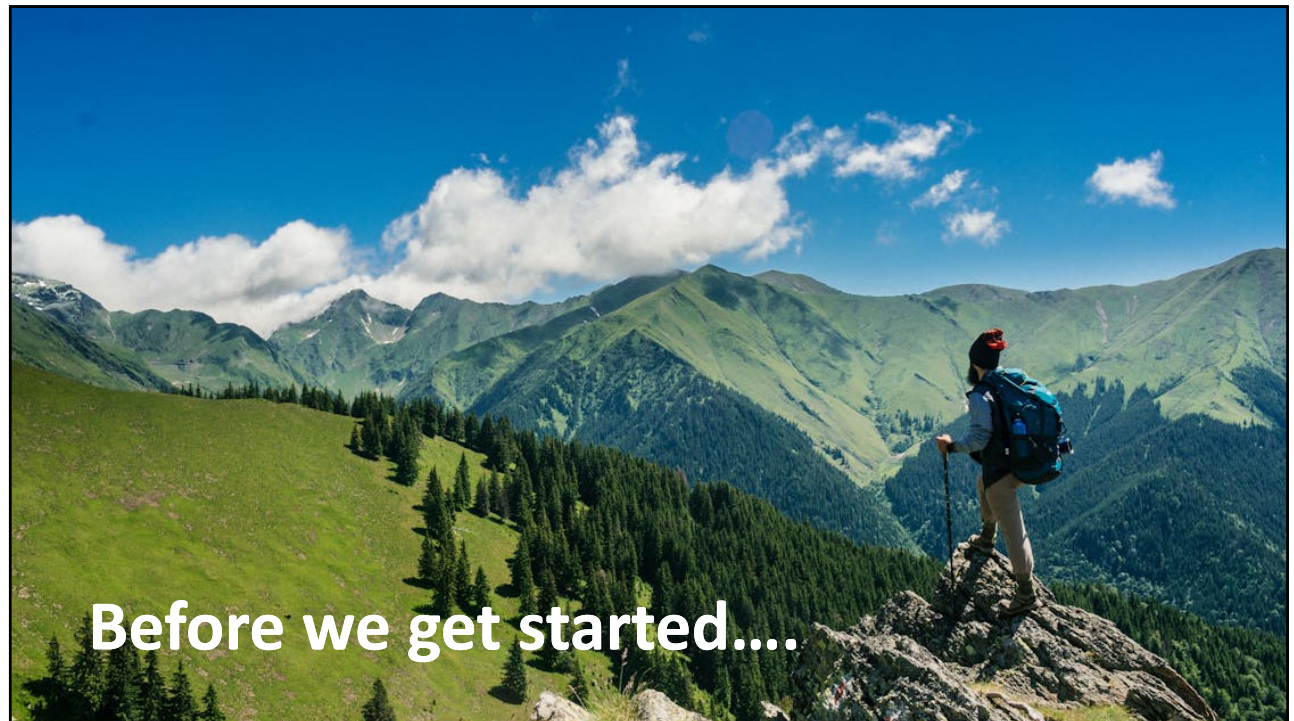
- This law prohibits the sale of merchandise below cost, aiming to prevent **deceptive advertising** and **unfair competition**.
- The **minimum markup** for alcohol is set at **3% for wholesalers** and **6% for retailers**.
- Important resources:
  - [DATCP's Guide to the Unfair Sales Act](#)
  - [Legislative History on Minimum Markup](#)

# From Taps to Tokes: A Guide to Wisconsin's Evolving Alcohol and Hemp Laws (and Other Legal Oddities)

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Before we get started....

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## Agenda



Overview of the Major Alcohol Changes  
in Wisconsin



Overview of Hemp & Vapor Products  
Changes



Other Oddities – Fair Dealership,  
Minimum Markup and more

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## Alcohol Changes: Changes at the Department of Revenue

- Originally, alcohol permits and applications were handled by the same agents who oversaw vapor products, motor fuel refunds, among other activities.
- New law creates a Division of Alcohol(ic) Beverages at the DOR which will handle permit applications and administration of the new statute.
  - Time to build new relationships!
- No new funding provisioned, that we know of.
- Rulemaking is underway.

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## Alcohol Changes: List of Impactful Changes

- Earlier winery closing hours removed – hours harmonized at 2a
- Licensed bartenders required (Learn2Serve for everyone!)
- All alcoholic beverage manufacturers can have more than one tasting room (depending on production volume)
- Limit on winery and distillery production locations eliminated



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## Alcohol Changes: List of Impactful Changes cont.

- No municipal permit required for wineries (Class B – Wine eliminated)
- Breweries, brewpubs, and out of state shipper fees now \$500 (previously \$0)
- Brewpubs can produce and self-distribute double their previous limit
- Conforms definition of “Fermented Malt Beverage” to federal definition (seltzer!)



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## Alcohol Changes: List of Impactful Changes cont.

- Class C License – No Restaurant Requirement
- Class B - Batching for 48 hours is allowed!
- “Re-Corking” no longer required



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## Alcohol Changes: List of Impactful Changes cont.

Statewide Operators  
Permit

Countywide License  
Transfers



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## Full Service Retail: Production Requirements

Number of FSR Outlets	Brewers § 125.29(7)	Wineries § 125.53(3)	Distillers § 125.52(4)
1	250 to 2,500 bbl	1,000 to 4,999 gal	1,500 to 4,999 liters
2	2,500 to 7,499 bbl	5,000 to 24,999 gal	5,000 to 34,999 liters
3	>=7,500 bbl	>= 25,000 gal	>= 35,000 liters

- Lookback period of 3 years for production levels
- FSR's are in addition to the production premises
- FSR's are not subject to liquor licenses – i.e. they are exempt from quota.
- FSR is capped at 3 external \ outside locations (not counting the production premises), and applies across all permits (can't double dip\double count if you have more than one permit type)



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## Approval of Full Service Retail (“FSR”) Locations

- § 125.04(3)(k) – Approval of FSR by Department
  - AB-105 – DOR Form for Approval
- Approval of FSR by Municipalities
  - Municipal approval is *still required for at an off-production premise location – not for the production premises!*
  - Breweries – § 125.29(7)(d)
  - Wineries – § 125.53(3)(d)
  - Distiller/Rectifier – § 125.52(4)(d)



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## Municipal Approval of FSR: Logistics

- Producer may not commence sales at FSR at an off-production premise location without approval from municipality. Municipal approval\signature required on the forms submitted to DOR.
- Two sections for a municipal approval:
  - Approvals shall be based upon the same standards and criteria as established by ordinance as other retail licenses.
  - May not impose requirements or restrictions not imposed on other retail licensees.
- Municipalities may limit sale of alcohol beverages of type not the same as FSR producer (i.e. restrict liquor at a brewer FSR)



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## Changes for Wedding Barns

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## Changes for Wedding Barns

- Wedding Barns are now defined as “public places” subject to municipal licensing requirements
- Codifying what the DOR would have said if wedding barn operators called and asked
- 2 Year Delayed Effective Date
- Pending Lawsuit from WILL challenging Wedding Barn provisions
  - Not challenging quota system

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## Public Place Definition – § 125.09(1)

- New Definition effective 1-1-2026
  - Explicitly includes venues for rent to public for events (i.e. wedding barns)
  - Expanded exclusions from “public place”
    - Hotel/motel/B&B rooms
    - Vacation Rentals
    - Campsites
    - Parking lot, driveway or yard where vehicles are parked for sporting events.
    - Professional football or baseball districts

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## Changes for Wedding Barns: Options

- Options for Wedding Barn Clients
  - Class B Beer & Class C Wine
  - Quota Exception for Existing Wedding Barns (time limited)
  - “No Sale Event Venue” Permit creates an exception to municipal licensing requirement
    - 6 events per year
    - Alcohol cannot be sold at the event; no admission fees allowed
  - License Transfer
  - Encourage municipality to confirm quota and reserve licenses

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## Hemp & Vapor Products Changes

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## Hemp & Vapor Products: Hemp Production

- USDA oversees hemp production permits
- Application process is relatively straightforward
- Timing on FBI background checks
- No separate processing permit required
- DATCP oversees truth in labeling

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## Hemp & Vapor Products: Vapor Distributor

- Needed for all manufacturers of vapor products
- Where excise tax emanates from:
  - The tax applies to liquids or other substances that function as part of a vapor product or are sold with a vapor product as one packaged item. The tax does not apply to equipment and devices that are not sold with a liquid or other substance. The tax also does not apply to liquids that are not packaged and sold with equipment that is in whole or in part a vapor product. (\$0.05\ml)

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## Hemp & Vapor Products: Vapor Distributor

- DOR form for application is: CTP-129
  - <https://www.revenue.wi.gov/dorforms/ctp-129.pdf>
  - Issued by the DOR
  - Not technically needed for each location
- Most clients that had this permit were either:
  - A) manufacturers selling their vapor products to retailers or;
  - B) retailers purchasing vapor products for their shop from outside of the State, and needed to pay state excise tax on those purchases (prior to sale at retail)

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## Hemp & Vapor Products: Vapor Retailer

- DOR form for application is: CTV-100
  - <https://www.revenue.wi.gov/dorforms/ctv-100f.pdf>
  - Issued by the Municipality; one for each location
- New application this year, as applied to vapor products
  - (b) "Electronic vaping device" means a device that may be used to deliver any aerosolized or vaporized liquid or other substance for inhalation, regardless of whether the liquid or other substance contains nicotine, including an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Electronic vaping device" includes a component, part, or accessory of the device, and includes a liquid or other substance that may be aerosolized or vaporized by such device, regardless of whether the liquid or other substance contains nicotine. "Electronic vaping device" does not include a battery or battery charger when sold separately. "Electronic vaping device" does not include drugs, devices, or combination products authorized for sale by the U.S. food and drug administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
  - If a client already has this permit for cigarettes, a new one is not required

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## Electronic Vaping Device Registry

- Every manufacturer of an electronic vaping device sold in the state, either directly by the manufacturer or through a distributor, wholesaler, retailer or similar intermediary, must do the following no later than July 1, 2025:
  - Certify to DOR that the manufacturer will comply with requirements contained in the act and either of the following:
    - The manufacturer has received marketing authorization or similar order from the U.S. FDA pursuant to federal law.
    - The electronic vaping device was marketed in the United States on or before August 8, 2016, the manufacturer submitted a pre-market tobacco product application for the electronic vaping device to the U.S. FDA pursuant to federal law on or before September 9, 2020, and the application either remains under review by the U.S. FDA or a final decision on the application has not otherwise taken effect.
  - Submit to DOR, in the manner prescribed by the department, a form that separately lists each of the manufacturer's electronic vaping devices that are available in this state. Together with this form, and in each year thereafter, the manufacturer must also submit a payment of \$500 for each device listed on the form

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## Electronic Vaping Device Registry

- Based on the State's definition of "Electronic Vaping Device" – CBD vapor devices\carts. are subject to this list requirement.
- Given the FDA's position on CBD vapor products...the future looks...questionable

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## FDA Position on CBD\THC in Food

- CBD is not approved by the FDA as a food ingredient; “adulterated food”
- How are so many products available for sale?
  - Federalism
  - Farm Bill 0.3% “loophole”
  - Non-Uniform Enforcement



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## A Mathematical Example

For 5 mg of Substance X, the calculation follows the same pattern.

Set up the equation:

$$\frac{5}{x} = \frac{0.3}{100}$$

Cross-multiply:

$$\begin{aligned} 5 \times 100 &= 0.3 \times x \\ 500 &= 0.3x \end{aligned}$$

Now, divide by 0.3:

$$x = \frac{500}{0.3} = 1666.67 \text{ mg}$$

To convert to grams:

$$\frac{1666.67}{1000} = 1.67 \text{ grams}$$

So, for 5 mg of Substance X, you would need **1.67 grams** of dissolved solids.



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## Two Views on the 0.3% Threshold

- Plant is Compliant = Everything is Compliant
- Plant is Everything = Everything Must be Compliant
  - Based on Farm Bill and Possession Authorization Statute ([Wis. Stat. Sec. 961](#))

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## Other Oddities

- Fair Dealership
- Minimum Markup  
Law/Unfair Sales Act



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## Fair Dealership

- Essential Reading from WisBar:
  - <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=97&Issue=3&ArticleID=30277>
- Protects dealers and only allows manufacturers who have appointed those dealers to distribute and sell their products to terminate the relationship for "good cause."
  - Special rules for Brewery and Spirits distributors
- Brass tacks
  - Understand the Wisconsin caselaw on what constitutes a "independent sales rep." vs. "dealer"
  - Community of interest factors weigh heavily
  - Easy to become a dealer without meaning to – which could be great for a "dealer" but an unwelcome surprise for a manufacturer

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## Minimum Markup Law/Unfair Sales Act

- Essential Reading:
  - [https://datcp.wi.gov/Pages/Programs\\_Services/UnfairSalesAct.aspx](https://datcp.wi.gov/Pages/Programs_Services/UnfairSalesAct.aspx)
  - <https://cdm16831.contentdm.oclc.org/digital/api/collection/p16831coll4/id/212/download>
- Commonly referred to as the "Minimum Markup Law," the Unfair Sales Act prohibits selling items of merchandise below cost. The law states that "the practice of selling [...] below cost to in order to attract patronage is generally a form of deceptive advertising and an unfair method of competition in commerce." See [Wis. Stat § 100.30, the Unfair Sales Act](#) and [Wis. Admin. Code ch. ATCP 105, Sales Below Cost](#).
- Minimum Markup for Alcohol: 3% for Wholesalers; 6% for Retailers

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