



**To:** Alliance for Wisconsin Youth (AWY) Coalitions

**From:** Alexandra Johns and Felice Borisy-Rudin, JD, PhD

**Date:** 07-11-2023

**Re:** 2023 AB 304/2023 SB 332

**Issue:** How would 2023 SB 332 change the alcohol laws in Wisconsin and increase the availability and production of alcohol across the state?

**Brief Answer:** 2023 SB 332 proposes to overhaul the alcohol laws in Wisconsin.<sup>1</sup> If enacted, the bill would change Wisconsin laws for the production, regulation, and distribution of alcohol beverages and change how alcohol is regulated and oversight is provided. This memo outlines ten significant changes this bill creates for alcohol regulation. SB 332 would allow for greater production of alcohol beverages in the state, increasing the accessibility of ready-to-drink cocktails, fermented malt beverages, wine, and intoxicating liquors. It would extend closing hours for licensed premises, increase production arrangements, and increase available retail sites for those holding permits.

The proposed legislation also creates a new division within the Department of Revenue (DOR) for alcohol beverage regulations, enforcement, and production called the Division of Alcohol Beverages (Division). The bill would require 10 agents but provides no specific funding for the Division.

**Summary of 10 Major Proposed Changes:** SB 332 would implement the following changes:

1. Creation of Division of Alcohol Beverages (Division): Creates a new division within the DOR entitled the Division of Alcohol Beverages (Division). This Division would have its own police powers. It would enforce alcohol laws within the state and be able to make rules regarding alcohol. The Division would also have enforcement, legal services, education, and community outreach ability. Members of the Division may not be employed or have financial interests in any alcohol beverage industry or business regulated by the Division. There would be at least ten field agents dedicated to enforcement for this division. Currently, there is no additional funding for these agents, this rearrangement by shifting personnel could leave only one agent for

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<sup>1</sup> 2023 AB 304 was passed in the State Assembly on June 21, 2023, in 90-4 vote. Currently the two bills are identical except for one amendment made in the Assembly: Amendment 2 added to Sec. 3G crossing out "tax investigator" and replacing with "a special agent."

tobacco enforcement, which could lead to the nonenforcement of settlements coming into Wisconsin and tobacco regulations going unenforced.<sup>i</sup>

2. Changes Definition of Beer: SB 332 would create a more expansive definition of “Fermented Malt Beverages” by adopting the federal definition found in [27 CFR 25.11](#). This definition states: “Any beverage made by the alcohol fermentation of an infusion in potable water of barley, malt, and hops, without or without unmalted grains or decorticated and degerminated grains or sugar, containing 0.5% or more of alcohol by volume.” This definition does not require malt but allows for substitutes such as corn or sugar. This means that ready-to-drink (R2D) cocktails could be sold as fermented malt beverages (beer) in Wisconsin. This would also place R2D at the lowest taxable level for alcoholic beverages.<sup>ii</sup> For example Ohza sells ready to drink mimosa’s which contains filtered water, wine, and orange juice. No malt is contained within the drink, but it is classified as a fermented beverage under the federal definition, not wine which is taxed at a higher rate. Further, White Claw and some flavors of Four Loko do not contain malt but are classified as fermented malt beverages under the federal definition.

3. Full-Service Retail: The bill would create a new category of retail alcohol outlet called “Full-Service Retail” that allows for the sale of beer, liquor, and wine for on-premises consumption or sale for off-premises consumption in a closed container. This is a significant change to Wisconsin’s alcohol law which has always separated licenses and permits based on whether the premises sold beer or liquor. The “full-service retail” permit would permit all types of alcohol to be sold. This permit is available to breweries, wineries, manufacturers, and rectifiers.<sup>iii</sup> Holders of this permit are allowed up to three locations in addition to the production premises. The person seeking this permit must apply to the Division for the permit and receive “approval” from the municipality in which the outlet is located.<sup>iv</sup> This approval from the municipality would be “based on the same standards and criteria that the municipality has established by ordinance for the evaluation and approval of retail license applications.”<sup>v</sup> Essentially, the full-service retail permit is similar to a Class B combination license, but it is a state permit that also needs approval by the municipality.

4. No-Sale Event Venue Permit:

- a. Proposed to create a regulation for venues such as wedding barns, that rent places for people to have parties in which alcohol is consumed. No-Sale Event Venue Permits would be limited to a maximum of six times per year and one time per month and would not allow the venue to sell or provide the alcohol.<sup>vi</sup>
- b. However, the bill would also provide an option for certain venues, based on past performance, to apply to the Division for a certificate excepting them

from the “Class B” liquor license quota in their municipality. The certificate would allow a venue to apply for and receive a combination of the Class “B” fermented malt beverage (beer) license and the “Class B” liquor license. This has the potential to increase the number of licensed alcohol locations.<sup>vii</sup>

5. Statewide Operator’s Permit: SB 332 creates a statewide operator’s permit that would be valid in all the municipalities in Wisconsin. The DOR would issue this permit, meaning that bartenders, waiters, cashiers would be allowed to acquire a statewide permit and bypass applying for and receiving a license in each municipality where they work.<sup>viii</sup> An individual would be able to apply for an operator’s license from the municipality, a permit from the state, or both.
6. Wine-Shipping:
  - a. The bill creates a fulfillment house permit for all fulfillment house locations involved in the shipment of wine to individuals in Wisconsin. The permit includes requirements that the wine be shipped directly to individuals with a conspicuous label stating that the package contains alcohol, a person 21 or older must sign for delivery, and the permit holder must provide the Division with monthly reports tracking manufacturers, consignors, consignees, date of shipment, and type and quantity of alcohol shipped.<sup>ix</sup> This allows for better tracking of the alcohol shipped into and within the state to be sent to the Division and making sure shipping of wine is being given to those 21 and older.
  - b. There is also a common carriers permit created for the transportation and delivery of wine into Wisconsin on behalf of a permitted direct wine shipper or fulfillment house. Like the fulfillment house permit, a monthly report tracking the sellers, the buyers, and the amount and types of alcohol is required.<sup>x</sup> Similarly this created a system for increasing tracking of alcohol being delivered to individuals around the state and how much is being moved and delivered. This will be reported to the Division.
7. Safe Ride Program: The safe ride program surcharge would be increased from \$50 to \$75 for a person who is convicted of operating a vehicle while under the influence of an intoxicant, prohibited alcohol concentration, or restricted controlled substance (OWI / PAC / RCS). The bill would also require that each municipality provide Class “B,” “Class B,” and “Class C” license holders with information about the safe ride program at the time of issuance of their license.<sup>xi</sup>
8. Blurring of Three-Tier System: Alcohol producers, distributors and retailers are defined and currently are prohibited from having interest in a different tier:

- a. Change the definition of a small manufacturer: (1) distilleries would be considered small manufacturers if they produce less than 50,000 gallons of intoxicating liquor (250,000 bottles equaling more than 4.2 million standard drinks);<sup>xii</sup> (2) wineries would be small manufacturers if they produce 50,000 gallons of wine in a calendar year (about 250,000 bottles equaling almost 1.3 million standard drinks – double the previous limit);<sup>xiii</sup> and (3) Brewpubs would be able to produce double the number of barrels, at 20,000 in a calendar year.<sup>xiv</sup> With this increase in production, the cost of alcoholic beverages may decrease as there would be more supply. This could make alcohol beverages more affordable.
- b. Brewpubs would also be able to sell to other brewpubs and serve other brewpubs beverages on their premises. This would blur the three-tier system by cutting out the distributors and having the producers sell directly to the retailers.<sup>xv</sup>

9. Drinking While Axe-Throwing: Under current law, axe-throwing facilities are not explicitly allowed to hold a Class “B” License (although they might qualify as a “recreation premises”). The bill defines axe-throwing facilities as “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.”<sup>xvi</sup> The bill would also explicitly allow for axe-throwing facilities to hold Class “B” and “Class B” licenses. Further, while in general underaged people are not allowed in bars without a parent, guardian, or spouse, this bill would create an exception that it would not be a violation of the minimum legal drinking age laws for an unaccompanied underaged person or child to be on the premises of an axe-throwing facility that serves alcohol.

10. Political Convention: The bill would allow for later closing hours in southeast Wisconsin during a Political Conventions. The bill would designate the following counties for the later closing hours: Kenosha, Racine, Walworth, Rock, Milwaukee, Waukesha, Jefferson, Dane, Ozaukee, Washington, Dodge, Columbia, Sheboygan, and Fond du Lac County. Usually Class “B” and “Class B” premises much close at 2 am on weekdays and 2:30 am on weekends. However, Class “B,” “Class B,” and “Class C” license holders, in the designated southeast regions, may stay open until 4 am during the Republican National Convention.<sup>xvii</sup>

For more information, there is a detailed explanation of the contents of 2023 SB 332 at the beginning of the bill.

**Economic Effects:** In simply economic terms, with more supply of alcohol and a reduction of price, more alcohol consumption will ensue.<sup>xviii</sup> Similarly, a price decrease in alcohol beverages increases the consumption of heavy drinking and heavy episodic drinking in adults.<sup>xix</sup> A

decrease in price may also lead to an increase in rates of suicide, traffic injuries, and sexually transmitted diseases among young people.<sup>xx</sup>

**Conclusion:** Some parts of 2023 SB 332 have the potential to improve the regulation of sales of alcohol if they were funded. The bill helps clarify some definitions. Other parts of the bill would increase the availability of alcohol in Wisconsin and increase production, with the likelihood of leading to increased consumption, and increased injury and illness due to alcohol use.

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<sup>i</sup> 2023 SB 332 Sec. 1-3, modifying Wis. Stat. §§ 15.433(2), 19.42(13)(q), and 20.923(4)(c)(7).

<sup>ii</sup> 2023 SB 332 Sec. 6, modifying Wis. Stat. § 125.02(6).

<sup>iii</sup> 2023 SB 332 Sec. 204, creating Wis. Stat. § 125.52(4).

<sup>iv</sup> 2023 SB 332 Sec. 32, creating Wis. Stat. § 125.04(3)(k). The bill used the term “approval” in reference to the municipal decision-making process for this permit and links the process for approval to the existing process that the municipality has for granting and issuing licensing. However, many municipalities do not have an ordinance specifically establishing the standards and criteria for granting and issuing retail license applications.

<sup>v</sup> 2023 SB 332 Sec. 204(3).

<sup>vi</sup> 2023 SB 332 Sec. 96, modifying Wis. Stat. § 125.09(1).

<sup>vii</sup> 2023 SB 332 Sec. 96(5), creating 125.24.

<sup>viii</sup> 2023 SB 332 Sec. 89, modifying Wis. Stat. § 125.175.

<sup>ix</sup> 2023 SB 332 Sec. 95, creating Wis. Stat. § 125.23.

<sup>x</sup> 2023 SB 332 Sec. 94, creating Wis. Stat. § 125.22.

<sup>xi</sup> 2023 SB 332 Sec. 49, 299, modifying Wis. Stat. §§ 125.045(3)(b), 346.657(1).

<sup>xii</sup> 2023 SB 332 Sec. 226, creating Wis. Stat. § 125.545(1)(cm).

<sup>xiii</sup> 2023 SB 332 Sec. 227, modifying Wis. Stat. § 125.545(1)(d).

<sup>xiv</sup> 2023 SB 332 Sec. 141, modifying Wis. Stat. § 125.295(1)(a).

<sup>xv</sup> 2023 SB 332 Sec. 142-143, modifying Wis. Stat. § 125.295(1)(fm),(g).

<sup>xvi</sup> 2023 SB 332 Sec. 4, creating Wis. Stat. § 125.02(1g).

<sup>xvii</sup> 2023 SB 332 Sec. 301(4).

<sup>xviii</sup> Thomas F. Barbor et. al., *Alcohol: No Ordinary Commodity*, Oxford University Press, Ed.3, 104 (2023).

<sup>xix</sup> *Id.* 129.

<sup>xx</sup> *Id.*