



# WISCONSIN ALCOHOL POLICY

## Guide to laws and regulations for restaurant owners

### Basic laws

Wisconsin's legal drinking age is 21. HOWEVER, an underage person may legally drink alcohol if accompanied by his or her parent, legal guardian, or spouse of legal drinking age. However, you may establish your own policy of refusing service to any underage person even when a legal guardian accompanies them. If you chose to implement a "no service" policy, it must be uniformly enforced, with no exceptions.

A business with a license to serve alcohol must have one of the following people present during all business hours:

- The liquor license licensee.
- An adult member of the licensee's immediate family. (The family member must be at least 18 and actually living in the licensee's household.)
- The corporation agent named on the liquor license (Family members of the agent may not supervise alcohol sales in the agent's absence unless they have operator's licenses.)
- The holder of an operator or manager's license.
- The holder of a provisional operator's license.

Employees who serve alcohol beverages without an operating license must be at least 18 and under the immediate supervision of one of the people listed in the above point. "Immediate supervision" means the person qualified to supervise alcohol sales must be in the same room or area and able to watch the unlicensed person's activities.

To obtain an operator's license, you must be at least 18 years old and successfully complete a state-approved responsible alcohol service class.

It is illegal to furnish alcohol beverages to an intoxicated person. The penalty for this violation is a fine of \$100 to \$500, imprisonment for not more than 60 days, or both.

### Purchasing Alcohol from Wisconsin Wholesaler

If you hold an alcohol beverage license, the only alcohol beverages allowed on the premises are those purchased by your establishment from a permitted Wisconsin wholesaler. You must have invoices from the wholesaler showing which products were purchased from the wholesaler. There is NO provision in state statutes that allows a restaurant/bar to purchase alcohol beverages from a liquor store, grocery store or other restaurant/bar. Every licensed retailer must keep paper or electronic copies of all purchase invoices for alcohol beverages on the licensed premises for two years from the date of the invoice. Invoices should be kept in chronological order and be available for inspection during all reasonable hours. (sec. 139.11(1), Wis. Stats.)

### Corkage Fees

Wisconsin alcohol beverage law does not permit "corkage fees." These fees, charged by restaurants, allow patrons to carry in their own alcohol beverages for consumption on the restaurant premises. If the restaurant does not have an alcohol beverage license, consumption of alcohol beverages is prohibited. The restaurant owner can be criminally charged for allowing illegal consumption on the premises. Although you might see this in other establishments, it is illegal to have customers bring in their own alcohol!

Questions? Ask WRA: 608.270.9950 or [askwra@wirerestaurant.org](mailto:askwra@wirerestaurant.org)

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## **Giveaways**

Giving away alcohol beverages or using any other device to evade the law relating to its sale is illegal. Examples of these illegal transactions at unlicensed premises include:

- A "free" drink with a meal
- A cover charge where mix is furnished at a price with "no charge" for liquor
- A "free" bottle of liquor tied to the sale of some other item

Violators may be fined not more than \$10,000 or imprisoned for not more than nine months, or both.

## **Payment for Alcohol Beverages**

A licensee may only buy liquor or beer for cash or on credit terms for a period not to exceed:

- Beer - 15 days
- Liquor - 30 days

A licensee in debt to a wholesaler beyond the above time periods may not purchase alcohol beverages from the wholesaler. A person may not be issued a license if he or she exceeds these limits.

## **Nonalcoholic Beverages**

Beverages that contain less than 0.5% alcohol by volume are not alcohol beverages regulated by ch. 125, Wis. Stats. Therefore, nonalcoholic (NA) "beer," and mocktails may be sold in the same manner as water and sodas regardless of age.

These beverages should not be confused with those labeled "low alcohol" (LA), which generally contain 3.2% alcohol, and are regulated by ch. 125, Wis. Stats.

## **Cocktails to Go**

Wisconsin has a law that allows restaurants and bars to safely sell craft cocktails and wine by the glass to customers for carryout. The law went into effect on Sunday, March 28<sup>th</sup>, 2021.

Remember that cocktails sold to-go must be in a container with a tamper evident seal. "Tamper-evident seal" means a device or material that is used to securely and fully close off a container, with no perforations, in such a manner that access to the contents of the container cannot be gained without showing evidence of tampering. This means a restaurant cannot put a cocktail in a plastic cup with a lid with a straw hole. WRA strongly urges you to securely seal cocktails with heat seal bands, strong "deli" style tape/stickers or invest in jars and pouches specifically created for to-go beverages that need to be sealed. Pouches may not have holes for straws. There is no limit to the amount an establishment can sell to one person.

## **Recorking Wine Bottles to Go**

Wisconsin Statutes governing alcoholic beverages actually allows restaurants to re-cork a single bottle and send it home with you. Wis. Stat. Sec. 125.51(3r) permits holders of Class B or class C liquor licenses to sell a bottle of wine for consumption both on and off the premises. You must meet the following criteria:

1. The premises is a restaurant that also operates under a Class B or Class C license;
2. The purchaser of the wine orders food to be consumed on the premises;
3. The restaurant provides a dated receipt that identifies the purchase of the food and the bottle of wine;
4. The restaurant reinserts the cork into the bottle to the point where the top of the cork is even with the top of the bottle;
5. The cork is reinserted outside of the hours of 12 am to 6 am

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## Frequently Asked Questions

**Question:**

I usually supervise the bar in our restaurant, but sometimes the kitchen gets swamped, and I go back to lend a hand. I have an employee who stays up front and supervises the bar while I'm in the kitchen. Is this okay? He doesn't have an operator's license.

**Answer:**

No. Either a licensed bartender or the agent named on the establishment's liquor license must be in the bar supervising the sale of alcohol at all times. If you are in the kitchen, you aren't supervising. The employee must be within your direct sight.

**Question:**

I own a bar and grill. If teenagers come into my business without their parents, can I serve them food?

**Answer:**

That depends -- is your business primarily the bar or the grill? If you are primarily a bar, no underage person is allowed unaccompanied in your establishment. If your main business is that of a restaurant, customers under 21 can come in by themselves to eat.

If you do serve meals to underage patrons, you must still try to keep them as far away from the bar as possible. If your bar and dining areas are separate rooms, you should allow them in the dining room only. If your establishment is one big area, you should serve the teenagers at a table far from the bar and not at the bar counter itself.

How do you know if your establishment is primarily a bar or restaurant? Generally, gross sales are the determining factor. If more than 50 percent of your gross sales come from alcohol, your business will probably be considered a bar; if more than 50 percent of gross sales come from food, you will probably be seen as a restaurant. However, this is not always so clear. Other factors, such as how much physical space is devoted to alcohol versus food sales, can be considered. If your business did a lot of off-premises catering, but most of your on-premises sales were alcohol, you might be considered a bar even if your gross sales were more than 50 percent food.

**Question:**

Recently an older couple came into our restaurant with their teenage granddaughter. They wanted to buy her a glass of wine with dinner. Was it legal to serve her?

**Answer:**

No. Wisconsin law says you may serve an underage person only if they are accompanied by a parent, legal guardian, or legal-age spouse. A grandparent, aunt, uncle, brother, sister, etc., cannot legally give you permission to serve someone who is underage.

**Question:**

What is my legal liability if a person who drinks at my restaurant later gets into a drunk driving accident?

**Answer:**

It is against the law in Wisconsin to serve alcohol to a person who is intoxicated. If you serve someone who is intoxicated, you can be held criminally liable. The penalty for this violation is a fine up to \$500 and/or imprisonment for up to 60 days.

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However, in Wisconsin you cannot be held civilly liable if someone you served hurts himself or herself (or someone else) while intoxicated. What does this mean? It means if someone gets hurt in a drunk driving accident, nobody can bring a multi-million dollar lawsuit against you because the person who caused the accident was drinking at your bar or restaurant. This is not the case in every state. Minnesota and many other states have what are called “dram shop” laws. This means bars and restaurants can be held civilly liable if someone they serve has an accident. Consequently, liquor liability insurance in these states can be incredibly expensive. WRA fought hard to keep dram shop laws out of Wisconsin.

One important note: if the person you were serving was underage, you can still be sued by a third party if that underage person hurts someone else while he or she is intoxicated.

**Question:**

Where can I learn more about alcohol laws?

**Answer:**

The Department of Revenue’s Wisconsin Alcohol Beverage and Tobacco Laws for Retailers (Publication 302) is a very valuable resource! Visit [www.revenue.wi.gov/pubs/pb302.pdf](http://www.revenue.wi.gov/pubs/pb302.pdf) (or just search Publication 302)