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Enforcement of Laws Prohibiting Alcohol Sales to Intoxicated Patrons (Wisconsin)

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Prohibiting Alcohol Sales
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This document was written by Maria G. Carmona with the National Center for Alcohol Law Enforcement (NCALE). NCALE is a project of the International Institute for Alcohol Awareness at the Pacific Institute for Research and Evaluation.

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Introduction

Overservice of alcohol to patrons of licensed alcohol establishments can create serious problems for a community and significantly affect quality of life. Excessive consumption of alcohol leads to "calls for service" for a wide variety of problems, including motor vehicle crashes and fatalities, assaults, alcohol poisoning, and disorderly conduct. Indeed, studies have shown that up to 50 percent of persons driving under the influence of alcohol had their last drink at a licensed establishment¹. Intoxication can be controlled at the level of the licensed outlet through active enforcement of existing laws that specifically prohibit alcohol sales to intoxicated persons.

This document examines the problem of alcohol sales to intoxicated persons and provides information about enforcement strategies designed to counter this illegal behavior. It begins with a brief review of the research on the topic and an overview of relevant Wisconsin state law. Following these introductory materials is a practice guide for law enforcement agencies and staff, focusing on problem establishment identification and both proactive and reactive responses to problem establishments. The guide includes a discussion on the types of evidence necessary to obtain successful prosecutions of violations. The conclusion provides a summary of the key guidance points articulated throughout the document.

Research on Alcohol Sales and Service to Intoxicated Persons

Nearly every state prohibits sales and service of alcohol to obviously intoxicated patrons². The limited research available suggests that compliance rates are low among retail establishments. One study set in 11 communities in a large Midwestern metropolitan area found that 79 percent of alcohol establishments sold alcohol to patrons who appeared obviously intoxicated. Such sales were higher among establishments that sell alcohol for off-premise consumption (83 percent) than among establishments that sell alcohol for on-premise consumption (76 percent).³

Another study based in Washtenaw County, Michigan examined the effects of widely publicized enforcement of sales to intoxicated laws. The multi-faceted intervention consisted of advance publicity about upcoming enforcement, training for bar and restaurant staff, active enforcement, and citations for violations. Researchers measured compliance before, during, and after the intervention. Refusals of service rose from approximately 18 percent prior to the intervention to a peak of 54 percent after the first three months of implementation. Significantly, the percentage of impaired drivers arrested after leaving bars and restaurants declined from 32 percent to 23 percent during the same period. Refusals of sales decreased to 47 percent six months after the intervention and 41 percent after a year, but these refusal rates were still significantly higher than the baseline rate.⁴

An Australian study examined the relationship between enforcement-led efforts and alcohol-related harm in New South Wales.⁵ Establishments identified as “place of last drink” by individuals apprehended for alcohol-related incidents (e.g., drunk driving, domestic violence, assault) were randomly assigned to receive a multi-pronged intervention. Intervention establishments received feedback concerning incidents associated with their establishments, audits of responsible beverage service (RBS) practices, general assistance, and guidance for improving service practices, and RBS training. Following the multi-pronged intervention, the number of alcohol-related incidents associated with the intervention group of establishments decreased 36 percent

compared to a 21 percent decrease for the control group of establishments. The results clearly demonstrated that enforcement efforts focused on alcohol serving practices could have a large impact on reducing crime.

Wisconsin is one of 23 states that does not prohibit "happy hours" and drink specials, although research clearly demonstrates that such sales practices encourage over-consumption of alcohol and are associated with higher rates of drinking and driving.⁶ The existence of reduced priced alcohol sales in Wisconsin suggests that enforcement of laws that prohibit alcohol sales to intoxicated persons would be particularly important vis-à-vis retail establishments that offer drink specials.

Wisconsin State Law on Sales to Intoxicated Persons

Wisconsin state law expressly prohibits alcohol sales to intoxicated persons.* Violations of the law can result in criminal penalties for any person who violates the law. Criminal penalties may include a fine of no less than \$100 and no more than \$500 and/or arrest and imprisonment for not more than 60 days in jail. Alcohol license holders of retail establishments that violate the law are subject to administrative penalties in addition to any criminal penalties imposed on employees who serve or sell to intoxicated persons. Licensees may have their license revoked or suspended, may be subjected to a fine, and may have their application for license renewal denied. Violations may also lead to a finding that the retail establishment is a public nuisance, leading to additional penalties, including possible closure.

Local law enforcement agencies have the authority to enforce laws prohibiting alcohol sales to intoxicated persons and to report violations to both licensing and criminal justice officials for adjudication and possible imposition of administrative and criminal penalties. Criminal complaints should include information about the time and location of the sale and a brief statement of the facts showing that the sale was in violation of the state statute. Criminal complaints are deemed a misdemeanor charge and are adjudicated in circuit court when the complaint pertains to the state statute. A

criminal complaint is adjudicated in municipal court when it pertains to a similar local ordinance.

State law also specifies that any resident of the state who believes that a licensed alcohol establishment sold alcohol to an intoxicated patron may file administrative complaint with the clerk of the municipality in which the licensed establishment is located. The municipality will, in turn, issue a summons to the licensee, instructing the licensee to appear before the municipal governing body. The person who filed the complaint and the licensee may appear at the hearing, produce witnesses, cross-examine witnesses, and be represented by counsel. If the allegations on the complaint are found to be true, the license may be suspended for not less than 10 days and not more than 90 days.

A “duly authorized employee” of the state Department of Revenue may also file a complaint, but this complaint must be filed with the clerk of the circuit court. The clerk of the court will issue a summons, and a subsequent hearing on the matter will take place before the court without a jury. If the allegations on the complaint are found to be true, the license may be suspended for not more than 90 days or revoked.

Local governments may enact ordinances regarding alcohol beverage laws provided they are not in conflict with state statutes. This includes prohibitions on “happy hours” and drink specials.

Identifying Problem Establishments

Perhaps the most common enforcement strategy to identify violations of sales to intoxicated patrons involves the use of surveillance and undercover agents. In many states, these investigations are often initiated as a result of complaints filed with the local police department. That is, complaints are not filed with clerk of the municipality (the procedure specified for sales to intoxicated persons violations outlined in state law) but, rather, complaints are filed with the municipal police department in response to fights or other disturbances in and around establishments. A few state agencies also identify violations as a result of walk-through inspections or undercover operations. Problem establishments can also be identified through cold crime reports

A promising strategy being implemented in several states (e.g., Utah, Washington, Oregon, Massachusetts) involves identifying the place of last drink for those arrested on driving under the influence/driving while intoxicated (DUI/DWI) charges. The collection of this information allows jurisdictions to identify and target problem establishments that may have violated or may regularly violate laws prohibiting sales to intoxicated persons.

Responding to Problem Establishments - Proactive Investigations

Proactive investigations of sales to intoxicated laws violations are designed to avoid future problems or incidents related to excessive alcohol consumption. They are planned based on previous reports or evidence of violations, and begin with outreach to the problem establishment.

In making initial contact with a problem establishment, the enforcement agency seeks to accomplish three things:

- ▶ Contact the alcohol licensee to inform him/her about the problems encountered;
- ▶ Provide information about the problems encountered, including information about state law regarding alcohol sales to intoxicated patrons and consequences for continued violations; and
- ▶ Offer solutions and assistance to address and stop the problems from recurring. Assistance should include participation in a responsible beverage service (RBS) training and educational materials for servers and patrons.

Following outreach to problem establishments, enforcement agencies should engage in monitoring establishments for future compliance. This monitoring includes:

- ▶ Routine bar checks with visible officers
- ▶ Covert undercover observation of establishments; and
- ▶ Continued collection of data related to disturbances and problems.

During both overt and covert enforcement operations, successful conviction of a violation of the sale to an intoxicated person law depends heavily on building a sound case. The following subsections pertain to the collection of evidence during proactive investigations. Evidence is collected during an observation stage and during an interactive stage. The investigator should also attend to the safety of the intoxicated individual as well as document the facts of the investigation in a written report.

Collecting Evidence - Observation

It is important to look for visible signs of intoxication in condition of eyes (e.g., bloodshot, inability to maintain eye contact), speech patterns and volume (e.g., slurring, loud), body odor (i.e., alcohol), movement (e.g., clumsiness, uneven gait), buying patterns (i.e., ordering more than one drink at a time), demeanor (e.g., boisterous, argumentative) and general appearance (e.g., soiled or disarranged clothing). Signs of intoxication can also be detected through formal evaluation such as the Nystagmus evaluation (eyes) and Rhomberg evaluation (balance and coordination), but these evaluations should only be conducted by trained law enforcement or medical personnel.

Law enforcement observation should also determine whether signs of intoxication are visible to members of the public and bar staff, and whether alcohol was sold after signs of intoxication were visible. Utilizing a common-man standard of intoxication is perhaps the most effective in proving a violation. If the average person could look at the patron and say “that person's drunk,” this information is very helpful. Effectively documenting and describing these signs of intoxication is the key to a successful prosecution.

Finally, observations should note staff reaction to intoxicated patrons as well as the reaction of the patron. It is important to record whether staff ignores intoxication, cuts off further service, asks for assistance, or takes other intervening actions, and how the patron responded to this action.

Interaction with Licensee/Manager and Patron

Should the investigator determine that alcohol was sold to an intoxicated person, he/she should identify him/herself to the licensee/

manager, explain the purpose of the visit, and ask for assistance. The investigator should then clearly state his/her observations and ask if the patron appears intoxicated. The question should be asked to the licensee/manager, server, the intoxicated person, and his/her companions.

Following the gathering of evidence regarding the various perspectives on degree of intoxication, the investigator should ask whether the patron is on medication and/or has any physical condition that would cause the appearance of intoxication. Again, the question should be asked of the licensee/manager, server, the intoxicated person, and his/her companions.

Handling the Patron Effectively

Once questions regarding intoxication have been asked and answered, the investigator should administer a breathalyzer test to determine blood alcohol content level of intoxication. The results will indicate whether further medical assistance is necessary, and if so, the investigator should call for this assistance. If it is determined that the patron is not in any medical danger, the investigator should follow their agency's policy in dealing with the intoxicated patron. This may include an inquiry about how the patron will be transported home and who will care for him/her. If it is determined that the patron can be transported home safely, the patron should be instructed to leave.

Issuance of Summons

Following actions taken to ensure the safety of the patron, the investigator should issue a criminal summons to the server or seller and an administrative summons to the alcohol licensee. Wisconsin state law allows for criminal arrest of server or seller; however, the investigator should adhere to agency policy regarding whether or not issuances of summons and arrests are desirable.

Writing a Comprehensive Report

The written report for a proactive investigation should detail all observations, including interactions with and actions of patrons, patron staff, licensee/manager, and involved staff. The report should

document any statements that corroborate intoxication. The report should frame all evidence in light of the elements of statutory violation, proving that the patron was served after showing signs of intoxication.

Responding to Problem Violations - Reactive Investigations

Reactive investigations are immediate responses lodged complaints, calls for service, and other incidents resulting in police attention. Similar to proactive investigations, the initial response entails collection of facts and evidence. The investigator should look for visible signs of intoxication (detailed above).

The investigator should then interview the licensee/manager and staff about the incident behind the complaint or call for service. The investigator will want to know if the patrons were served drinks, whether the staff refused to sell alcoholic beverages, and when the patron first appeared intoxicated.

Investigators should also interview the intoxicated patron and his/her companions. Questions should ask whether they are intoxicated, how long they have been drinking, how many drinks they have had, whether the same server served them drinks, and whether the intoxicated person has a physical limitation that would cause him/her to appear intoxicated.

Based on evidence collected to this point, the investigator will then determine whether the intoxicated patron should be transported elsewhere to receive medical attention, be allowed to return home accompanied safely by his/her companions, or transported elsewhere or in another fashion as dictated by agency policy. The investigator may also choose to arrest the intoxicated patron if his/her behavior resulted in incident spurring the complaint or call for service. At this time, a criminal summons may be issued to the license or server/seller.

Investigator should then prepare for the adjudication process, writing the type of comprehensive report discussed above.

Responding to Cold Incidents and Deaths

Reactive investigations that involve responding to a cold incident or death require that investigators collect information in order to establish a timeline of events preceding the incident or death. It is important to determine where drinking occurred, how long it occurred, and who else was present. A toxicology report or other blood alcohol test is advisable.

As with other types of investigations, it is also necessary to interview companions, the alcohol licensee, and staff as previously discussed, but additional questions regarding how much alcohol was served and manner of payment are important to ask. In addition, the investigator should also inquire as to whether or not the establishment possesses videotape that may have recorded the individual and service.

The report on any cold incident or death should establish that the subject was served after visible signs of intoxication. It will also be necessary for investigators to discuss the pending case with prosecutors.

A Final Word About Preparing for the Adjudication Process

Before proceeding to adjudication, it is advisable for the investigator be prepared to present information about the following:

- ▶ violation history of the licensee;
- ▶ history of calls for service in connection with the establishment;
- ▶ licensee cooperation with the authorities; and
- ▶ whether the staff required or was offered server training.

Summary and Conclusion

Overservice of alcohol to intoxicated patrons can result in a variety of public safety problems as well as injury and even death for the intoxicated individual. Enforcement of sales to intoxicated persons laws has tremendous potential for preventing motor vehicle crashes and fatalities, assaults, and disorderly conduct, and for

improving the quality of life in local neighborhoods all across the county.

In Wisconsin, the state law expressly prohibits alcohol sales to intoxicated persons, specifies procedures for filing criminal and administrative complaints, and stipulates sanctions for violations. Wisconsin does not prohibit retail establishments from offering “happy hours” or other reduced price drink specials, although such practices contribute to overservice of alcohol. Local governments are not prohibited from enacting similar ordinances regarding sales to intoxicated persons provided they do not conflict with state statutes. Local governments may enact ordinances regarding alcohol beverage laws provided they are not in conflict with state statutes.

Addressing establishments that sell alcohol to intoxicated patrons can occur via proactive and reactive investigations. Proactive investigations are planned based on previous reports of violations (i.e., complaints) as well as data derived from alcohol source investigations in connection with DUI/DWI cases. Proactive investigations include two components: education and enforcement. Reactive investigations are immediate responses to lodged complaints, calls for service, and other incidents requiring police attention.

Successful conviction of a violation of the sale to an intoxicated persons law depends heavily on building a sound case. A sound case includes documenting specific details about the investigation, including those derived from observation and from interactions with the alcohol licensee/manager, server/seller, intoxicated person, and his/her companions. Before proceeding to any hearing on the matter, the investigator should be aware of the any relevant history associated with the licensee, the establishment, and the staff.

Public safety problems resulting from alcohol service has received significant attention in recent years. There appears to be a greater appreciation of the role of problematic alcohol consumption in such crimes as assaults, rioting, nuisance behavior (public urination, boisterous behavior), and greater political and community support for addressing problem alcohol establishments whose sales and service practices contribute to these crimes. Enforcement of sales to intoxicated persons laws in Wisconsin would do much to improve public safety statewide.

Endnotes

¹Anglin L., Caverson, R., Fennel, R., Geisbrecht, N. & Mann, R.E. (1997). A Study of Impaired Drivers Stopped by Police in Sudbury, Ontario. Addiction Research Foundation: Toronto, Ontario; Gallup Organization (2000). Volume I: Findings, Racial and Ethnic Group Comparisons, National Surveys of Drinking and Driving, June; and O'Donnell, M.A. (1985). Research on drinking locations of alcohol-impaired drivers: Implications for prevention policies. *Journal of Public Health Policy*, 6(4):510-525.

²National Highway Traffic Safety Administration. (2005) Research Report: Preventing Over-consumption of Alcohol - Sales to Intoxicated and "Happy Hour" (Drink Specials) Laws. Available on online at <http://www.nhtsa.dot.gov/people/injury/alcohol/PIREWeb/images/2240PIERFINAL.pdf>.

³Toomy, T., Kilian, G., Fitch, O.B., Fletcher, L., and Wagenaar, A.C. (1999). Characteristics and rates of illegal alcohol sales to pseudo-intoxicated patrons. Paper presented at the American Public Health Association's 127th Annual Meeting, Chicago, Illinois, November 1999; Toomy, T. Wagenaar, A.C. Erickson, D.J., Flecher, L.A., Patrek, W., and Lenl, K.M. (2004). Illegal alcohol sales to obviously intoxicated patrons at licensed establishments. *Alcoholism: Clinical and Experimental Research* 28(5):769-774.

⁴McKnight, A. and Streff, F. (1994). The effect of enforcement upon service of alcohol to intoxicated patrons of bars and restaurants. *Accidental Analysis and Prevention* 26(1):79-88.

⁵Wiggers, J. Considine, R., Daly J., Smith, K., Sutherland, T. Walker, K., Bowman, J. Campbell, L, Burrows, S., Nicholas, C. (2001). The Linking Project: Pilot Project in the Hunter and Northern Metropolitan Policing Regions of NSW, Final Report. New South Wales, Australia: Hunter Centre for Health Advancement.

⁶Kuo, M., Weschler, H., Greenberg, P. and Lee, H. (2003). The marketing of alcohol to college students: The role of low prices and special promotions. *American Journal of Preventive Medicine* 25(3):1-8; Weschler, H., Lee, J. Nelson, T. and Lee, H. (2003). Drinking and driving among college students: The Influence of alcohol-control policies. *American Journal of Preventive Medicine* 25(3): 212-218.

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SALES TO INTOXICATED RESTRICTIONS	Law prohibiting (see excerpts below in Appendix)	Who May be Held Liable?			Definition of Intoxicated	Standard of Proof
		Non-commercial	Commercial Licensees/Employees	State store employees		
	√	√	√	N/A	Not Specified	Not Specified

CRIMINAL PENALTIES FOR SALES TO INTOXICATED	Criminal Statute #	Class of Crime	Criminal Penalty
		125.07 (2)(b)	Not Specified

Procedure			
Statute #	Arrest	Closing facility	Form of Complaint
125.14	A police officer may arrest, without a warrant, any person who violates this chapter (which includes sales to intoxicated) in the police officer's presence.	If alcohol is served in a manner that violates this chapter (which includes sales to intoxicated) it is considered a nuisance and the facility may be closed until the unlawful activity is abated.	In order to prosecute a case within this chapter, it is sufficient to state the time and place of the sale of alcohol with a brief statement of how the law was violated. The type and amount of alcohol does not need to be stated.

Authority to Enter Licensed Premises	
Statute # 139.08	<p>Police powers. The department of revenue shall enforce and the duly authorized employees of the department shall have all necessary police powers to prevent violations of s. 134.65, this subchapter and chapter 125, (which includes a violation of sales to intoxicated).</p> <p>Inspection for enforcement. Duly authorized employees of the department of justice and the department of revenue and any sheriff, police officer, marshal or constable, within their respective jurisdictions, may at all reasonable hours enter any licensed premises, * * * may inspect and examine, according to law, any premises where fermented malt beverages or intoxicating liquors are manufactured, sold, exposed for sale, possessed or stored, for the purpose of inspecting the same and determining whether * * * ch. 125 [is] being complied with. Any refusal to permit such examination of such premises is sufficient grounds under s. 125.12 for revocation or suspension of any license or permit granted for the sale of any fermented malt beverages or intoxicating liquors and is punishable under s. 139.25(10).</p>

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ADMINISTRATIVE PENALTIES FOR SALES TO INTOXICATED	Administrative Statute #	Administrative Penalty
	125.12	Revocation, suspension, nonissuance, or nonrenewal of licensee
Procedure		
<p>Comment: The procedure and penalty varies depending on the party alleging that a licensee has violated the law. There is a procedure that allows “any resident” to file a complaint, and a procedure for a “duly authorized employee of the department” to file a complaint. “The department” is the Department of Revenue. Below is a summary of the statute’s procedure for initiating a complaint. See tables below for actual statutory language:</p> <p>“Any resident” (of a municipality that issued the license)</p> <ol style="list-style-type: none"> 1) “Any resident” may file a complaint with <u>the clerk of the municipality</u> alleging that a person holding an alcohol beverage license has violated the law (by selling alcohol to an intoxicated person). 2) The municipality or other governing body shall issue a summons, signed by the clerk and directed to any peace officer. The summons shall direct the licensee to appear before the governing body not less than 3 days, but not more than 10 days from the date of issuance. 3) The person who filed the complaint and the licensee may appear and may produce witnesses, cross-examine witnesses and be represented by counsel during the hearing held before the municipal governing body. 4) If the hearing is held before a committee of the city council, the committee shall create a report, which the complainant and licensee may both review and may file an objection and will have the opportunity to be heard before the city council. 5) If the complaint is found to be true, the license shall be suspended for not less than 10 days not more than 90 or may be revoked. 6) The action taken by any municipal governing body may be reviewed by the circuit court for the county. <p>“A duly authorized employee of the department” (Department of Revenue)</p> <ol style="list-style-type: none"> 1) A duly authorized employee of the department” may file a complaint with <u>the clerk of the circuit court</u> alleging that a licensee has violated the law (by selling alcohol to an intoxicated person). 2) Once the complaint is filed, the clerk of the court shall issue a summons commanding the licensee to appear before the court not less than 20 days from the date of issuance. 3) If the licensee appears and answers the complaint, a hearing shall be scheduled not more than 30 days from the return date of the summons. The hearing shall be before the court without a jury. 4) If the allegations on the complaint are found to be true, it shall order the license either suspended for not more than 90 days or revoked. <p>“The department”</p> <ol style="list-style-type: none"> 1) The department may, after notice and an opportunity to be heard, revoke, suspend, or refuse to renew any retail permit issued by it (for various causes) or a violation of this chapter (which includes sales to intoxicated). 		

Relevant Statutory Excerpts:

Statute with Prohibition of Sale to Intoxicated and Criminal Penalties –

125.07 Underage and intoxicated persons; presence on licensed premises; possession; penalties.

- 1) Sales of alcohol beverages to intoxicated persons.
 - a. *Restrictions.*
 - i. No person may procure for, sell, dispense or give away alcohol beverages to a person who is intoxicated.
 - ii. No licensee or permittee may sell, vend, deal, or traffic in alcohol beverages to or with a person who is intoxicated.
 - b. *Penalties.* Any person who violates par. (a) shall be fined not less than \$100 nor more than \$500 or imprisoned for not more than 60 days or both.

(Current through 2005 Act 2, published 3/11/05)

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Statute with Enforcement Provisions -

125.14. Enforcement provisions

- 1) **Arrest.** Subject to s. 175.38, any peace officer may arrest without warrant any person committing in his or her presence a violation of this chapter or ch. 139 and may, without a search warrant, seize any personal property used in connection with the violation.***
- 2) **Nuisances.** Any building or place where alcohol beverages or alcohol is sold, possessed, stored, brewed, bottled, manufactured or rectified without a valid permit or license issued under this chapter or ch. 139, or where persons are permitted to drink alcohol beverages in violation of this chapter is a public nuisance and may be closed until the activity in violation of this chapter is abated. When the activity is abated, the building or place may be used for any lawful purpose.
- 3) **Form of complaint.** In a prosecution for a violation of a statute relating to the sale of alcohol beverages it is not necessary to allege in the complaint, information or indictment the kind or quantity of alcohol beverages sold or the person to whom it was sold. It is sufficient to allege generally that the defendant sold alcohol beverages at a time and place mentioned, together with a brief statement of the facts showing that the sale was a violation of this chapter.

Statute authorizing entrance into Licensed Premises -

139.08. Powers and duties of the secretary of revenue

- 1) **Administration; personnel.** The secretary of revenue shall administer ss. 139.01 to 139.25 and collect and keep a record of all taxes collected.
- 2) **Rules.** The secretary of revenue shall adopt rules necessary to carry out the secretary's duties under this chapter.
- 3) **Police powers.** The department of revenue shall enforce and the duly authorized employees of the department shall have all necessary police powers to prevent violations of s. 134.65, this subchapter and ch. 125.
- 4) **Inspection for enforcement.** Duly authorized employees of the department of justice and the department of revenue and any sheriff, police officer, marshal or constable, within their respective jurisdictions, may at all reasonable hours enter any licensed premises, and examine the books, papers and records of any brewer, manufacturer, bottler, rectifier, wholesaler or retailer, for the purpose of inspecting the same and determining whether the tax and fee imposed by ss. 139.01 to 139.25 have been fully paid, and may inspect and examine, according to law, any premises where fermented malt beverages or intoxicating liquors are manufactured, sold, exposed for sale, possessed or stored, for the purpose of inspecting the same and determining whether the tax imposed by ss. 139.01 to 139.25 has been fully paid, and whether ss. 139.01 to 139.25 and ch. 125 are being complied with. Any refusal to permit such examination of such premises is sufficient grounds under s. 125.12 for revocation or suspension of any license or permit granted for the sale of any fermented malt beverages or intoxicating liquors and is punishable under s. 139.25(10).

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Statute with Administrative Penalties -

125.12. Revocations, suspensions, refusals to issue or renew

1) Revocation, suspension, nonissuance or nonrenewal of license.

ag. Except as provided in this subsection, any municipality or the department may revoke, suspend or refuse to renew any license or permit under this chapter, as provided in this section.

bg.

- i. In this paragraph, "violation" means a violation of s. 125.07(1)(a), or a local ordinance that strictly conforms to s. 125.07(1)(a). (This section applies only to sale to minor violations)
- ii. No violation may be considered under this section or s. 125.04(5)(a)1. unless the licensee or permittee has committed another violation within one year preceding the violation. If a licensee or permittee has committed 2 or more violations within one year, all violations committed within one year of a previous violation may be considered under this section or s. 125.04(5)(a) 1.

cg. Neither a municipality nor the department may consider an arrest or conviction for a violation punishable under s. 945.03(2m), 945.04(2m) or 945.05(1m) in any action to revoke, suspend or refuse to renew a Class "B" or "Class B" license or permit. (This section applies only to gambling violations)

2) Revocation or suspension of licenses by local authorities.

ag. *Complaint.* Any resident of a municipality issuing licenses under this chapter may file a sworn written complaint with the clerk of the municipality alleging one or more of the following about a person holding a license issued under this chapter by the municipality:

- i. The person has violated this chapter or municipal regulations adopted under s. 125.10.
- ii. The person keeps or maintains a disorderly or riotous, indecent or improper house.
- iii. The person has sold or given away alcohol beverages to known habitual drunkards.
- iv. The person does not possess the qualifications required under this chapter to hold the license.
- v. The person has been convicted of manufacturing, distributing or delivering a controlled substance or controlled substance analog under s. 961.41(1); of possessing, with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog under s. 961.41(1m); or of possessing, with intent to manufacture, distribute or deliver, or of manufacturing, distributing or delivering a controlled substance or controlled substance analog under a substantially similar federal law or a substantially similar law of another state.
- vi. The person knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess, with the intent to manufacture, distribute or deliver, or to manufacture, distribute or deliver a controlled substance or controlled substance analog.
- vii. The person received the benefit from an act prohibited under s. 125.33 (11).

ar. *Summons.* Upon the filing of the complaint, the municipal governing body or a duly authorized committee of a city council shall issue a summons, signed by the clerk and directed to any peace officer in the municipality. The summons shall command the licensee complained of to appear before the municipal governing body or the committee on a day and place named in the summons, not less than 3 days and not more than 10 days from the date of issuance, and show cause why his or her license should not be revoked or suspended. The summons and a copy of the complaint shall be served on the licensee at least 3 days before the time at which the licensee is commanded to appear. Service shall be in the manner provided under ch. 801 for service in civil actions in circuit court.

b. *Procedure on hearing.*

- i. If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the municipal governing body or the committee finds the allegations sufficient, the license shall be revoked. The clerk shall give notice of the revocation to the person whose license is revoked.
- ii. If the licensee appears as required by the summons and denies the complaint, both the complainant and the licensee may produce witnesses, cross-examine witnesses and be represented by counsel. The licensee shall be provided a written transcript of the hearing at his or her expense. If the hearing is held before the municipal governing body and the complaint is found to be true, the license shall either be suspended for not less than 10 days nor more than 90 days or revoked, except that, if a complaint under par. (ag)4. is found to be true with respect to a license issued under s. 125.51(4)(v), the license shall be revoked.
- iii. If the hearing is held before a committee of a city council, the committee shall submit a report to the city council, including findings of fact, conclusions of law and a recommendation as to what action, if any, the city council should take with respect to the license. The committee shall provide the complainant and the licensee with a copy of the report. Either the complainant or the licensee may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the city council. The city council shall determine whether the arguments shall be presented orally or in writing or both. If the city council, after considering the committee's report

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and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to a report recommending suspension or revocation, the license shall be suspended or revoked as provided under subd. 2.

- iv. The municipal clerk shall give notice of each suspension or revocation to the person whose license is suspended or revoked.
 - v. If the municipal governing body finds the complaint untrue, the proceeding shall be dismissed without cost to the accused. If the municipal governing body finds the complaint to be malicious and without probable cause, the costs shall be paid by the complainant. The municipal governing body or the committee may require the complainant to provide security for such costs before issuing the summons under par. (ar).
- c. *Effect of revocation.* When a license is revoked under this subsection, the revocation shall be recorded by the clerk and no other license issued under this chapter may be granted within 12 months of the date of revocation to the person whose license was revoked. No part of the fee paid for any license so revoked may be refunded.
- d. *Judicial review.* The action of any municipal governing body in granting or failing to grant, suspending or revoking any license, or the failure of any municipal governing body to revoke or suspend any license for good cause, may be reviewed by the circuit court for the county in which the application for the license was issued, upon application by any applicant, licensee or resident of the municipality. The procedure on review shall be the same as in civil action instituted in the circuit court. The person desiring review shall file pleadings, which shall be served on the municipal governing body in the manner provided in ch. 801 for service in civil actions and a copy of the pleadings shall be served on the applicant or licensee. The municipal governing body, applicant or licensee shall have 45 days to file an answer to the complaint. Following filing of the answer, the matter shall be deemed at issue and hearing may be had within 5 days, upon due notice served upon the opposing party. The hearing shall be before the court without a jury. Subpoenas for witnesses may be issued and their attendance compelled. The decision of the court shall be filed within 10 days after the hearing and a copy of the decision shall be transmitted to each of the parties. The decision shall be binding unless it is appealed to the court of appeals.
- 3) Refusals by local authorities to renew licenses.** A municipality issuing licenses under this chapter may refuse to renew a license for the causes provided in sub. (2)(ag). Prior to the time for the renewal of the license, the municipal governing body or a duly authorized committee of a city council shall notify the licensee in writing of the municipality's intention not to renew the license and provide the licensee with an opportunity for a hearing. The notice shall state the reasons for the intended action. The hearing shall be conducted as provided in sub. (2)(b) and judicial review shall be as provided in sub. (2)(d). If the hearing is held before a committee of a city council, the committee shall make a report and recommendation as provided under sub. (2)(b)3 and the city council shall follow the procedure specified under that subdivision in making its determination.
- 3m) Refusals by local authorities to issue licenses.** If a municipal governing body or duly authorized committee of a city council decides not to issue a new license under this chapter, it shall notify the applicant for the new license of the decision not to issue the license. The notice shall be in writing and state the reasons for the decision.
- 4) Suspension or revocation of licenses on complaint of the department.**
- ag. *Complaint.* A duly authorized employee of the department may file a complaint with the clerk of circuit court for the jurisdiction in which the premises of a person holding a license issued under this chapter is situated, alleging one or more of the following about a licensee:
- i. That the licensee has violated this chapter.
 - ii. That the licensee keeps or maintains a disorderly or riotous, indecent or improper house.
 - iii. That the licensee has sold alcohol beverages to known habitual drunkards.
 - iv. That the licensee has failed to maintain the premises in accordance with the standards of sanitation prescribed by the department of health and family services.
 - v. That the licensee has permitted known criminals or prostitutes to loiter on the licensed premises.
 - vi. That the licensee does not possess the qualifications required under this chapter to hold the license.
 - vii. That the licensee has been convicted of manufacturing, distributing or delivering a controlled substance or controlled substance analog under s. 961.41(1); of possessing, with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog under s. 961.41(1m); or of possessing, with intent to manufacture, distribute or deliver, or of manufacturing, distributing or delivering a controlled substance or controlled substance analog under a substantially similar federal law or a substantially similar law of another state.
 - viii. That the licensee knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess, with the intent to manufacture, distribute or deliver, or to manufacture, distribute or deliver a controlled substance or controlled substance analog.

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- a. *Summons.* Upon the filing of the complaint, the clerk of the court shall issue a summons commanding the licensee to appear before the court not less than 20 days from its date of issuance and show cause why his or her license should not be revoked or suspended. The summons and a copy of the complaint shall be served at least 20 days before the date on which the person is commanded to appear. Service shall be in the manner provided in ch. 801 for civil actions in circuit court.
- b. *Procedure on hearing.* If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the court finds the allegations sufficient, it shall order the license either suspended for not more than 90 days or revoked, except that, for allegations under par. (ag)6. with respect to a license issued under s. 125.51(4)(v), it shall order the license revoked. The clerk of the court shall give notice of the suspension or revocation to the person whose license is suspended or revoked. If the licensee appears and answers the complaint, the court shall fix a date for the hearing not more than 30 days after the return date of the summons. The hearing shall be had before the court without a jury. If upon the hearing the court finds the allegations of the complaint to be true, it shall order the license either suspended for not more than 90 days or revoked, except that, if upon the hearing the court finds allegations under par. (ag)6. to be true with respect to a license issued under s. 125.51(4)(v), the court shall order that license revoked. If the court finds the allegations of the complaint to be untrue, the complaint shall be dismissed.
- c. *Effect of revocation or suspension.* When a license is revoked or suspended under this subsection, the clerk of court shall notify the authority which issued the license. If the license is revoked, no other license may be issued under this chapter to the person whose license was revoked or to any person related to him or her as owner, lessor, bailor or lender, within the 12 months after the date of revocation and no other license may be granted for the premises covered by the revoked license within 60 days of the date of revocation. The findings and order of the court shall be filed within 10 days after the hearing and the order shall be final unless appeal is taken to the court of appeals. If an appeal is taken from a revocation, any period during which the order is stayed shall be added to the 12 months and 60 days, respectively. No part of the fee paid for any license which is revoked may be refunded. Whenever any court has revoked or suspended any license under this subsection, no further proceedings shall be commenced under this subsection except upon grounds arising after the original revocation or suspension.
- 5) **Revocations or suspensions of, or refusals to renew, permits by the department.** The department may, after notice and an opportunity for hearing, revoke, suspend or refuse to renew any retail permit issued by it for the causes provided in sub. (4) and any other permit issued by it under this chapter for any violation of this chapter or ch. 139, except that, for a violation of sub. (4)(ag)6. with respect to a license issued under s. 125.51(4)(v), the department shall revoke the license. A revocation, suspension or refusal to renew is a contested case under ch. 227.

Relevant Practices:

HAPPY HOUR/ DRINK SPECIAL RESTRICTIONS	Prohibit Happy Hours and/or Drink Specials	Prohibit Free Alcoholic Beverages	Prohibit Additional Servings	Prohibit Reduced Price- Specified Day or Time	Prohibit Unlimited Beverages- Fixed price, Fixed Time	Prohibit Increased Volume	Prohibit Prizes
	N/A	*125.67 N/A	N/A	N/A	N/A	N/A	N/A

* Sections 125.67 (wine and spirits) and 125.315 (beer) prohibit the providing of free alcoholic beverages by unlicensed commercial providers. Retail licensees can provide free alcoholic beverages to their customers.



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Pacific Institute for Research and Evaluation

11710 Beltsville Drive, Suite 125
Calverton, MD 20705-3102
(301) 755-2700
www.pire.org

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National Center for Alcohol Law Enforcement

Pacific Institute for Research and Evaluation
11710 Beltsville Drive, Suite 125
Calverton, MD 20705-3102
Toll Free: 1-866-95-NCALE (866-956-2253)
Inquiry@ncale.us