

Liquor License FAQ's for The Village of Webster

“Information provided here comes from the Wisconsin Department of Revenue, The League of Wisconsin Municipalities, and Wisconsin State Statutes § Chapter 125.”

Who needs to have an alcohol beverage license?

Anyone wishing to sell, deal, vend, or traffic in any and all types of alcohol beverages within the Village of Webster, for consumption either on or off the premises, must obtain the appropriate alcohol beverage license(s).

What are the various classes of licenses and what do they mean?

“Class D” Operator’s License (New Applicants) – Granted to individuals who sell or serve alcoholic beverages in licensed establishments. License period is: (1 year from July 1st to June 30th.) Proof of a Responsible Beverage Training course is necessary.

“Class D” Operator’s License (Renewal Applicants) – Granted to individuals who sell or serve alcoholic beverages in licensed establishments. License period is: (1 year from July 1st to June 30th.) Proof of a Responsible Beverage Training course is not necessary if you have previously applied (the prior licensing year) with the same establishment that is licensing you and you provided documentation at that time.

“Class D” Provisional License – Issued to applicants for regular “Class D” licenses for the purposes of operating as bartenders during the period of time their applications for regular license are being processed. License period is: (up to 60 days.)

“Class D” Temporary License – Issued to those operators employed by or donating their services to a non-profit organization. License period is: (not more than 14 consecutive days.) Expiration date is event specific.

“Class A” Fermented Malt Beverage Retailer’s License – Authorizes the retail sale of fermented malt beverages for consumption away from the licensed premises. No sales allowed between the hours of 9:00 p.m. and 6:00 a.m.

“Class A” Liquor and Malt Retailer’s License – Authorizes the retail sale of intoxicating liquors and fermented malt beverages for consumption away from the licensed premises. (Liquor stores.) No sales allowed between the hours of 9:00 p.m. and 6:00 a.m.

“Class B” Fermented Malt Beverage License – For the consumption of fermented malt beverages on the licensed premises. (This license may be applied for in conjunction with the “Class C” Wine License; a single combined application can be filed.

“Class B” Special Fermented Malt Beverage License – Authorizes the holder to sell, barter or give away retail beer and/or wine, at a specific picnic, festival or similar event. It does permit the sale or service of liquor.

“Class B” Tavern License – For the consumption of intoxicating liquors and fermented malt beverages on the licensed tavern premises.

“Class C” Wine License – Allows the licensee to sell, offer for sale, barter or give away wine by the glass in an opened original container for consumption on the premises. The license may only be granted to restaurants in which the sale of alcohol beverages is less than 50% of the gross receipts. Foreign Corporations may not hold this type of license. (This license may be applied for in conjunction with the “Class B” Fermented Malt Beverage License; a single combined application can be filed.)

What is the difference between a “Class B” intoxicating liquor license and a reserve “Class B” intoxicating liquor license?

Reserve “Class B” licenses are those “Class B” licenses that (1) were held by the Village of Webster on December 1, 1997, but had not been issued to any establishment, or (2) any additional “Class B” licenses afforded the Village by the State on or after December 1, 1997 as a result in population growth.

To obtain a reserve “Class B” license from the Village of Webster, applicants are required to pay a one-time issuance fee of \$10,000 in addition to all other fees required of a regular “Class B” liquor license applicant.

What is the fee for an alcohol beverage license?

Applications fees vary depending on the license type. In addition to the application fee, applicants are required to pay the cost of publication for the license notice in the local paper. State law requires that notice of all applications be posted, or published, in a local newspaper prior to granting of the license.

How are reserve “Class B” license quotas determined?

The initial reserve “Class B” license quota calculation involves several steps. First, take the number of “Class B” liquor licenses authorized to be issued by the municipality under the old quota system as of December 1, 1997.

Note: a municipality’s quota was based, prior to December 1, 1997, on the number of licenses issued in good faith under 1975 Wis. Stat. § 176.05(21)(h), and was adjusted for annexations and detachments plus whichever of the following was the largest:

1. One per 500 population or fraction thereof as determined in the previous year by the Department of Administration under Wis. Stat. sec 16.96(2) for purposes of revenue sharing distribution;
2. The number of “Class B” licenses lawfully issued and in force on August 27, 1939, when the quota law went into effect;
3. The number of “Class B” licenses lawfully issued and in force within the municipality in the previous year;
4. In the case of a village or city incorporated since August 27, 1939, one license per 500 population or fraction thereof at the time of incorporation; and
5. In the case of a municipality incorporated or organized since August 27, 1939, the number of licenses in effect in the territory at the time of incorporation or organization. Wis. Stat. §; 125.51(4) (1995-1996).

Subtract from that number the number of “Class B” licenses actually granted or issued by the municipality and in force on December 1, 1997. If the municipality had, as of December 1, 1997, already issued all the “Class B” liquor licenses it was authorized to issue under the old quota system, then the municipality had no initial reserve “Class B” licenses as of December 1, 1997.

If the municipality had three or less “Class B” liquor licenses that were authorized under the old quota system but not granted or issued as of December 1, 1997, those three or less licenses constituted the initial reserve “Class B” licenses quota.

If the municipality had more than three unissued “Class B” liquor licenses as of December 1, 1997, it is necessary to engage in a few more calculations. The next step is to subtract three from the number of unissued licenses. Then, divide the remaining number of licenses by two. If the result after division is a fraction, round down to the next whole number. Finally, add back three licenses. The number that results from working through the above steps is the municipality’s total number of initial reserve “Class B” licenses as of December 1, 1997. Wis. Stat. § 125.41(4)(br).

A municipality’s initial quota of “Class B” reserve licenses and current quota may be different. An increase in a municipality’s initial quota of “Class B” reserve licenses may occur through an increase in population, as determined by the Department of Administration for revenue sharing purposes. Wis. Stat. § 125.51(br)2 should be reviewed for this purpose.

How do I apply for an alcohol beverage license?

All persons wishing to apply for an alcohol beverage license should arrange a meeting with the Village Clerk to review applications and legal requirements. Application forms are available from the **Wisconsin Department of Revenue** website. After you submit the application, the Clerk will publish the application once in the weekly newspaper, to see if there are objections in the community. The Village Board will vote on the application. The license may not be granted until at least fifteen days after the application is filed with the Clerk.

How do I qualify for an alcohol beverage license?

To qualify for an alcohol beverage license in the Village of Webster;

1. You must be a legal drinking age (21).
2. You must have resided continuously in Wisconsin for at least 90 days prior to the application date.
3. You must not be a habitual law offender or have felony convictions which substantially relate to the alcohol beverage licensing activity.
4. You must have a seller’s permit issued by the Department of Revenue. Call (608) 266-2776.
5. You must have completed a responsible beverage server training course.
6. You must have the right to possession of the premises described in the application either by lease of deed.
7. The premises must meet all state and local government requirements for site location, sanitation, safety, and health.
8. You must not be delinquent in the payment of any taxes, assessments, forfeitures, or other financial claims of the Village of Webster on either the premises or equipment.

Can I get a liquor license if I have a criminal record?

A criminal record is not an automatic bar to getting a license. If the law offenses are determined by the Clerk to be habitual or substantially related to activities described in the license, the application may be rejected. If you have any questions concerning this point, please contact the Clerk by phone at (715) 866-4211.

Are licensing qualifications different for corporations?

A corporation must meet the seller's permit and criminal offense requirements. The officers must be of legal drinking age and may be affected by a criminal record as described above. The officers and directors need not be residents of Wisconsin, or attend server training, but the agent does. You must appoint an agent, and the agent must meet all the qualifications of an individual applicant. The agent has the authority of a licensee and, like an individual licensee, is in control of the premises and of the business conducted there.

Does a licensee or agent have to be on the premises at all times during open hours?

No. However, there must be one or more licensed operators in charge of the premises. An operator's license, sometimes referred to as a "bartender's license," must be obtained for each person who will be placed in charge of the premises during hours of operation. If the premise is large, with several serving areas, bar areas, etc., licensed operators must be in charge of each discrete area.

Who need an operator's license?

All persons who are placed in charge of a licensed premise should have an operator's license. Persons who do not need an operator's license are:

1. The licensee
2. Members of a licensee's immediate family; i.e., those persons at least 18 years of age who are related to and reside in the common household of the licensee (individual or partner in a partnership). See § 125.32(2) and §125.68(2), Wis. Stats.; 24.
3. The approved agent of a corporation also has the privilege of an operator's license. This **privilege does not extend to the members of the agent's immediate family or to the officers/directors of the corporation.**

How do I apply for an operator's license?

To apply for an operator's license submit the application to the Village Clerk with the respective fee.

How do I qualify for an operator's license?

To qualify for an operator's license,

1. You must be at least 18 years old.
2. You must meet criminal record requirements, and
3. You must have completed a responsible beverage server course.

The beverage-server training course requirement can be waived for persons who:

1. Are renewing a license,
2. Have held an alcohol beverage license, including an operator's license, within the State of Wisconsin within the past two years.

What is a beverage-server training course and what is it for?

These courses are required to hold alcohol beverage licenses, with some exceptions. They cover alcohol beverage laws, signs of intoxication, safe serving of alcohol beverages, etc. These courses are most often offered by local technical colleges. For further information, contact your local Vocational, Technical and Adult Education (VTAE) School. Or visit the **Wisconsin Department of Revenue** website for a list of approved providers.

Not all responsible beverage server courses are taught by technical colleges, but most are. Other courses (TIPS, CARE, ServSafe Alcohol (formerly "Bar Code"), Responsible Serving Course, Learn2Serve, Bartending College, LLC) may be substituted for those taught at VTAE schools, as long as they have been approved by the Department of Revenue or the educational approval board. Make sure of this approval before enrolling in a responsible server course not offered at a VTAE school.

Learn2Serve and the WI Indianhead Technical College offer online courses.

Are there exceptions to the beverage-server training course requirement?

Yes. The exceptions to this requirement are:

1. If you are renewing a Wisconsin retail or an operator's license,
2. If you were the agent of a corporation that held a Wisconsin retail license within the past two years.
3. If you held a Wisconsin retail or operator's license within the past two years, or
4. If you completed a Wisconsin approved server training course within the past two years.

Do temporary operator's license applicants have to take the beverage-server training course?

No. The training requirement does not apply to applicants for temporary operator's licenses. The training course requirement only applies to applicants for regular operators' licenses. § 125.17(6), Wis. Stats.; provides that "no municipal governing body may issue an *operator's license* unless the applicant has successfully completed a responsible beverage server training course." Operators' licenses are different from temporary operator's licenses. The statutes pertaining to this question are rather confusing, but the beverage server training requirement does **not** apply to temporary operator licenses. § 125.04(5)(a)5 requires that all natural persons applying for licenses related to alcohol beverages successfully complete a responsible beverage server training course unless they have held a license or taken the class within the last two years. However, § 125.04(5)(d)3, Wis. Stats., specifically provides that the responsible beverage server training course requirement does not apply to applicants for operators' licenses under § 125.17. Despite the exemption, applicants for operators' licenses must still satisfy the training requirement because it is imposed in § 125.17(6), Stats. Temporary operator licenses are governed by § 125.17(4), Wis. Stats., which states that municipal governing bodies may issue temporary

operators' licenses under the terms of subsections (1) to (3) of § 125.17, Wis. Stats. § 125.17(1) Wis. Stats. states that a municipal governing body shall issue an operator's license to any applicant who is qualified under § 125.04(5). Thus, the training requirement imposed in § 125.17(6) does not apply to applicants for temporary operators' licenses while the exemption from the training requirement in § 125.04(5)(d)3 is applicable.

The temporary operator's license may only be issued to persons employed by or donating their services to nonprofit organizations. A temporary operator's license is only valid from one to 14 days. A person is limited to only one such license per year.

Does state law require a person with an operator's license or person deemed to have an operator's license on premises covered by a temporary, (i.e., picnic) license?

Yes. A person with an operator's license or a person deemed to have an operator's license must be on the premises covered by a Temporary "Class B" beer (picnic) license and on the premises covered by a Temporary "Class B" (picnic) wine license during all times when activities authorized by the license are being conducted. See Wis. Stat. § 125.32(2) and § 125.68(2). Given that a picnic license may only be issued to a bona fide club or organization, the license cannot be issued to a natural person and there is really no method by which a person may be deemed to hold an operator's license in such circumstance except possibly as the designated agent of a nonprofit corporation which is also a bona fide club or organization.

Notably, a governing body may issue temporary operator's licenses to persons who are employed by or donating their services to nonprofit corporations but a person is limited to only one such license per year. The temporary operator's license is valid for any period from 1 to 14 days which must be specified on the license, § 125.17(4).

Who can obtain temporary (picnic) beer and wine licenses and is there any limit on the number of picnic licenses that can be obtained in a year?

Picnic licenses can only be issued to "bona fide" clubs, fair associations or agricultural societies, churches, lodges or societies that have been in existence for at least six months, and to veterans' organizations. Wis. Stat. § 125.26(6) and § 125.51(10). The dictionary defines "bona fide" as authentic, genuine, done or made in good faith, without deception or fraud. "Club" is defined as a group of people organized for a common purpose, especially a group that meets regularly. The definition of "club" in § 125.02(4) appears to be inapplicable to picnic licenses. An individual, partnership, or business corporation is not eligible for a picnic license. Although there is no limit on the number of temporary "Class B" (picnic) beer licenses that may be issued to an eligible organization in a calendar year, no more than two temporary "Class B" (picnic) wine licenses may be issued to an eligible organization in any 12-month period. § 125.51(10).

When I buy or sell my establishment, is the liquor license transferred automatically to the new owner?

No. Licenses can only be transferred from one person to another in certain specific situations. Ordinarily, the prospective buyer of a licensed establishment must apply for a new license. If a municipality is "at quota" and has issued all of its available "Class B" liquor licenses, then the seller usually surrenders his or her license, so that a license is available, with the surrender contingent on the governing body's granting the license to the prospective buyer.

The prospective buyer must file a license application form and complete the entire application process. The prospective buyer must also pay a prorated fee for the license.

How do the recent legislative amendment allowing stores to begin selling alcohol earlier in the morning affect municipalities?

On December 21, 2011, Act 97 took effect changing the earliest allowable morning opening hours for retail Class "A" beer and "Class A" liquor stores from 8:00 a.m. to 6:00 a.m. The Village of Webster imposed Ordinance #1-2012 on August 15, 2012 regarding this change.

When can a license be transferred from one person to another?

The only time when liquor licenses can be transferred from one person to another is if one of the following situations exists.

1. If a licensee dies, becomes bankrupt or makes an assignment for the benefit of creditors, the license may be transferred to the personal representative or, if there is none, to the surviving spouse or to the trustee in bankruptcy or receiver. The personal representative, surviving spouse or receiver may continue or sell the business. If the business is sold or assigned, the license may be transferred to the new owner or assignee at no charge if the person qualifies for an alcohol beverage license and obtains the governing body's consent.
2. If a licensee becomes disabled during the license year, the license may be transferred to his/her spouse if the spouse applies to the municipality and is qualified to hold an alcohol beverage license. The spouse is exempt from paying the license fee.
3. Finally, an alcohol beverage license may be transferred to the receiver in a foreclosure action if the transfer is ordered by the court. State statutes do not provide for the automatic transfer of a license to a court-appointed receiver in the case of foreclosure. The receiver may not operate under the license in effect at the time of the foreclosure action unless permitted to do so by the court order.

Can I surrender my license under the condition that it be granted to a particular applicant?

Yes. Although § 125 of the Wisconsin statutes does not address conditional surrenders, they are commonly used where a municipality is at quota for "Class B" licenses and has no licenses or only reserve "Class B" licenses available.

Conditional surrenders are most frequently used where a business with an existing license is being sold and the seller an ongoing business but only the governing body has the discretion to grant or not grant a license to a particular applicant. The owner has no way of guaranteeing that the buyer will get the license, but usually the sale won't go through if the buyer cannot be assured that he or she will get a license. Therefore, owners commonly surrender their license on the condition that the license be granted to the buyer.

If the governing body denies the buyer's application for the license (e.g., if the applicant does not meet all of the necessary qualifications), then the surrender of the license does not take place because the condition precedent never occurs. Thus the licensee retains his or her license.

When a regular “Class B” liquor license is not renewed or is surrendered in the middle of a license year, does it become a reserve license?

No. The rule is that all regular “Class B” licenses remain regular “Class B” licenses and all reserve “Class B” licenses remain reserve “Class B” forever. In the example above, the municipality would be able to grant the non-renewed or surrendered regular “Class B” license to a qualified applicant if it so chooses. Incidentally, a holder of a reserve “Class B” liquor license may apply for an available regular “Class B” license upon surrendering the reserve license.

Do all partners in a business need to be listed on the alcohol beverage application?

Yes.

Do all partners in a business need to complete an auxiliary questionnaire (form AT-103)?

Yes.

Can a partnership renew its license if partners have been added or dropped during the license year?

No. The remaining partners constitute a new partnership and must apply as a new partnership for the following license year.

Do you have to be a United States citizen to qualify for a license?

No. Citizenship is not a requirement for obtaining a beer or liquor license. However, individuals, all natural persons in a partnership and the agents of corporations and limited liability companies must, in order to qualify for a beer or liquor license, have resided 90 days continuously in Wisconsin before applying for a license.

Can I hold a “Class A” liquor license and a “Class B” liquor, “Class B” beer, or “Class C” wine license for the same or connecting premises at the same time?

No. A person may not obtain a “Class A” liquor and a “Class B” beer, “Class B” liquor or “Class C” wine license for the same connecting premises unless the operation qualifies as a hotel. § 125.51(8) and § 125.02(7), Stats.

If my restaurant delivers or caters meals off the premises, can I deliver or cater beer and/or wine with the meals?

Yes, **however**, the sale of beer and wine must take place on the licensed premise. To be considered a valid, on premises sale, **both the buyer and seller must be physically present at the time of sale** and in the presence of either the licensee, the agent of the corporation if the licensee is corporate, or the holder of a valid operator’s license.

Can the Village refuse to issue an alcohol beverage license to people who are delinquent on taxes, or other fees?

Yes. Wisconsin Stat. § 66.0115(1), specifically authorizes a municipality to “refuse to issue any license (except those listed in Stat. § 66.0115(2)) or permit to a person who has not paid an overdue forfeiture resulting from a violation of an ordinance of the municipality.” However, the municipality may not refuse to issue a license for nonpayment of forfeiture if the license applicant is appealing the imposition of the forfeiture. Wis Stat. § 66.0115(1).

In addition, Wis. Stat § 125.10(1), provides sufficient authority for a municipality to enact an ordinance that prohibits the issuance of an alcohol beverage license (retail or operator) where the applicant owes municipal taxes, assessments or other fees. However, this local ordinance must apply to all municipal licenses, not just alcohol beverage licenses. Moreover, licenses cannot be withheld for failure to pay taxes or other debts owed to the state or federal government. *Tavern League v. Madison*, 131 Wis. 2d 477, 389 N.W.2d 54 (Ct. App. 1986).

When an initial license is withheld for failure to pay municipal taxes, an outstanding forfeiture or similar grounds, the municipality should give the applicant notice and an opportunity to rebut the charge. If a renewal license is withheld, then the procedures for the non-renewal of the license set forth in § 125, Wis. Stats., would apparently have to be followed. See *Tavern League v. Madison*, supra.

Can a licensee allow people to bring their own alcohol onto the premise for consumption or other use?

No. Such action is prohibited under Wisconsin’s alcohol beverage laws. The only alcohol beverages that may be possessed in a bar, nightclub, restaurant or other establishment covered by a retail or wholesale fermented malt beverage license are those that have been purchased by the licensee from a licensed wholesaler. The idea of “bring your own” is not allowed for beer or alcohol in such premises.

Someone applied for a “Class B” alcohol license and claims he needs it so he can have video gambling machines in his establishment. Does a “Class B” liquor license authorize video gambling machines?

No! No! No! Video gambling machines are unlawful. See Wis. Stat. § 945. A “Class B” alcohol license in no way authorizes or legitimizes video gambling machines. Nonetheless, some people claim they have been told (by whom it’s unclear) that the license will allow them to have the machines. This notion may come from the fact that although the machines are prohibited by state law, the state legislature has created lesser violations for “Class B” premises with five or fewer video gambling machines (see § 945.03(2m) and § 945.04(2m)). The notion may also come from the legislature’s emasculating of the prohibition in 2003 when it amended the laws to tie the hands of local law enforcement and the Department of Justice (DOJ) by preventing them from investigating or enforcing video gambling violations on premises with a “Class B” alcohol license.

Effective July 26, 2003, the video gambling statutes were amended to provide that only a Special Agent of the Department of Revenue (DOR) that is certified as a law enforcement officer may investigate or enforce video gambling violations on “Class B” alcohol beverages licensed premise, if the “Class B” premises has no more than five video gambling machines. See Wis. Stat. § 165.70(1m) and § 73.03(59). Although the legislature transferred enforcement authority for § 945.03(2m) and § 945.04(2m) to DOR, it

did not provide DOR with enforcement funds or additional personnel. Consequently, enforcement is now the responsibility of DOR which has less than ten agents to cover 13,000 taverns.

The penalties for having five or fewer gambling machines on a “Class B” premises include seizure of the machines, seizure of money in the machines, and a penalty of \$500 per machine per incident. It is a felony for a “Class B” establishment to have more than five video gambling machines on premises; it is also a felony for a “Class A” licensee to have any video gambling machines on premises. In these instances, the licensee may be arrested either by a Special Agent of the Department of Revenue or a law enforcement officer in the jurisdiction where the arrest is made. The Department of Revenue conducts tax audits of both machine operators and “Class B” establishments. The gross receipts from these illegal machines is also subject to Wisconsin sales tax, the net income is subject to Wisconsin income or franchise tax, and the purchase of the machines is subject to Wisconsin sales and use tax. See DOR Publication 302, Wisconsin Alcohol Beverage and Tobacco Laws for Retailers.

Although the 2003 amendments limited DOJ’s enforcement of the state video gambling law, they did not remove all of DOJ’s gambling enforcement authority. They did not affect DOJ’s authority to investigate and enforce gambling activities in § 125, Wis. Stats.; “Class B” or “Class B” premises that do not involve video gambling machines such as pull-tab games, illegal lotteries and sports betting. They also did not affect DOJ’s authority to investigate and enforce video gambling activities on premises for which a § 125, Wis. Stats.; “Class B” or “Class B” alcohol beverage license or permit has not been issued. Importantly, the changes also did not alter the authority of cities and village to control or prohibit gambling, including video gambling, through local regulation.