



**2015 WSSFC  
Substantive Track – Session 2**

**Can Work for Beer:  
Starting a Brewery in  
Wisconsin**

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## About the Presenter...

**Jeffrey M. Glazer** is a Clinical Assistant Professor at the UW Law & Entrepreneurship Clinic. Prior to teaching at the Law School he worked in private practice for a number of boutique law firms in business litigation, intellectual property, and creditors' rights. He also ran (and continues to run) his own law firm focusing on trademarks and breweries. Jeffrey Glazer has been representing breweries in Wisconsin since 2007. He has advised dozens of brewers on legal issues related to brewing and distributing beer in Wisconsin.

# Wisconsin Brewing Laws 2015

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## Basics

- ▶ Three Tier System
- ▶ Federal Licensing -> State Licensing -> Local Licenses (if needed)
- ▶ Chapter 125 - Alcohol Beverages
  - ▶ 125.02 - Definitions
  - ▶ 125.28 - Wholesalers
  - ▶ 125.29 - Brewers
  - ▶ 125.295 - Brewpubs
  - ▶ 125.32 - General Restrictions
  - ▶ 125.33 - Three Tier System
  - ▶ 125.34 - Distribution Restrictions
- ▶ Cider (non-malt fermented products) = wine = 125.51, et seq.

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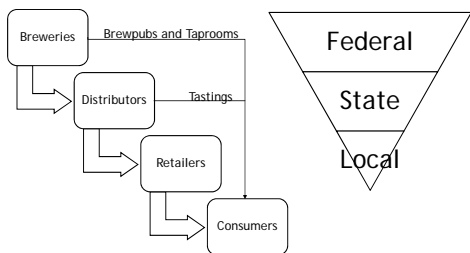
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## Three-Tier System



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### Brewers (125.29)

- ▶ No person holding a Class A License (off-premise), Class B license or Permit (on-premise), or Wholesaler's Permit (or Brewpub Permit)
  - ▶ Can own indirect interest in Class B for restaurant if restaurant doesn't serve brewer's beer
  - ▶ Question not answering today: Can a person that owns X% of a company that holds a Class A/B, own X% of a Brewery that holds a Brewers Permit?
- ▶ Can't do anything unless authorized:
  - ▶ Manufacture beer on premises; Bottle/store beer on premises; Transport beer to warehouse
  - ▶ Sale in "original unopened containers" to wholesalers
  - ▶ Retail sale "In original unopened packages or containers" on or off-premises or at "an off-site retail outlet established by the Brewer"
    - ▶ Question not answering today: Growler fills not explicitly mentioned; but implied under this authorization; do growlers have to be pre-filled?
  - ▶ Free sampling on-premises or at off-site retail outlet: sales of other Wisconsin brewers beers
  - ▶ Bierhall at State Fair (1)
  - ▶ Self-distribution: permitted for breweries up to 300K bbls, if brewer follows the distributor rules in 125.33 and 125.34 (note: NOT 125.28 generally)

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### Recipe (Contract) Brewer

- ▶ Not in the statute because when the distributors re-wrote the statute they accidentally left it out
- ▶ Tax 7.23 - "Brewer" includes "Recipe Brewer"
  - ▶ No longer a subset of "Wholesaler" but is now a subset of "Brewer"

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### Brewpubs (125.295)

- ▶ Neither Applicant nor Brewpub Group holds a direct or indirect interest in:
  - ▶ Class A/B, Wholesaler, or Brewery, Winery
- ▶ Authorization:
  - ▶ Entire manufacturing process on-premises, up to 10K bbls per year in "Brewpub Group"; up to 6 locations
    - ▶ Must be 100% manufactured on licensed premises - NO contract brewing!
    - ▶ Question Not Answered: Can brewpubs do Alternating Proprietorship?
    - ▶ Brewpub Group: All premises under same license or ownership
  - ▶ Bottling and Growler fills; sell at retail on premises; store/transport beer between premises
  - ▶ Sell beer to wholesalers; sell up to 1K bbls directly to retailers

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### Other Stuff

- ▶ 125.32(7): all packages (including kegs) must have Brewery's name and address and quantity in fluid ounces
- ▶ 125.33(1): "Cannot give/lend/sell/etc furniture, fixtures, equipment, ... "or other thing of value" to any Class B licensee, except:
  - ▶ Signs/clocks/etc.: up to \$2500 ("cheap signs" - plastic/vinyl/cardboard, etc. - can be freely given)
  - ▶ Tap handles
  - ▶ Contribute money or [beer] for the benefit of 501(c)3 non-profit corporations ... which is conducting festivals of limited duration in a 1<sup>st</sup> Class City *if* the festival is sponsored and endorsed by that municipal corporation (note: only Milwaukee is a 1<sup>st</sup> Class City, and festival must be sponsored/endorsed by City of Milwaukee)
  - ▶ Contribute money or [beer] to ... "an autumn ethnic festival of limited duration in a 2<sup>nd</sup> Class city that had a population in 1986 of at least 49,000 but less than 50,000," if that festival is sponsored/endorsed by that municipal corporation. (note: La Crosse Oktoberfest)
  - ▶ Free sampling on Class B premises
  - ▶ Attend beer festivals
- ▶ 125.33(7): Cash or credit to retailer of not more than 15 days

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### Distribution

- ▶ Self-distribution if Brewers follows Distributor rules
- ▶ Distribution is exclusive to a distributor in a territory
- ▶ 125.33(10): Compensation for Termination of Wholesaler Distribution Rights
  - ▶ A Successor Wholesaler shall compensate a Terminated Wholesaler for the *Fair market value* of the Terminated Wholesaler's distribution rights to any brand
  - ▶ What is fair market value? Typically 3-7 times Gross Revenue in the market

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### Big Issues That Frequently Arise

- ▶ Brew on Premises
  - ▶ DOR's Position: "a person who contracts with an agent to directly manufacture fermented malt beverages" is presumed to be a Recipe Brewer
  - ▶ But: customer not engaging "for sale or transportation by that person;" however, "transportation" is undefined and simply "driving away from the brewery" could be considered "transportation" (see, e.g., 125.06(3) re: homebrewing which exempts needing a permit to "transport" homebrew)
- ▶ Brewpub Contract Brewing
  - ▶ Technically: NO; DOR has been cracking down on this
  - ▶ Can purchase "white label" beer, though
- ▶ Brewery Ownership Issues
  - ▶ Requires careful reading of law and specific facts of the permits in question
- ▶ Growler fills - what is "an original, unopened, package or container"
  - ▶ Retail/Grocery growler fills (No-ish)
  - ▶ Brewery Growler fills (Yes-ish)

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Finally, Some Real Quick Words to Throw  
on a Screen

- ▶ Alternating Proprietorship v. Custom Crush Agreement v. Contract Brewing v. White Label

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