



DEPARTMENT OF
**LEGAL AND
ADMINISTRATIVE
SERVICES**

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TO: Safety and Licensing Committee, Common Council

From: ACA Zak Buruin

Date: May 29, 2025

RE: Non-renewal of the Class "B" Fermented Malt Beverage and "Class B" Liquor License for Tandem Wine & Beer, LLC located at 101 W Edison Street, Suite 100, Karter Thompson, Agent.

Tandem Wine & Beer LLC (hereafter referred to as "Tandem") has applied for renewal of Class "B" and "Class B" retail alcohol licenses. Staff has recommended that the licenses not be renewed. Having been notified of the intent to not renew the sought licenses, "Tandem" now appeals the staff recommendation of denial and the denial of that application. Below is a summary of the relevant Chapter 125 eligibility requirements and an analysis of their application in this case.

Summary

State statute prohibits the issuance of a retail alcohol license to a LLC unless all of the officers, directors, members, and managers meet the eligibility criteria related to criminal and unlawful behavior. Mr. George Koenig remains a member of the limited liability company (LLC) applying for license renewal, as he is the owner. Mr. Koenig has thrice been convicted of intoxicated driving offenses in Wisconsin, with the most recent conviction date occurring on March 10, 2025. As intoxicated driving offenses are substantially related to the activity for which a license is (re)sought, Mr. Koenig's prohibited arrest record, conviction record, and history of habitual law violation leaves him, and his LLC ineligible to renew the retail alcohol licenses applied for. This ineligibility is subject to the opportunity to demonstrate evidence of rehabilitation.

§125.04(5) Licensing Requirements

According to §125.04(5)(a)1, in order to be granted a license or permit under Wisconsin Statutes Chapter 125, the applicant may not have an arrest or conviction record. This prohibition is subject to the requirements of various statutes prohibiting certain types of employment discrimination, which will be discussed below. These statutes are §111.321, §111.322, §111.335 and §125.12 (1) (b).

§125.04(5)(b) states that “No license or permit related to alcohol beverages may, subject to §111.321, 111.322 and 111.335, be issued under this chapter to any person who has habitually been a law offender or has been convicted of a felony unless the person has been duly pardoned.”

§125.04(5)(c) prohibits any license or permit may be issued to any corporation or limited liability company unless that company’s agent, and officers and directors, or members or managers meet the qualifications set forth in §125.04(5)(b).

In summary, §125.04(5) prohibits the issuance of alcohol related licenses under Chapter 125 to anybody with an arrest or conviction record, anybody with an unpardoned felony conviction, or anybody “who has habitually been a law offender,” regardless of whether any arrests or convictions exist (see State ex rel. Smith v. City of Oak Creek, 139 Wis. 2d 788, 407 N.W.2d 901 (1987)), unless failing to grant that license would constitute prohibited discrimination. This prohibition extends to the agents, officers, directors, members, and managers of corporations and limited liability companies.

Prohibited Discrimination

§111.321 – Prohibited Bases of Discrimination

Arrest or conviction (among other bases not relevant to consideration here) are not generally permitted to be used as a basis for employment discrimination by a licensing agency.

§111.335 – Arrest or Conviction Record; Exceptions and Special Cases

§111.335(3)(a)1 states that it is not employment discrimination because of a conviction record to refuse to license an individual where that person has been convicted of “any felony, misdemeanor, or other offense the circumstances of which substantially related to the circumstances of the particular job or licensed activity.” In evaluating the existence of a substantial relationship, it is the circumstances that provide the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the applicant that are the proper considerations. It is not relevant whether the applicant has the ability to perform the work to an employer’s standards. (See Milwaukee Cnty. v. Lab. & Indus. Rev. Comm’n, 139 Wis. 2d 805, 407 N.W.2d 908 (1987)).

Each offense must be evaluated under the above criteria for determination of whether or not it is substantially related to the activity for which a license is sought. Any arrest, conviction, or other offense which is substantially related to the licensed activity is to be considered in the licensing decision.

Consideration of Rehabilitation

§111.335(4)(c)1 requires that if a license is denied *based upon §111.335(3)(a)1* (as discussed in

the preceding section), the licensing agency typically has two further obligations. It must state the reasons for denial in writing, including a statement of how the circumstances of the offense(s) relate to the licensed activity. It must also allow the person to show evidence of rehabilitation. According to §111.335(4)(c)1.b, if the individual “shows competent evidence of sufficient rehabilitation and fitness to perform the licensed activity under par. (d), the licensing agency may not refuse to license the individual or bar or terminate the individual from licensing based *on that conviction*.” (Emphasis added).

The statute specifically notes documentation that can demonstrate rehabilitation “on that conviction.” As such, rehabilitation is to be considered with respect to each offense individually, rather than the applicant in totality. Where denial is based upon §111.335(3)(a)1, and competent evidence of sufficient rehabilitation shown, that offense may not be considered as part of a denial decision.

Competent Evidence of Sufficient Rehabilitation

For denials *based upon §111.335(3)(a)1*, competent evidence of sufficient rehabilitation may be shown. As indicated above in §111.335(4)(c)1.b, where such evidence is shown, the related conviction may not be the basis for a denial of a license.

§111.335(4)(d)1 provides two forms of evidence which are statutorily required to be considered “competent evidence of sufficient rehabilitation,” and therefore must be accepted by the licensing agency as such. §111.335(4)(d)1.a. allows one to provide certified documentation of honorable discharge from the US armed forces following the otherwise disqualifying conviction. This documentation is no longer sufficient if there is a criminal conviction following the discharge date.²

§111.335(4)(d)1.b, allows the applicant to provide documentation of their release from custody *and* either completion of probation or release from custody and compliance with all terms and conditions of release, be it extended supervision, probation, or parole, for at least one year (including no subsequent criminal convictions).³

Where neither of the above exists, §111.335(4)(d)2 provides additional documentary evidence that may be provided that the licensing agency is bound to consider, but that it is not required to accept conclusively as sufficient evidence of rehabilitation. Evidence which the agency is required to consider include:

¹ Denials under other provisions may be subject to other requirements.

² From a practical standpoint, honorable discharge from the armed forces is not related to any particular offense. This section, in conjunction with §111.335(4)(c)1.b. could be interpreted as effectively removing any criminal offenses prior to honorable discharge from licensing consideration. This would be more akin to evaluating the rehabilitation of the person rather than specific offenses, which is not what the other related statutes call for. This arguable inconsistency what my prior, more rigid analysis was based upon.

³ Periods of supervision are attributable to specific offenses, allowing for consideration of individual offenses as §111.335(4)(c)1.b contemplates.

- a. evidence of the seriousness of any offense of which he / she was convicted.
- b. evidence of all circumstances relative to the offense including mitigating circumstances or social conditions surrounding the offense.
- c. The age of the individual at the time the offense was committed.
- d. The length of time that has elapsed since the offense was committed.
- e. Letters of reference by persons who have been in contact with the individual since the applicant's release from any local, state, or federal correctional institution.
- f. All other relevant evidence of rehabilitation and fitness presented.

Based upon the above, where a denial of a license is based upon §111.335(3)(a)1, and there is no evidence presented that is statutorily defined as "competent evidence of sufficient rehabilitation" for a particular offense, it is up to the licensing agency to determine whether the other documentary evidence available constitutes "competent evidence of sufficient rehabilitation and fitness to perform the licensed activity."

Applicability to Tandem Wine & Beer, LLC.

"Tandem's" most recent application for renewal of retail licenses lists two members of the LLC. Karter Thompson is listed as the agent. This is a relatively recent change, but one with which there is no issue.

Mr. Koenig is listed as the owner of the LLC, and is certainly therefore a member of the LLC. The recent change of agent does not shield Mr. Koenig's legal background from consideration in the licensing decision. He remains a member of the LLC.

Mr. Koenig has thrice been convicted of intoxicated driving offenses.

- In Outagamie County case 17TR3458, he was convicted of a non-criminal offense of Operating While Intoxicated, contrary to Wisconsin Statutes §346.63(1)(a) on July 12, 2017. This is evidenced by the certified copy of Mr. Koenig's driving record.
- In Winnebago County case 18CT941, he was convicted of a criminal offense of Operating While Intoxicated, contrary to Wisconsin Statutes §346.63(1)(a) on January 14, 2019. This is evidenced by the certified copy of Mr. Koenig's driving record.
- In Outagamie County case 24CT651, he was convicted of a criminal offense of Operating With a Prohibited Alcohol Concentration, contrary to Wisconsin Statutes §346.63(1)(b) on March 10, 2025. This is evidenced by the certified copy of Mr. Koenig's driving record.

Each of these offenses, alone and particularly in concert, substantially relate to the licensed business of retail distribution of alcohol beverages. It is inarguable that engaging in the retail sale of alcohol beverages provides one with the opportunity to engaged in impaired driving. Engaging in such a business provides one with nearly unfettered access to alcohol beverages, and access to motor vehicles is nearly ubiquitous regardless of the presence of an alcohol license. The opportunity for impaired driving (i.e. criminal) behavior is palpable.

On at least three occasions of which the law is aware, Mr. Koenig reacted to the availability of

intoxicating substances and a motor vehicle by consuming to the point of excess and following that decision with the decision to drive. It is not clear whether any of these occasions involved his licensed establishment, but this is immaterial. Even assuming none of these incidents involved his establishment, they involved the lesser responsibility of merely having personal access to alcohol and a vehicle. The responsibility of commercial access and oversight of responsible distribution and consumption of intoxicants is higher. On three documented occasions, Mr. Koenig failed to respond appropriately to even the lower level of responsibility of mere personal consumption.

It is important to note that whether Mr. Koenig can perform the work associated with the license his LLC seeks is not material. At issue is the substantial relationship between the unlawful acts and the activity for which a license is sought.

Based upon the offenses for which Mr. Koenig has been convicted, his arrest record, conviction record, and record of habitual law violation leaves him and his LLC ineligible to renew the sought retail alcohol licenses.

The offenses which disqualify Mr. Koenig, and therefore "Tandem" as well, are subject to showing of rehabilitation. Should the applicant show evidence which it deems to be "competent evidence of sufficient rehabilitation," either because they are statutorily obligated to, or because their judgement leads them to that conclusion, Mr. Koenig and therefore "Tandem's" eligibility is restored. In such a case, the license must be renewed. Absent such a showing, the LLC is ineligible, and the license renewal must be denied.

Conclusion

Mr. Koenig's history of intoxicated driving offenses leaves him and his LLC ineligible for licensure under Chapter 125 of the Wisconsin statutes. Unless the Committee / Council receive what it determines to be "competent evidence of sufficient rehabilitation," both Mr. Koenig and the LLC will remain ineligible for licensure and the Committee / Council may not renew the license applied for.