



1997 ASSEMBLY BILL 718

January 15, 1998 - Introduced by Representatives ZIEGELBAUER, URBAN, HARSDORF, J. LEHMAN, NOTESTEIN, ROBSON, TURNER, OTTE, WARD, STASKUNAS, BLACK, R. YOUNG, LA FAVE and WASSERMAN, cosponsored by Senator DARLING. Referred to Committee on State Affairs.

1 **AN ACT** *to repeal* 125.51 (3) (e) 2. and 3., 125.51 (4) (a) 4. and 125.51 (4) (b) 1m.,
2 (bm) and (br); *to renumber and amend* 125.51 (3) (e) 1.; *to consolidate,*
3 *renumber and amend* 125.51 (4) (b) (intro.) and 1g.; *to amend* 125.04 (12) (a)
4 and 125.17 (1); *to create* 125.51 (4) (b) 1., 2., 3., 4. and 5. and 125.51 (4) (c), (d)
5 and (f) to (u) of the statutes; and *to affect* 1997 Wisconsin Act 27, section 9343
6 (1tv); **relating to:** alcohol beverage “Class B” and reserve “Class B” licenses
7 and operators’ licenses.

Analysis by the Legislative Reference Bureau

Current law delegates to municipalities (cities, villages and towns) the authority to issue on-premises liquor licenses, licenses which authorize the sale of intoxicating liquor to be consumed on the premises where sold. Current law imposes a quota on the number of licenses a municipality may issue.

Prior to 1997 Wisconsin Act 27 (the biennial budget act), a municipality’s quota was determined using a formula, but generally was the number of licenses that were issued by the municipality when the quota was first implemented plus an additional license for each 500 persons residing in the municipality. There were numerous specific exceptions to the quota authorizing municipalities to issue to qualifying premises licenses in excess of the quota. The annual fee for an on-premises intoxicating liquor license was established by the municipality in an amount of \$50 to \$500.

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1997 Wisconsin Act 27 significantly modified the on-premises liquor license quota law. In general, the act reduced the number of on-premises liquor licenses available to be issued by a municipality by “retiring” one-half of the authorized but unissued on-premises liquor licenses. Unlike other types of alcohol beverage licenses, the act made the remaining on-premises liquor licenses nontransferable from one location to another and established a minimum initial issuance fee of not less than \$10,000. A person desiring to obtain an on-premises liquor license may pay at least \$10,000 to the municipality for a nontransferable license, or obtain from another person a (transferable) on-premises liquor license that was issued before the enactment of 1997 Wisconsin Act 27.

This bill undoes these changes to the on-premises liquor license quota made by 1997 Wisconsin Act 27. The bill restores the quota law and its exceptions that existed prior to the enactment of that act.

Also under current law, no premises that sells alcohol beverages at retail may be open for business unless there is upon the premises the licensee or permittee, the designated corporate agent of the licensee or some person who possesses an operator’s license (commonly called a bartender’s license) and who is responsible for the acts of all persons serving alcohol beverages. Operators’ licenses are issued by municipalities and are valid only in the municipality that issued the license. Prior to the enactment 1997 Wisconsin Act 27, municipalities were authorized (but not required) to issue operators’ licenses. An applicant for an operator’s license was required to meet minimum state qualifications but, because municipalities generally have authority to enact ordinances regulating alcohol beverages if the ordinances do not conflict with state law, could also be required to meet additional qualifications imposed by the issuing municipality. Because each municipality in this state could impose unique requirements, qualifications for an operator’s license varied throughout this state. 1997 Wisconsin Act 27 prohibited municipalities from imposing qualifications in addition to those required under state law and required municipalities to issue an operator’s license to any person who meets the state qualifications. That is, under current law, a municipality is required to issue an operator’s license to any individual applicant who: 1) does not have an arrest or conviction record for any offense; 2) has been a resident of this state for at least 90 days prior to the date of applying for the operator’s license; 3) is at least 21 years of age; 4) possesses a seller’s permit issued by the department of revenue for purposes of sales taxes; and, with limited exceptions, 5) has completed an approved responsible beverage server training course during the previous 2 years.

This bill undoes these changes to municipal authority enacted by 1997 Wisconsin Act 27. The bill restores the law that existed prior to that act, namely that a municipality may (but is not required to) issue operators’ licenses, and may impose on an applicant for an operator’s license qualifications in addition to those required under state law.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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1 **SECTION 1.** 125.04 (12) (a) of the statutes, as affected by 1997 Wisconsin Act 27,
2 is amended to read:

3 125.04 **(12)** (a) *From place to place.* Every alcohol beverage license or permit
4 may be transferred to another place or premises within the same municipality. An
5 alcohol beverage warehouse permit under s. 125.19, a winery permit under s. 125.53
6 or an intoxicating liquor wholesaler's permit under s. 125.54 may be transferred to
7 another premises within this state. Transfers shall be made by the issuing authority
8 upon payment of a fee of \$10. No retail licensee, retail permittee, intoxicating liquor
9 wholesaler or holder of a warehouse or winery permit is entitled to more than one
10 transfer during the license or permit year. This paragraph does not apply to a license
11 issued under s. 125.51 (4) (v) ~~or to a reserve "Class B" license, as defined in s. 125.51~~
12 ~~(4) (a).~~

13 **SECTION 2.** 125.17 (1) of the statutes, as affected by 1997 Wisconsin Act 27, is
14 amended to read:

15 125.17 **(1)** AUTHORIZATION. Every municipal governing body shall may issue an
16 ~~operator's license to any applicant who is qualified under s. 125.04 (5) operators'~~
17 ~~licenses.~~ Operators' licenses may not be required other than for the purpose of
18 complying with ss. 125.32 (2) and 125.68 (2). Operators' licenses may be issued only
19 upon written application.

20 **SECTION 3.** 125.51 (3) (e) 1. of the statutes, as affected by 1997 Wisconsin Act
21 27, is renumbered 125.51 (3) (e) and amended to read:

22 125.51 **(3)** (e) ~~Except as provided in subs. 2. and 3., the~~ The annual fee for a
23 "Class B" license shall be established by the municipal governing body and shall be
24 the same for all "Class B" licenses, except that the minimum fee shall be \$50 and the

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1 maximum fee shall be \$500. The minimum fee does not apply to licenses issued to
2 bona fide clubs and lodges situated and incorporated in the state for at least 6 years.

3 **SECTION 4.** 125.51 (3) (e) 2. and 3. of the statutes, as created by 1997 Wisconsin
4 Act 27, are repealed.

5 **SECTION 5.** 125.51 (4) (a) 4. of the statutes, as created by 1997 Wisconsin Act
6 27, is repealed.

7 **SECTION 6.** 125.51 (4) (b) (intro.) and 1g. of the statutes, as affected by 1997
8 Wisconsin Act 27, are consolidated, renumbered 125.51 (4) (b) (intro.) and amended
9 to read:

10 125.51 (4) (b) (intro.) The ~~Except as provided in pars. (c) and (d), the~~ quota of
11 each municipality is the ~~sum of the following:~~ 1g. The number of licenses granted
12 or issued in good faith by the municipality and in force on the first day of the 2nd
13 month beginning after the effective date of this subdivision [revisor inserts date].
14 under s. 176.05 (21) (h), 1975 stats., plus whichever of the following is the largest:

15 **SECTION 7.** 125.51 (4) (b) 1., 2., 3., 4. and 5. of the statutes are created to read:

16 125.51 (4) (b) 1. One license per 500 population or fraction thereof.

17 2. The number of licenses lawfully issued and in force within the municipality
18 on August 27, 1939.

19 3. The number of licenses lawfully issued and in force within the municipality
20 in the previous year.

21 4. In the case of a village or city incorporated since August 27, 1939, one license
22 per 500 population or fraction thereof at the time of incorporation.

23 5. In the case of any municipality incorporated or organized since August 27,
24 1939, the number of licenses lawfully issued and in force in the territory within the
25 municipality at the time of incorporation or organization.

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1 **SECTION 8.** 125.51 (4) (b) 1m., (bm) and (br) of the statutes, as created by 1997
2 Wisconsin Act 27, are repealed.

3 **SECTION 9.** 125.51 (4) (c), (d) and (f) to (u) of the statutes are created to read:

4 125.51 (4) (c) If territory containing premises covered by a license is annexed
5 to the municipality and if the municipality's quota would not otherwise allow licenses
6 for the premises, the quota shall be increased to include a license for each premises
7 in the annexed territory.

8 (d) Detachment of territory shall decrease the quota of the remainder of the
9 municipality by the number of premises covered by licenses existing in the detached
10 territory, except that detachment shall not decrease the quota of the remainder to
11 less than one license per 500 persons or less than one license.

12 (f) Notwithstanding the quota of a town, licenses issued by the town under s.
13 176.05 (21) (k), 1979 stats., remain valid and may be renewed by the town board, but
14 the town board may not issue any new "Class B" licenses until the total number of
15 licenses is less than the quota.

16 (g) Notwithstanding the quota of a municipality, its governing body may, by a
17 three-fourths vote of its members, issue a license limited to the sale of wine for
18 consumption only on the premises to any person engaged in preserving a place of
19 historic significance built during the state's first 5 years of statehood and operating
20 the place as a restaurant.

21 (h) Notwithstanding the quota of a municipality, its governing body may, by a
22 three-fourths vote of its members, issue a license to any restaurant existing on
23 August 7, 1977, with a museum having permanent exhibition space open to the
24 public at least 3 times the area of the restaurant, whether or not the museum existed
25 on August 7, 1977.

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1 (i) Notwithstanding the quota of the municipality, licenses issued under s.
2 176.05 (21) (h), 1979 stats., remain valid and may be renewed by the municipality.

3 (j) Each municipality that issues "Class B" licenses shall issue a "Class B"
4 license to any club which, on June 30, 1982, held a "Class B" license issued by the
5 department under s. 176.05 (4a), 1979 stats. Licenses issued under this paragraph
6 shall be renewed annually, upon application, unless revoked under s. 125.12. The
7 quota of a municipality is permanently increased by the number of licenses it issues
8 under this paragraph.

9 (k) Notwithstanding the quota of a town, the town board may issue a license
10 to any of the following:

11 1. An outdoor theater operated by a professional repertory theater company
12 most of whose productions consist of classical drama.

13 2. A conference center and restaurant used by the staff and patrons of a
14 professional repertory theater company for lodging and meetings.

15 (L) Notwithstanding the quota of a town, the town board may issue a license to
16 a person operating a ski chalet on property owned by the state.

17 (m) Notwithstanding the quota of a municipality, its governing body may, by
18 a three-fourths vote of its members, issue a license to any restaurant with a museum
19 having permanent exhibition space open to the public at least 3 times the area of the
20 restaurant if the building housing the museum was built during the first 8 years of
21 statehood or earlier.

22 (n) Notwithstanding its quota, a village may issue a license for a hotel owned
23 by an American Indian tribe.

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1 (o) Notwithstanding its quota, a village may issue a license for a motel located
2 on a lake which is the headwaters of a river which is part of the border between this
3 state and Minnesota.

4 (p) Notwithstanding its quota, a town which borders on a lake, is adjacent to
5 a 2nd class city and is located in a county with a population of 300,000 or more may
6 issue a license for a tavern which is covered by a Class "B" license on December 8,
7 1987, if the tavern is not located within 500 feet of a lake.

8 (q) Notwithstanding the quota of a municipality, its governing body may issue
9 a license to persons conducting business at a racetrack, as defined in s. 562.01 (12).

10 (r) Notwithstanding its quota, a village may issue a license to a post of a
11 veteran's organization for a building that was rebuilt after being destroyed by a
12 tornado.

13 (s) Notwithstanding the quota of a municipality, its governing body may issue
14 a license to a restaurant and public golf course situated on at least 200 acres of land,
15 if the restaurant and public golf course are located adjacent to STH 57.

16 (sm) Notwithstanding the quota of a town, the town board may issue a license
17 to a person who owns a building located at the intersection of STH 11 and STH 80
18 in Grant County, if the person had a license under sub. (3) issued to him or her
19 previously.

20 (t) 1. Notwithstanding the quota of a municipality, its governing body may issue
21 a license to a restaurant that was established in 1949 and is located on STH 42 across
22 from a town park.

23 2. No license may be issued under subd. 1. after July 29, 1995, but a license
24 issued under subd. 1. before July 29, 1995, may be renewed.

