

CHAPTER 176.

INTOXICATING LIQUORS.

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176.01 Definitions. As used in this chapter, or in any regulation made pursuant thereto, unless the context or subject matter otherwise requires:

(2) "Intoxicating liquors" means all ardent, spirituous, distilled, or vinous liquors, liquids, or compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of one per cent or more of alcohol by volume, which are fit for use for beverage purposes, but shall not include "fermented malt beverages" as defined in subsection (10) of section 66.05, which contain less than five per centum of alcohol by weight.

(3) The term "peace officer" includes sheriffs, undersheriffs, deputy sheriffs, police officers, constables, marshals, and deputy marshals, and any duly authorized employe of the state treasurer employed pursuant to chapter 139 of the statutes.

(4) The term "sell" or "sold" or "sale" includes the transfer, gift, barter, trade or exchange, or any shift, device, scheme or transaction whatever whereby intoxicating liquors may be obtained, but does not include the solicitation of orders for, or the sale for future delivery of, intoxicating liquors.

(5) The term "magistrate" includes the judges of the several courts of record and judges of any municipal court in vacation as well as term time, court commissioners, police justices, and all justices of the peace.

(6) "Restaurant" means space, in and wholly within a suitable building, leased or rented or owned by a person or corporation, licensed as such, and provided with adequate and sanitary kitchen and dining room equipment and capacity and employing such number and kinds of servants and employes necessary for preparing, cooking, and serving suitable food for strangers, travelers, and other patrons and customers, and complying with all the requirements imposed upon restaurants under the laws of this state.

(7) "Hotel" means a building owned or leased and operated by a person holding a duly issued and valid license as an innkeeper, provided with adequate and sanitary kitchen and dining room equipment and capacity, and employing such number and kinds of servants and employes for preparing, cooking, and serving suitable food for its guests, including travelers and strangers and its other patrons and customers, as necessary to meet and comply with all the requirements imposed upon innkeepers under the laws of this state.

(8) "Club" shall mean an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building used exclusively for club purposes, and which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose but not for pecuniary gain; except that where such club is located in an office or business building it may be licensed as such provided it otherwise qualifies as a "club" within the meaning of this subsection. The trafficking in intoxicating liquors shall be incidental only and shall not be the object of its existence or operation. A club making application for a license shall have occupied the premises upon which it is then located for a period of six months prior to the date of filing such application.

(9) A "manufacturer" is a person, firm, or corporation, other than a rectifier, that manufactures or distills intoxicating liquors, including selling at wholesale such intoxicating liquors manufactured or distilled by the licensee at the premises designated in the license.

(10) A "rectifier" is a person, firm or corporation that rectifies, purifies or refines distilled spirits or wines at the premises designated in the license by any process other than by original and continuous distillation from mash, wort or wash, through continuous closed vessels or pipes, until the manufacture thereof is complete or who has in his possession any still or leach tub or keeps any other apparatus for the purpose of refining in any manner distilled spirits or other liquors or who after rectifying and purifying distilled spirits, shall, by mixing such spirits or liquors with any materials, manufacture any spurious, imitation or compound liquors for sale and any person who, without rectifying, purifying or refining distilled spirits shall, by mixing such spirits with any materials, manufacture any spurious, imitation or compound liquors for sale under the name of "whiskey," "brandy," "gin," "rum," "spirits," "cordials" or any other name and who is also a distiller or is under substantially the same management or control as a distiller. A rectifier may sell at wholesale intoxicating liquors rectified by him without any other license than that of a rectifier.

(11) A "wholesaler" is any person, firm, or corporation, other than a manufacturer or rectifier, that sells intoxicating liquors to retailers or other licensees for the purpose of resale.

(12) A "retailer" is any person, firm, or corporation that sells, exchanges, offers, or exposes for sale or exchange, or has in possession with intent to sell or exchange to consumers, any intoxicating liquors.

(13) The word "person" shall include firm, partnership, corporation or association. [*Spl. S. 1933 c. 13; 1935 c. 187 s. 1, 2; 1937 c. 346*]

Note: Intoxicating liquor laws of 1933 regular and special sessions are interpreted. 23 Atty. Gen. 130.

Warehouse receipts covering intoxicating liquor can be sold by Wisconsin manufacturers, rectifiers and wholesalers to other Wisconsin manufacturers, rectifiers, wholesalers and retailers but not to general public. 23 Atty. Gen. 637.

Fermented malt beverages containing 7½% of alcohol by volume or 6.01% by weight are not taxable as intoxicating liquors under chapter 139, but sale of such beverages is subject to provisions of chapter 176, regulating sale of intoxicating liquors. 32 Atty. Gen. 48.

176.04 Sale without license; penalty. (1) Any person who shall, without a license or permit, vend, sell, deal or traffic in or for the purpose of evading any law of this state, give away any intoxicating liquors in any quantity whatever, shall be guilty of a misdemeanor and be punished by a fine of not less than two hundred fifty dollars nor more than one thousand dollars, besides the cost; or by imprisonment in the county jail or house of correction not to exceed one year nor less than three months and in case of punishment by fine unless the fine and costs be paid forthwith be committed to the county jail or house of correction until they are paid or until discharged by due course of law; and in case of a second or subsequent conviction of the same person during any year the punishment shall be both by fine and imprisonment.

(2) The existence of the issue of any permit or special tax stamp from the United States government, authorizing or permitting any person to engage in the occupation of selling intoxicating liquors at the time and place of any alleged violation of the provisions of this chapter, or the ordinances of any city or other municipality, shall be accepted as prima facie evidence that such person is vending, selling, dealing, or trafficking in liquor.

(3) No license shall be required for the use of intoxicating liquor in hospitals or in bona fide institutions for the aged and infirm where such liquor is used for medicinal, mechanical, or scientific purposes only or for one licensed to practice surgery or medicine in using alcohol in any form in the bona fide treatment of the sick or in using or prescribing such alcohol for such bona fide treatment. However, a permit to receive shipments of

such intoxicating liquor must first be obtained from the state treasurer as otherwise provided for in section 176.404. [*Spl. S. 1933 c. 13; 1935 c. 187*]

Note: See note to 139.03, citing *State v. Jackson*, 219 W 13, 261 NW 732.

176.041 Expiration of licenses. All licenses or permits issued by the state treasurer pursuant to the provisions of this chapter, unless otherwise specified, shall be issued January first of the licensed year and shall expire December thirty-first of the licensed year. [*1935 c. 187*]

176.05 Liquor licenses. (1) **AUTHORITY TO GRANT LICENSES.** Each town board, village board, and common council may grant retail licenses, under the conditions and restrictions in this chapter contained, to such persons entitled to a license under this chapter as they deem proper to keep places within their respective towns, villages, or cities for the sale of intoxicating liquors. No member of any such town board, village board or common council shall sell directly or indirectly or offer for sale, to any person, firm, or corporation that holds or applies for any such license any bond, material, product, or other matter or thing that may be used by any such licensee or prospective licensee in the carrying on of his or its said business.

(1a) **PERMITS TO MANUFACTURERS, WHOLESALERS, RECTIFIERS.** No manufacturer, wholesaler or rectifier shall sell, manufacture or rectify any intoxicating liquor within the state without first obtaining a permit from the state treasurer. The application for such permit and the permit shall be in such form as the state treasurer shall prescribe. Each permit shall expire on July first of each year. The annual fee for such permits shall be as follows: A manufacturer's permit, the sum of seven hundred and fifty dollars; a rectifier's permit, the sum of seven hundred and fifty dollars; and a wholesaler's permit, the sum of five hundred dollars, and a combination permit consisting of any two permits here listed for one thousand dollars which shall be paid into the state treasury and credited to the general fund. If any manufacturer, wholesaler or rectifier violates any of the provisions of this chapter or chapter 139, the state treasurer may suspend or revoke such permit for such period of time as he may determine.

(1b) **SAME.** The restrictions and limitations imposed in subsections (3), (9), and (13) of this section shall apply to manufacturers and rectifiers and the permits issued by the state treasurer.

(1c) **SAME.** A permit issued to a manufacturer, rectifier, or wholesaler shall entitle the holder of such permit to sell, deal, or traffic in such liquors at wholesale in quantities of not less than one wine gallon at any one time, no part of which shall be sold for consumption upon the premises of the permittee.

(1d) **PUBLIC WAREHOUSE LIQUOR PERMIT.** The state treasurer shall also issue a "public warehouse liquor permit." The holder of such permit shall be entitled, subject to rules and regulations issued by the state treasurer, to store and warehouse intoxicating liquors and fermented malt beverages in premises of the public warehouse so licensed. Such permit, however, shall not authorize the sale of any intoxicating liquor or fermented malt beverages. The annual fee for such permit shall be one hundred dollars for each place licensed and shall be paid into the state treasury and credited to the general fund. No public warehouse shall store or warehouse intoxicating liquor or fermented malt beverage without such permit.

(1f) **WINERY LICENSE.** There shall also be issued by the state treasurer a license which shall be called a winery license. The annual fee for said license shall be one hundred dollars paid into the state treasury and credited to the general fund, and shall permit the licensee to wholesale or to manufacture and bottle wine on the premises so licensed for sale at wholesale to other licensees. A manufacturer, rectifier or wholesaler holding a permit issued under subsection (1a) may manufacture, rectify, bottle or wholesale wine, pursuant to the terms of the permit without procuring a winery license.

(1g) **SACRAMENTAL WINE.** Any person who holds a license or permit to manufacture, rectify or sell intoxicating liquor at wholesale or who is the holder of a winery license may sell sacramental wine direct to ministers of the gospel, priests, rabbis or religious organizations for sacramental use exclusively.

(2) **KIND OF LICENSES.** (a) Licenses to sell, deal, or traffic in intoxicating liquors shall be designated either "Retail Class A" or "Retail Class B". A retail license "Class A" shall permit its holder to sell, deal and traffic in intoxicating liquors only in original packages or containers, in quantities of not more than three wine gallons at any one time, and to be consumed off the premises so licensed, except that wine may be sold in the original package or otherwise in any quantity. A retail license "Class B" shall permit its holder to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed and not in the original package or container. Wine, however, may be sold in the original package or otherwise in any quantity to be consumed off the premises. The provisions of this paragraph relating to retail "Class B" licenses shall

apply to all town, cities and villages except those located in counties containing a city of the first class, and such towns, cities and villages as by their governing bodies elect to come under the provisions of paragraph (b).

(b) In all counties containing a city of the first class, and in all towns, cities and villages that by ordinance of their governing bodies elect to come under the provisions of this paragraph a retail license "Class B" shall permit its holder to sell, deal and traffic in intoxicating liquors to be consumed by the glass only on the premises so licensed, and in the original package or container, in quantities of not more than one quart at any one time, and to be consumed off the premises so licensed, except that wine may be sold in the original package or otherwise in any quantity to be consumed off the premises.

(3) LIMITATION TO SAME PERSON. Not more than two retail "Class A" or "Class B" licenses shall be issued in the state to any one corporation or person, except in case of hotels or clubs, and in each application for a retail "Class A" or "Class B" license the applicant shall state that he has not made application for more than one other retail "Class A" or "Class B" license for any other location in the state. No such license shall be issued to any person acting as agent for or in the employ of another. A retail "Class A" and "Class B" license shall not both be issued for the same premises or connecting premises except in the case of hotels as defined in paragraph (e) of subsection (2) of section 176.20.

(3a) FEDERAL STAMP TAX A PREREQUISITE. No license shall be issued to any person until such person has obtained a valid federal special tax stamp appropriate to his business.

(4) LICENSE FEES. The sum to be paid for such license shall be at all times the same for each class of licenses and shall be in such amount as the governing body of the town, city or village issuing the same may determine, except that the minimum fee shall be fifty dollars and the maximum fee shall be five hundred dollars in any town, village or city, and except that licenses may be granted to bona fide clubs and lodges situated and incorporated or chartered in the state of Wisconsin for at least six years at a smaller fee, as the governing body of the town, city or village may determine.

(4a) LICENSES TO COUNTRY CLUBS. All "Class A" and "Class B" licenses issued to clubs, as defined in subsection (8) of section 176.01, that are operated solely for the playing of golf, tennis or similar sports, and commonly known as country clubs, and including yachting clubs, shall be issued by the state treasurer without regard to the provisions of section 176.38 and paragraph (b) of subsection (10) of this section for an annual fee of fifty dollars which shall be paid to the treasurer of the town, city or village in which such club is located. The provisions of subsection (1a) of section 176.05 relative to suspending or revoking permits shall apply to all licenses issued by the state treasurer hereunder, and, except as herein provided, all provisions of this chapter relating to "Class A" and "Class B" licenses for the sale of intoxicating liquors shall apply to licenses issued to country clubs by the state treasurer.

(4n) LICENSE FEE REFUND TO THE MILITARY. Any "Class B" licensee for the sale of intoxicating liquor or fermented malt beverages entering the armed forces of the United States for the duration of World War II and who closes the licensed premises or transfers or leases the same to another licensee, shall be given a refund of one-twelfth of the license fee paid for such "Class B" license or licenses times the number of full months remaining in the license year. This subsection shall apply to license fees paid for the license year 1942-43 and to fees paid for all license years thereafter until the termination of the present war as proclaimed by the President or the Congress.

(5) FORM; DURATION. The application for a license to sell or deal in intoxicating liquor and "fermented malt beverages" as defined in subsection (10) of section 66.05 shall be in writing on a form furnished by the state treasurer and sworn to by the applicant. The application shall state the kind of license applied for, designate the premises where such liquor is to be sold and such other information as required by this chapter. Such form shall be prepared by the state treasurer and shall be suitable for the entire state and so worded as to make clear to any licensing authority the past history of the applicant and fitness for license under this act. The state treasurer shall furnish on request such form blanks as may be necessary to each licensing body. Except as provided in subsection (6), all such licenses shall remain in force until the first day of July next after the granting thereof, unless sooner revoked; they shall be attested by the town, city or village clerk, and shall not be delivered until the applicant shall produce and file with the clerk a receipt showing the payment of the sum required therefor to the proper treasurer. If any licensee or license applicant shall die or become bankrupt or make an assignment for the benefit of creditors during any license year or at any time after filing the application for a license and a license is granted to such applicant, the administrator, executor, receiver or trustee, or, if no administrator is appointed, the surviving husband or wife of such deceased licensee may continue or sell said business, and, if he sells the same, may assign or transfer such license and all rights and privileges of the licensee there-

under if the transferee or assignee is acceptable to the licensing authorities, and secures their consent thereto, and fully complies with the requirements of law applicable to original applicants, and executes and delivers a satisfactory bond; provided that the administrator so appointed must be a citizen of the United States; and provided further that the surviving husband or wife of the deceased is an American citizen. No license shall be issued to any person in violation of this chapter, and any license so issued shall be null and void. The town, village or city clerk shall keep all applications for license and they may be inspected by any citizen.

(6) SEMIANNUAL LICENSES. Licenses may be granted which shall expire on the thirtieth day of June of each year upon payment of such proportion of the annual license fee as the number of months or fraction of a month remaining until June thirtieth of each year bears to twelve. Licenses may also be issued at any time for a period of six months in any calendar year for which one-half of the annual license fee shall be paid. Such six months' licenses shall not be renewable during the calendar year in which issued.

(6a) "CLASS B" LICENSE SUBJECT TO RULES ON SANITATION. The rules and regulations made by the state board of health governing sanitation in restaurants shall apply to all "Class B" licenses issued under this section. No "Class B" license shall be issued unless the premises to be licensed conform to such rules and regulations.

(7) NO LICENSE ON RAILROADS. No license shall be required for the sale of intoxicating liquor upon any dining, buffet, or cafe car operated upon any railroad, but such liquor shall be sold and furnished only to bona fide passengers or other persons actually being transported, and shall be consumed only in such dining, buffet, or cafe car while in transit.

(8) ANNUAL LICENSE MEETINGS. All town and village boards and common councils, or the duly authorized committees of such councils, shall meet not later than May 15 of each year and be in session from day to day thereafter, so long as it may be necessary, for the purpose of acting upon such applications for license as may be presented to them on or before April 15, and all applications for license so filed shall be granted, issued or denied not later than June 15 for the ensuing license year, provided that nothing shall prevent any governing body from granting any licenses which are applied for at any other time. As soon as an application has been approved, a duplicate copy thereof shall be forwarded to the state treasurer. No application for a license which is in existence at the time of such annual license meeting shall be rejected without a statement on the clerk's minutes as to the reasons for such rejection.

(9) WHERE AND TO WHOM LICENSES NOT GRANTED. No license or permit shall be granted to any person or persons for the sale of any such intoxicating liquors, who is not of good moral character and a full citizen of the United States and of this state and who has not resided in this state continuously for at least one year prior to the date of filing the application; nor shall any such license be granted or issued to any person who has habitually been a petty law offender, or has been convicted of an offense against the laws of this state punishable by imprisonment in the state prison, unless the person so committed has been duly pardoned. The provisions of this subsection shall not apply to a Wisconsin corporation; such provisions apply, however, to all officers and directors of any such corporation.

(10) RESTRICTIONS ON RETAIL "CLASS B" LICENSES. (a) Intoxicating liquor shall be sold in restaurants only at tables and to seated customers.

(b) No retail "Class B" license shall be issued to any person who does not have, or to whom is not issued, a "Class B" retailer's license to sell fermented malt beverages under subsection (10) of section 66.05.

(11) RESTRICTIONS ON PREMISES UNDER RETAIL "CLASS A" OR "CLASS B" LICENSES. There shall be upon premises operated under a retail "Class A" or "Class B" liquor license, at all times, the licensee or some person who shall have an operator's license under subsection (10) of section 66.05 and who shall be responsible for the acts of all persons serving as waiters, or in any other manner, any fermented malt beverages or intoxicating liquor to customers. No person other than the licensee shall serve fermented malt beverages or intoxicating liquor in any place operated under a retail "Class A" or "Class B" liquor license unless he shall possess such operator's license, or unless he shall be under the immediate supervision of the licensee or a person holding an operator's license who shall be at the time of such service upon said premises.

(12) LICENSE FRAMED AND POSTED. Every license for the sale of intoxicating liquor or fermented malt beverages shall be inclosed in a suitable wood or metal frame, having a clear glass space and a substantial wood or metal back, so that the whole of such license may be seen therein, and shall be posted up and at all times displayed in a conspicuous place in the room where such business is carried on, so that all persons visiting such place may readily see the same.

(13) **LICENSES TO CORPORATIONS; APPOINTMENT OF AGENTS.** No corporation organized under the laws of this state or of any other state or foreign country, shall be given a license to sell in any manner any intoxicating liquor unless such corporation shall have first appointed, in such manner as the state treasurer shall by regulation prescribe, as agent, a citizen of the United States and shall have vested in him by properly authorized and executed written delegation full authority and control of the premises, described in the license of such corporation, and of the conduct of all business therein relative to intoxicating liquors as the licensee itself could in any way have and exercise if it were a natural person resident in the state, nor unless such agent is, with respect to his character, record and reputation, satisfactory to the state treasurer. Such corporation may cancel the appointment of such agent and appoint a successor agent, qualified as the one first appointed and to act in his stead, for the remainder of the license year or until another agent is appointed, by giving the licensing authority and the state treasurer immediate written notice thereof stating the reason for such cancellation and new appointment. Such successor agent shall have all the authority and perform all the functions and be charged with all the duties of such agent of the corporation with like force and effect as if he had been first appointed by approval of the state treasurer until the next regular or special meeting of the licensing authority; provided, that such license shall cease to be in force prior to such regular or special meeting upon receipt by the clerk of the licensing authority of notice of disapproval of such successor agent by the state treasurer or by the sheriff or other peace officer of the municipality wherein the license was issued. Such license of such corporation shall not be in force after such regular or special meeting unless and until such successor agent or another qualified agent is appointed and approved by the licensing authority and the state treasurer. Such corporation shall, in each instance, following the approval of such successor agent or another qualified agent by the licensing authority and the state treasurer, pay to the licensing authority a fee of \$10.

(14) **TRANSFERS OF LICENSES.** Every license or permit issued pursuant to this chapter or subsection (10) of section 66.05 may for a fee of ten dollars be transferred by the proper issuing authority from one premises to another within the same city, town or village, but no licensee shall be entitled to more than one transfer in any one license year. Whenever a license is transferred the licensing authority shall forthwith notify the state treasurer of such transfer.

(18) **SEPARATE LICENSE OR PERMIT REQUIRED.** Wholesalers, manufacturers, rectifiers, brewers, bottlers and retailers shall have a separate permit or license covering each location or premises from which removals, or deliveries on sale of intoxicating liquors or fermented malt beverages are made except from a licensed public warehouse.

(20) **LIMITATIONS.** The provisions of this section requiring a license or permit for the sale of intoxicating liquors shall not apply to any judicial, executor's, administrator's or guardian's sale, or any sale by a receiver or trustee in insolvency or bankruptcy, where the estate being administered possesses a license or permit in effect on the date of such sale, nor to the sale by a pledgee in good faith pursuant to the terms of the pledge, and not for the purpose of avoiding the provisions of this chapter or chapter 139, and in the ordinary course of business of lending money secured by a pledge of intoxicating liquor, or warehouse receipts therefor, or other evidence of ownership thereof.

(21) **RETAIL "CLASS B" LIQUOR LICENSES LIMITED IN NUMBER.** (a) No governing body of any town, village or city shall issue more than one retail "Class B" liquor license for each five hundred inhabitants or fraction thereof, except that if a greater number of such licenses have been granted, issued, or in force, in such town, village or city, at the time of the taking effect of this subsection, than would be permissible under said limitation, such town board, village board or common council may grant and issue such licenses equal in number to those granted, issued, and in force on the taking effect of this subsection, but no such town or village board, or common council shall grant and issue any additional retail "Class B" license above the number in force upon the taking effect of this subsection until the number of such licenses shall correspond to the limitation provided herein. Inmates of charitable and penal institutions shall not be considered as inhabitants of cities or villages for the purposes of this subsection.

(b) No governing body of any city, town, or village shall issue any retail "Class B" intoxicating liquor license to any other person, firm, or corporation, in place of any license surrendered, for the reason indorsed thereon and signed by the licensee named therein, that the licensee has discontinued business by reason of entry into the armed forces of the United States to serve in World War II, unless said licensee shall surrender and release in writing all his right, title and interest in and to said license. Notwithstanding any provision of paragraph (a), or of this paragraph, the governing body to which such license was surrendered may grant a retail "Class B" intoxicating liquor license to any licensee who surrendered such license for the foregoing reason without written release of his right,

title and interest therein, upon application therefor made at any time within 6 months after the applicant's discharge from the armed forces, provided the applicant is qualified under subsections (9) and (10). This paragraph shall apply only in cases where the licensee is the owner in fee simple of the premises for which the surrendered license is issued and where the premises are not to be used for any other business purpose in the licensee's absence. [*Spl. S. 1933 c. 13; 1935 c. 46, 187, 217, 241, 249, 276, 292, 411, 473, 486, 503; 1937 c. 292, 390; 1939 c. 101, 376, 397, 460; 1939 c. 515 s. 9; 1941 c. 42; 1943 c. 184, 331, 424; 1943 c. 455*]

Note: Requirement of city ordinance, as condition of issuing beer license, that licensee also secured liquor license, thus compelling him to pay more than maximum statutory fee, imposed by ordinance, for beer license and give bond, held invalid as in conflict with state law. *State ex rel. Torres v. Krawczak*, 217 W 593, 259 NW 607.

Where no other tavern existed in a neighborhood where an applicant for a liquor license proposed to establish a tavern, and the neighborhood was a residential one with places of amusement for children and others near the proposed location, the refusal of the city common council after due consideration to grant a license because of the character of the surroundings was not arbitrary, but was a proper exercise of the council's discretion. *State ex rel. Higgins v. Racine*, 220 W 107, 264 NW 490.

The town board may limit the number of retail licenses and when it has so limited the number no applicant for a license has a vested right to have his application considered in the order in which the applications are filed. *Bjoridal v. Town Board of Delavan*, 230 W 543, 284 NW 534.

Although a partnership may be granted a license to operate a tavern and sell intoxicating liquors provided the names of the partners are disclosed in both the application for and in the license granted, a partnership may not obtain a license for the sale of intoxicating liquors in the name of one of the partners, and there is no legal sanction for a so-called silent partner's engaging in a tavern business in which intoxicating liquors are sold under a license issued in the name of one of the partners. (*Sec. 176.05 (1), (3), (5), (9), (13), Stats. 1937.*) *Brill v. Salzwedel*, 235 W 551, 292 NW 908.

Statutes regulating the sale of intoxicating liquor may prescribe requirements which result in classification as between citizens of the United States, and where there is legitimate classification and the regulation affects all members of the class alike, there is no violation of any equality clause of federal or state constitution. The classification in this section is valid. *Weinberg v. Kluchesky*, 236 W 99, 294 NW 530.

The matter of granting retail liquor licenses is within the discretion of the licensing authority, and, while it may not act capriciously or arbitrarily, it may grant or refuse licenses in the exercise of a sound discretion. *Rawn v. Superior*, 242 W 632, 9 NW (2d) 87.

If 176.05 (8), Stats. 1941, deprives a city council of power to deny an application after June 15th, it likewise deprives the council of power to issue a license after June 15th, and hence it does not entitle an applicant to compel the council to issue a license where the council did not deny the application until after June 15th. *Rawn v. Superior*, 242 W 632, 9 NW (2d) 87.

Provision in liquor law prohibiting member of town board, village board or common council from selling to any person holding liquor license anything that may be used by such licensee in his or its business is constitutional. 23 Atty. Gen. 69.

Town and village boards and city councils may issue licenses to sell liquor in all instances except where community has voted dry. 23 Atty. Gen. 152.

Many questions calling for construction of liquor laws (66.05 (10), chapter 139 and chapter 176, Stats. 1933) are answered. 23 Atty. Gen. 191.

When tavern keeper leaves home with no intention of returning his wife may not

operate tavern under license issued in his name. 24 Atty. Gen. 133.

When tavern keeper absconds his license may be revoked by town board and new license issued to his wife for same premises. 24 Atty. Gen. 264.

Member of town or village board may have liquor license. 24 Atty. Gen. 292.

Duty of determining whether applicant for "Class A" or "Class B" intoxicating liquor license is acting as agent for or is in employ of another rests primarily upon local licensing authorities. Under (13), state treasurer is limited to determination that character, record and reputation of proposed agent are satisfactory. 25 Atty. Gen. 369.

In absence of referendum election city council may by ordinance determine that intoxicating liquor licenses issued by city shall be of "Class B" only. 25 Atty. Gen. 373.

Licenses to sell liquor for period of six months beginning June 1 and ending December 1 may be granted under provisions of second sentence of (6). Licenses may be granted under first sentence for year or any shorter period of time but must expire on June 30 following issuance. 27 Atty. Gen. 352.

This section prohibits issuance of retail "Class A" or "Class B" license for sale of intoxicating liquors to any person acting as agent or in employ of another. 27 Atty. Gen. 567.

Under (9) license or permit may be granted to Wisconsin corporation only when all officers and directors of such corporation can satisfy requirements set forth for individual desiring license or permit. 23 Atty. Gen. 191, 203, adhered to. 27 Atty. Gen. 567.

Wisconsin cases construing term "premises" as used in former state prohibition statutes apply with equal logic to present statutes relating to issuance of licenses for sale of fermented malt beverages and intoxicating liquors. Test as to whether particular room or space comes within term rests upon accessibility and dominion as disclosed by particular facts in each case. 27 Atty. Gen. 702.

Subsection (1) does not apply to members of town board indirectly engaged in sale of beer. 27 Atty. Gen. 798.

Intoxicating liquor dealer operating under "Class A" retail license only may not accept order for intoxicating liquor from hotel guest who is away from licensed premises and deliver liquor to such guest where sale of such liquor is not consummated on dealer's licensed premises. 23 Atty. Gen. 251.

Power of state treasurer to issue liquor licenses to country clubs under (4a) is not limited by (21). Six-month licenses issued under (6) stand on the same footing as annual licenses so far as (21) is concerned. 23 Atty. Gen. 618.

"Class B" retail liquor licenses issued in excess of number allowed by 176.05 (21) are void and persons operating thereunder are subject to prosecution for selling without license, under 176.04. Where excessive number of "Class B" retail liquor licenses are issued at one meeting of license body, validity of individual licenses depends upon order in which voted on, if voted individually, but if all are voted simultaneously in one resolution, all are void, since such resolution is beyond jurisdiction of licensing body. 29 Atty. Gen. 295.

Where election resulted in voting beer out and voting intoxicating liquors in, 176.05

(10) (b) prohibits issuing Class B liquor holder to rectify wine without also having license. 30 Atty. Gen. 351. rectifier's permit under 176.05 (1a). 32 Atty. Winery license under (1f) authorizes Gen. 28.

176.051 Failure to obtain permit; penalty. Any person who shall sell, manufacture or rectify any intoxicating liquor within the state without first obtaining a permit from the state treasurer as required by this chapter, shall be guilty of a felony and shall upon conviction be punished by a fine of not less than one thousand dollars nor more than five thousand dollars or by imprisonment in the state prison for not less than one year nor more than ten years or by both such fine and imprisonment. A second or subsequent conviction shall be punished by both such fine and imprisonment. Any person aiding or abetting in such illicit sale, manufacture or rectifying of intoxicating liquor shall be guilty in the same degree as the principal offender. [1935 c. 187]

Note: In a prosecution for manufacturing, selling and aiding and abetting in the manufacture and sale of illicit intoxicating liquor contrary to 176.051, the evidence on the preliminary examination warranted the examining magistrate in binding a defendant over for trial where it disclosed that this defendant had appeared at the location of a still during a raid in the middle of the night, that another defendant directly in charge of the

manufacture and sale of the illicit alcohol made his headquarters at the tavern of this defendant and had there reported to this defendant on the night of the raid that something suspicious was going on at the still, and that this defendant had promised financial aid to another person arrested in connection with the same liquor charge. Kluck v. State, 223 W 381, 269 NW 683.

176.055 Warehouse receipts salesman's permit. The state treasurer may issue a warehouse receipts salesman's permit. The fee for such permit shall be one hundred dollars and it shall be issued only to natural persons of good moral character who have resided in the state for one year preceding the application for the issuance thereof. The permit shall entitle the holder to sell warehouse receipts for intoxicating liquors to duly licensed manufacturers, rectifiers and wholesalers of intoxicating liquors, but to none other. Any person who shall sell warehouse receipts for intoxicating liquors without a permit from the state treasurer or who shall sell such receipts to a person other than a duly licensed manufacturer, rectifier or wholesaler shall be punished by imprisonment in the state prison for not less than one year nor more than three years or by a fine of not less than one hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment. [1939 c. 535]

176.06 Closing hours. No premises for which a wholesale or retail liquor license has been issued shall be permitted to remain open for the sale of liquor:

(1) If a wholesale license, between 5 P. M. and 8 A. M. except on Saturday when the closing hour shall be 9 P. M.

(2) If a retail "Class A" license, between 9 P. M. and 8 A. M.

(3) If a retail "Class B" license, in any county of a population of less than 500,000, between 1 a. m. and 8 a. m.

(4) On any election day as provided in section 176.34, except as provided in subsection (6) (d).

(5) Hotels and restaurants whose principal business is the furnishing of food and/or lodging to patrons shall be permitted to remain open for the conduct of their regular business but shall not be permitted to sell intoxicating liquors during the hours mentioned in subsections (3) and (4) of this section.

(6) In any county having a population of 500,000 or more, if a retail "Class B" license, the closing hours, during which no patron or guest shall be permitted to enter or remain in the licensed premises except as provided in paragraph (e), shall be as follows:

(a) On Sunday, between 3:30 a. m. and 10 a. m.

(b) On week days, between 2 a. m. and 6 a. m.

(c) On January 1 of each year, no closing.

(d) On any election day, during such hours as the polls may be open.

(e) Hotels and restaurants whose principal business is the furnishing of food or drinks, as prescribed in section 176.05 (10), or lodging to patrons shall be permitted to remain open for the conduct of their regular business but shall not be permitted to sell intoxicating liquors or any malt beverages during the hours prohibited in paragraphs (a), (b) and (d). [Spl. S. 1933 c. 13; 1943 c. 47]

Note: Municipalities may make more rigid closing requirements with respect to sale of intoxicating liquors than those established by this section. Ruling in 27 Atty. Gen. 650 distinguished. 31 Atty. Gen. 147.

176.07 Blinds prohibited when premises closed. No premises licensed for the sale of intoxicating liquor at retail shall, during the days they are required to close or during the hours in which the sale of liquor is prohibited, obstruct by the use of curtains, blinds, screens or in any other manner, a full and complete view of the interior from the outside. During the hours in which the sale of intoxicating liquor is permitted the premises shall be properly and adequately lighted. [Spl. S. 1933 c. 13]

176.08 Municipal liquor stores may be established under local option. Any town, village, or city may, by majority vote of the electors voting thereon, establish, maintain, and operate one or more stores therein for the sale, dealing, or trafficking in of intoxicating liquor only in original packages or containers, in quantities of not more than one wine gallon at any time, and to be consumed off the store premises. Such stores shall be maintained and operated under the management or control of the local governing body. [*Spl. S. 1933 c. 13; 1935 c. 187*]

176.09 Application; publication; fee. (1) All applications for licenses to sell intoxicating liquors shall be filed with the clerk of the town, village, or city in which such premises are situated at least fifteen days prior to the granting of any such license; and the same shall, prior to the granting of such license, be published in a daily paper printed in such town, city, or village at least three times successively, and where there is no such daily paper published, at least once in a weekly paper published in such town, city, or village. Such publication shall include the name and address of the applicant, the kind of license applied for, and the location of the premises to be licensed.

(2) No publication of such applications shall be made in any newspaper, unless such newspaper making such publication shall have been regularly and continuously published daily or weekly as the case may be, in such town, village or city for a period of at least 2 years before the date of publication of such application. If there be no paper published in the town, village or city in which the premises are situated, then in such paper having circulation in such town, village or city as the local authorities may designate. If no paper is designated by the local authorities, then in the paper having the largest circulation in such town, village or city.

(3) At the time of filing such application the applicant shall pay to the town, village, or city clerk such a sum as, computed by the rate per folio for legal notices or publications as created, established, and applied in the counties of this state by the statutes of Wisconsin, would be required to pay for such publication. [*Spl. S. 1933 c. 13; 1943 c. 497*]

176.10 Release of liquor licensee's bond. Sixty days or more after expiration of a license to sell intoxicating liquor the principal on the bond covering the same, or the licensee depositing or filing a cash bond or security in lieu of a bond, may make application for cancellation, release and return of such bond or security. Such application, accompanied by an affidavit of the licensee, shall be filed with the clerk and addressed to the governing body of the municipality wherein such bond or security is filed or deposited. Such affidavit shall state that no action is pending on or against such bond or security and that affiant has not knowingly violated any of the conditions of his bond. If it shall find such affidavit to be true the governing body of such municipality shall within twenty days after such filing, by resolution cancel and release such bond or security and direct the clerk to forthwith return the same to the principal thereon or to the licensee filing or depositing the same. The provisions of this section shall extend to the executors and administrators of any licensee who may in a proper case make the affidavit so required upon information and belief. [*1939 c. 102*]

Note: A complaint against a tavern keeper which contained no allegation that the plaintiff's husband, killed while driving an automobile while intoxicated, was a minor or an habitual drunkard or that written notice not to sell to him had been given, did not state a cause of action against the surety on the tavern keeper's bond. *Demge v. Feisterstein*, 222 W 199, 268 NW 210.

Although no formal writing, signed by an applicant for an "on sale liquor license," accompanied the delivery of a security to the town clerk in lieu of a bond, the statutory conditions of the bond or security to be given by a liquor licensee are deemed incorporated in the licensing transaction. Prior to expiration of the time within which the state could bring an action under the statute to recover the full penalty of the bond or se-

curity given, a liquor licensee whose license had been revoked because of a sale of liquor to a minor was not entitled to the possession of the security which he had posted with the town board in lieu of a cash bond on the granting of the license. *Thomas v. Kind*, 222 W 645, 269 NW 543.

The state is authorized to bring an action on the bond in its name and enter judgment therein for the full penalty thereof, but execution can be levied only to the extent of damages sustained by breach of the condition of the bond, the bond being, in effect, solely an indemnity bond. *State v. Hackbarth*, 228 W 108, 279 NW 687.

Attorney-general is not required to bring suit to forfeit bond of tavern keeper, as only those interested should bring suit. 24 Atty. Gen. 235.

176.11 Revocation of license by local authorities. Upon complaint made in writing under oath by any resident in, and filing with the clerk of, any town, village, or city that any such licensed person therein has violated any provision of this chapter or keeps or maintains a disorderly or riotous, indecent or improper house, or that he has sold or given away any intoxicating liquor to any minor without the written order of his parents or guardians, or to persons intoxicated or bordering upon intoxication, or to known habitual drunkards, or that he has not observed and obeyed any order of such supervisors, trustees, aldermen, or county superintendent of the poor, or any of them, made pursuant to law, the proper town board, village board, or common council shall issue a summons, to be signed by the clerk, directed to any peace officer or constable therein, commanding the

cist, as such governing body may deem proper, a permit to sell within such town, village or city, intoxicating liquors in quantities less than one gallon for medicinal, mechanical or scientific purposes only and not to be drunk on the premises. The sum to be paid for such permit shall not exceed ten dollars and it shall be granted and issued in the manner and terminate at the same time as the license provided for in section 176.05.

(2) In any town, village, or city no sale for either medicinal, mechanical, or scientific purposes shall be made by any such pharmacist until the person purchasing the same shall for each sale make and file a certificate in writing, dated and subscribed by him and witnessed by such registered pharmacist, stating for what purpose the intoxicating liquor so desired is to be used and that it is not for a beverage; and also stating in case of a sale for medicinal purposes on a physician's prescription its date and number and the name of the physician issuing the same.

(3) Such certificate and prescription shall be filed and preserved with the book hereinafter mentioned, and shall be considered a public record at all times open to inspection by any member of the town or village board or council, or any peace officer, and may be produced in court; and at the end of each month all such certificates and prescriptions received by him shall be filed with the town, village or city clerk; provided, that each town, village or city clerk is authorized every ninety days to destroy the certificates and prescriptions filed by druggists each month.

(5) It shall be the duty of every pharmacist to keep a book in which he shall enter the date, kind and quantity of every sale of any such intoxicating liquor made by him, the name of the person to whom it was sold, and the purpose for which the sale was made. Every such pharmacist shall on the third Tuesday in April of each year file with the clerk of the town, village or city in which he does business a verified copy of all the entries in such book; provided, that the town, village or city clerk may destroy the yearly records of liquor sales filed by druggists every two years except that these records shall be kept on file for a period of one year after the filing of same.

(6) Any person who shall make any false certificate, statement, or representation to any physician to secure a prescription for such intoxicating liquor, or to a registered pharmacist, or to any of his clerks and employes, for the purpose of inducing either of them to sell any intoxicating liquor for use for any other than medicinal, mechanical, or scientific purposes, and shall thereby secure such prescription and a sale thereof to be made in violation of law, and any such pharmacist who shall refuse or neglect to comply with any of the requirements of this section, shall be punished by a fine of not less than forty dollars nor more than two hundred dollars, besides the cost of suit, or by imprisonment in the county jail or house of correction not less than thirty days nor more than eight months.

(7) If any pharmacist shall be convicted of violating any of the provisions of this chapter, the court in rendering judgment for such conviction may make an order canceling and annulling defendant's permit.

(8) Each and every container containing intoxicating liquor having an alcoholic content of 21% or more by volume dispensed by the holder of a pharmacist's permit after August 1, 1935, shall bear a state stamp in addition to any other provided for by law to be furnished by the state treasurer at the following rate:

Up to and including 8 ounces.....	\$0.005
More than 8 to and including 16 ounces.....	0.01
More than 16 to and including 32 ounces.....	0.02

State treasurer shall by regulation prescribe the manner in which such stamps shall be affixed.

(9) (a) No registered pharmacist holding a permit issued pursuant to this section shall, unless he also holds a retail "Class A" or "Class B" license for the sale of intoxicating liquor, advertise for sale either directly or indirectly any intoxicating liquor except as hereinafter provided nor shall any such registered pharmacist display any such intoxicating liquor in the original package or otherwise in any show window, show case or in connection with any soda fountain or in any other manner in or about his premises except upon wall shelving not to exceed three feet in length.

(b) Any person who shall violate any of the provisions of this subsection shall be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars or by imprisonment in the county jail for not less than ten days nor more than six months, or by both such fine and imprisonment.

(c) Nothing herein contained shall be construed to prohibit the display or exhibition by a registered pharmacist of the permit required by subsection (1) of this section. [*Spl. S. 1933 c. 13; 1935 c. 217, 381; 43.08 (2); 1939 c. 101; 1939 c. 515 s. 10*]

Note: Under (9) registered pharmacist holding permit may advertise and display intoxicating liquor upon wall shelving not to exceed three feet in length. 24 Atty. Gen. 675.

Unit advertisements which advertise sale of intoxicating liquor joined in by number of independent drug stores, some of which do not have "Class A" retail licenses, constitute advertising in violation of (9) (a)

by those pharmacists not holding "Class A" retail licenses. 26 Atty. Gen. 446.

City may not by ordinance require registered pharmacist holding permit under (1) to take out also "Class A" license for sale of intoxicating liquors. Municipality has discretion to refuse pharmacist's permit under (1), but such discretion may not be abused. Municipality may not require that liquor be

sold only on prescription for scientific and mechanical purposes. 27 Atty. Gen. 495.

City may not by ordinance set up regulations respecting sale of intoxicating liquors for medicinal or scientific purposes which are in conflict with this section. Requirements or regulations not required by said section are in conflict therewith. 27 Atty. Gen. 650.

176.19 Medical prescription limited; penalty. (1) It shall be unlawful for any physician or surgeon to prescribe intoxicating liquors for any person when unnecessary for the health of such person, or to prescribe a greater quantity of such liquor than proper for the ailment or disease of such person, with intent to evade or assist in evading any of the provisions of this chapter. Nothing in this chapter shall be construed as prohibiting any hospital or one licensed to practice medicine or surgery from having and using alcohol, in any form, in the bona fide treatment of the sick, nor as requiring either to have a permit or license to have, use, or prescribe the same for such bona fide treatment.

(2) Any physician or surgeon violating any of the provisions of this section shall be punished by a fine of not less than two hundred and fifty dollars nor more than one thousand dollars or by imprisonment in the county jail or house of correction not more than six months; and conviction for a second offense within any one year shall be ground for revocation of such defendant's license to practice medicine and surgery in this state. [*Spl. S. 1933 c. 13; 1935 c. 187*]

176.20 Residence districts; electoral population; included and excluded territory.

(1) Any clearly described, contiguous, compact territory in cities, villages, or towns bounded by corporation or ward lines, public streets, public alleys, or watercourses, in which actually reside not less than one hundred nor more than seven hundred and fifty qualified electors may be constituted a residence district. Its greatest length shall not be more than four times its narrowest width. No part of any one district once used to determine one residence district, and no territory which in any other manner shall have been constituted a no-license area, while continued as such, shall be used in fixing another residence district.

(2) Except as provided in section 176.20, the no-license area of a residence district shall not include:

(a) The frontage of that side of any street between intersecting streets in any city or incorporated village upon which one-third of the lineal feet of the property abutting thereon is devoted to or used for commercial, mercantile, manufacturing, or any other business purpose.

(b) The street frontage of either side of such street if one-third of the lineal feet of property abutting on both sides thereof between intersecting streets is so used.

(c) The frontage of either or both sides of a highway in towns or unincorporated villages within a distance of four hundred feet if one-third of the lineal feet of the property abutting upon said highway in such distance is so used.

(d) Territory, while continued as such, which in any manner shall have been constituted a no-license area.

(e) Actual and bona fide hotels maintaining in cities of the first class fifty or more sleeping rooms for the accommodation of transient guests; in cities of the second class, twenty-five or more such rooms; in cities of the third class, eighteen or more such rooms; and in cities of the fourth class, ten or more such rooms.

(3) Property occupied exclusively for educational, religious, or charitable purposes and public parks in residence districts may be included in residence districts as residence property, but shall not be used in determining the boundaries or size of any such district. [*Spl. S. 1933 c. 13*]

Note: Provisions of this section and 176.25 therein and not to whole communities. 23 apply only to residential district as defined Atty. Gen. 152.

176.21 Remonstrances against license in no-license districts. (1) Any compact, contiguous territory in any town, village, or city in this state, wherein no license to sell, deal, or traffic in intoxicating liquors has been issued or granted prior to the filing of the remonstrance hereinafter referred to, and containing not less than one hundred nor more than seven hundred and fifty resident electors, which district is bounded by corporation or ward lines, public streets, or public alleys, and the greatest length of which shall not be more than four times its narrowest width, may be constituted a residence district if a majority of the resident electors therein shall on or before May first in any year file with the town, village, or city clerk a remonstrance in writing describing the boundaries of such district and signed by said electors together with their residence address. Except as provided in subsection (2), no such license shall be granted or issued in any such district after the filing of such remonstrance unless a majority of the electors in such district shall thereafter consent thereto in writing, specifying the location in such district from which such

license may be issued or granted. The provision of section 176.23 shall apply to the remonstrance or consent herein provided for.

(2) The provisions of subsection (1) shall not apply to actual and bona fide hotels specified in paragraph (e) of subsection (2) of section 176.20. [*Spl. S. 1933 c. 13*]

176.22 Remonstrances and counter petitions in license districts. No license shall be issued or granted to any person to sell or traffic in any intoxicating liquors within any residence district as defined in section 176.20 if a majority of the qualified electors residing in such district shall, not earlier than the first day of May nor later than the fifteenth day of May in any year, present to and file with the clerk of any such city, village, or town in which such residence district is situated, a remonstrance in writing, signed by a majority of said electors, as hereinafter provided, and describing the boundaries of said residence district objecting to the granting of any such license or permit within said district, until a counter petition signed by a majority of said electors in such district praying that such license may be granted in said district shall be filed with such clerk, when it shall be lawful for the proper authorities to issue license in said district. [*Spl. S. 1933 c. 13*]

Note: Where no registration of electors be used in determining what constitutes majority had, correct enumeration of all electors jority of electors in district. 27 Atty. Gen. in district made by any person therein may 492.

176.23 Signature gatherers; electoral population; who may sign. (1) The electors signing such remonstrance or counter petition shall subscribe their names thereto together with their residence, including street or lot and block number, if any, in cities and villages, and quarter-section number in towns, before some person who shall make oath that the persons so signing the same are qualified electors of said residence district and that such names and that their residence and street number or lot and block number if any, or quarter-section number, are the genuine signatures and addresses of the persons so purporting to subscribe said remonstrance or said counter petition, as the case may be. No elector shall sign more than one remonstrance or counter petition affecting the district in which he resides. Such remonstrance or counter petition may be in parts and such signatures may be obtained by any number of persons, provided the person obtaining the names thereto is a resident of such district and makes oath to the signatures obtained by him.

(2) If a registration of voters be required in any territory included in a residence district as herein provided for, the number of names which appear in the last registration had in any such territory and residing in such district shall determine the number of electors residing therein. And only such electors can sign the remonstrance, counter petition, or consent provided for in this act. If there be no registration of voters, then the last enumeration of the number of electors therein made pursuant to law may be used to determine the number of electors therein at the time of filing such remonstrance, counter petition, or consent. [*Spl. S. 1933 c. 13*]

176.24 Notice of intention to secure signatures. At least five days before beginning to secure signatures to the remonstrance or counter petition provided for in section 176.22, notice of intention so to do, describing the boundaries of such proposed residence district, shall be published at least once in some newspaper printed in such city or village, if any, and if the district be in a town, in some newspaper published in the county, or at least three copies of such notice posted for five days in at least three conspicuous public places within said district declaring the intention to procure and file such remonstrance or counter petition. The giving of the notice and making and filing proof thereof shall be a condition precedent to the right to file such remonstrance or counter petition. [*Spl. S. 1933 c. 13*]

176.25 Review of petitions. Within ten days after the filing of said remonstrance or counter petition the proper authorities of any such city, village, or town who may be authorized to issue licenses for the sale of intoxicating liquors shall give notice in some newspaper, or by posting in three public places in said district, of a day, to be fixed by them, that they will take up and consider and examine said remonstrance or counter petition, as the case may be, and any persons objecting to the sufficiency of said remonstrance or counter petition, or either thereof, may appear before such authorities and make and file their objections thereto, and said authorities shall consider the same, and if they determine that either said remonstrance or counter petition is materially defective in any manner they shall point out such defects and permit the party so filing said remonstrance or counter petition to correct the same and supply defects, if any, within fifteen days from the date thereof, and if such remonstrance or counter petition shall be perfected within such time, no license shall issue, or a license may be issued, as the case may be, but if such remonstrance or counter petition be not perfected within such time, such proper authorities may exercise their discretion in respect to the issuing or granting of a license in said territory. [*Spl. S. 1933 c. 13*]

176.26 Liquor; sale forbidden; to whom. (1) When any person shall, by excessive drinking of intoxicating liquors, misspend, waste, or lessen his estate so as to expose him-

self or family to want, or the town, city, village, or county to which he belongs to liability for the support of himself or family, or so as thereby to injure his health, endanger the loss thereof, or to endanger the personal safety and comfort of his family or any member thereof, or the safety of any other person, or the security of the property of any other person, or when any person shall, on account of the use of intoxicating liquors, become dangerous to the peace of any community, the wife of such person, the supervisors of such town, the mayor, chief of police, or aldermen of such city, the trustees of such village, the county superintendent of the poor of such county, the chairman of the county board of supervisors of such county, the district attorney of such county, or any of them, may, in writing signed by her, him, or them, forbid all persons knowingly to sell or give away to such person any intoxicating liquors for the space of one year and in like manner may forbid the selling, furnishing, or giving away of any such liquors knowingly to such person by any person in any town, city, or village to which such person may resort for the same. A copy of said writing so signed shall be personally served upon the person so intended to be prohibited from obtaining any such liquor.

(2) And the wife of such person, the supervisors of any town, the aldermen of any city, the trustees of any village, the county superintendent of the poor of such county, the mayor of any city, the chairman of the county board of supervisors of such county, or the district attorney of such county, may, by a notice made and signed as aforesaid, in like manner forbid all persons in such town, city, or village, to sell or give away intoxicating liquors or drinks to any person given to the excessive use of such liquors or drinks, specifying such person, and such notice shall have the same force and effect when such specified person is a nonresident as is herein provided when such specified person is a resident of said town, city, or village. [*Spl. S. 1933 c. 13*]

Note: Name of alleged drunkard who has been posted for one year may not be removed from banned list before expiration of year. 25 Atty. Gen. 547.

Official or body placing name upon black-list under this section inadvertently or through mistake has power to correct error.

4 Atty. Gen. 347, in so far as it holds otherwise, is overruled. Where conditions exist that permit blacklisting official discretion once exercised may not be changed during year. 3 Atty. Gen. 507 and 25 Atty. Gen. 547, in so far as they so hold, are approved. 27 Atty. Gen. 616.

176.27 Renewal of prohibition. Such supervisors, aldermen, trustees, county superintendent of the poor, mayor, chairman of the county board or district attorney or any one of them, may, in the same manner, renew such prohibition from year to year as to all such persons as have not, in their or his opinion, reformed within the year; and if any person so prohibited shall, during such prohibition, sell or give away, to any person to whom such sale shall have been so forbidden, any such liquors of any kind whatsoever he shall forfeit for each offense the sum of two hundred fifty dollars, to be recovered upon his bond in an action to be prosecuted by the town, county, village or city treasurer. [*Spl. S. 1933 c. 13; 1935 c. 187*]

176.28 Sale to forbidden person; evidence; pleading. (1) When the sale or giving away of any intoxicating liquors to any person shall have been forbidden in the manner provided by law, every person who shall sell or give to, or for, or purchase or procure for, or in behalf of, such prohibited person any such liquors, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding two hundred fifty dollars and the costs of prosecution; and in default of immediate payment thereof he shall be committed to the county jail or house of correction not less than sixty days unless sooner discharged by the payment of such fine and costs.

(2) The person to whom the selling to, or purchasing or procuring for, any such liquors has been prohibited may be arrested on complaint of the wife of such person or of any supervisor, trustee, alderman, county superintendent of the poor, mayor, chairman of the county board, or district attorney and brought before any justice of the peace of the county to testify as to where and from, through or by whom, or by whose agency, he obtained or procured intoxicating liquor, and if he shall refuse to testify he shall be committed to the county jail or house of correction to be detained therein until he shall so testify or be discharged by order of the court.

(3) In any such prosecution it shall not be necessary to allege in the complaint or information any facts tending to show that the person to whom such liquors were sold or given was a person to whom the sale of such liquors might lawfully or properly be forbidden, but it shall be sufficient to allege generally that such liquors were given or sold by the accused to such person. [*Spl. S. 1933 c. 13; 1935 c. 187*]

Note: This chapter does not vest in authorities any right to require "posted person" to be photographed, such photograph to become part of "posted notice" served on tavern keepers. 24 Atty. Gen. 406.

A person selling or giving away liquor to a prohibited person within the meaning of 176.26 and 176.28 is liable if he has actual notice of the prohibition. It is not necessary that he be served with written notice. 28 Atty. Gen. 514.

176.29 Liquor sales to forbidden persons by unlicensed dealers. The provisions of section 176.28 shall be held to apply to all persons, whether licensed dealers or not, and

the notice provided for by section 176.26 shall be held to be a notice to all persons, whether licensed dealers or not, in any prosecution brought under the provisions of section 176.28. [S^{pl.} S. 1933 c. 13]

176.30 Minors; intoxicated persons; hospitals. (1) SALE TO MINOR OR INTOXICATED PERSON; PENALTY. Any keeper of any place of any name whatsoever for the sale of any intoxicating liquors who shall sell, vend or in any way deal or traffic in, or for the purpose of evading any law of this state relating to the sale of liquors, give away any such liquors in any quantity whatsoever to or with a minor, or to any person intoxicated or bordering on a state of intoxication, and any person whatever who shall procure for, or sell, or give away, to any minor, whether upon the written order of the parents or guardian of such minor or in any other manner whatsoever, or to any intoxicated person, any such liquors shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail or house of correction not to exceed sixty days, or by both such fine and imprisonment.

(2) MINOR, SEVENTEEN OR UNDER. Where the offense is that of selling intoxicating liquor to a minor seventeen years of age or under, the guilty person shall be punished by a fine of not less than two hundred nor more than five hundred dollars, or by imprisonment in the county jail or house of correction not less than thirty days nor more than eight months, and in all cases of conviction for a second or any subsequent offense by such imprisonment only.

(3) NEAR INSANE HOSPITALS. No person shall sell, or in any way deal or traffic in, or for the purpose of evading law, give away any such liquors in any quantity whatsoever within one mile of any of the state hospitals for the insane, except the central state hospital for insane at Waupun, and any person who shall so sell or give away any such liquors, shall be punished by a fine of not less than one hundred dollars nor more than two hundred fifty dollars, or by imprisonment in the county jail or house of correction not to exceed six months or by both such fine and imprisonment. [S^{pl.} S. 1933 c. 13; 1935 c. 5, 187, 477]

Note: Under (3) liquor shall not be sold in any inmate is housed. 25 Atty. within one mile of any insane hospital build- Gen. 355.

176.31 Minor's misrepresentation to procure intoxicating liquor; penalty. Any minor who shall represent that he is of age for the purpose of asking for, or receiving, any intoxicating liquors from any keeper of any place of any name whatsoever for the sale of intoxicating liquors, except in cases authorized by law, shall be punished by a fine of not less than ten dollars, nor more than fifty dollars, or by imprisonment in the county jail or house of correction not to exceed ten days, or by both such fine and imprisonment. [S^{pl.} S. 1933 c. 13; 1935 c. 187]

176.32 Presence in places of sale prohibited; penalty. (1) Every keeper of any place, of any nature or character, whatsoever, for the sale of any intoxicating liquor, who shall either directly or indirectly suffer or permit any person of either sex under the age of 21 years, unaccompanied by his or her parent or guardian, or suffer or permit any person to whom the sale of any such liquors has been forbidden in the manner provided by law, who is not a resident, employe, or a bona fide lodger or boarder on the premises of such licensed person, to remain in any barroom or other room on such premises in which such liquor is sold or dispensed for any purpose, excepting the transaction of bona fide business other than amusement or consumption of edibles or beverages, shall, for every such offense, be liable to a penalty not exceeding \$250, besides costs, or imprisonment in the county jail or house of correction not exceeding 60 days; and any such person so remaining as aforesaid, who is not a resident, employe, or a bona fide lodger or boarder on the premises, or who is not accompanied by his or her parent or guardian, shall also be liable to a penalty of not more than \$20, besides costs, or imprisonment not exceeding 30 days in the county jail or house of correction. This section shall not apply to hotels, drugstores, grocery stores, bowling alleys, cars operated on any railroad, nor to premises operated under both a "Class B" license and a restaurant permit where the principal business conducted therein is that of a restaurant. It shall be presumed, however, where such premises are so operated under both a "Class B" license and a restaurant permit, that the principal business conducted therein is that of the sale of intoxicating liquor, until such presumption is rebutted by competent evidence.

(2) Any person to whom the sale of any such liquors has been forbidden in the manner provided by law who shall enter any place of any nature or character whatsoever for the sale of such liquors shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$10 nor more than \$50 or by imprisonment in the county jail or house of correction not less than 10 days nor more than 60 days or by both such fine and imprisonment. [S^{pl.} S. 1933 c. 13; 1935 c. 187; 1943 c. 459]

Note: Proof that minors, unaccompanied parents, employes, lodgers or boarders, and by parent or guardian, enter barroom on licensed premises where they are not residing, which premises are not hotel, restaurant, grocery store or bowling alley, and (a) re-

main for period of 30 minutes, during which time they dance to music from juke box and purchase and consume several soft drinks, or (b) remain for period of 20 minutes, during which time they purchase and consume several bottles of beer, or (c) remain for a

period of 30 minutes, during which time they play two games of pool, probably would not be sufficient in itself for successful prosecution of tavern-keeper under 176.32 (1), for permitting minor to loiter. 32 Atty. Gen. 82.

176.33 Furnishing liquor at public auctions; penalty. It shall be unlawful for any person to sell, furnish, or give away any intoxicating liquors at any public auction held in this state, or to any person or persons in attendance at any such auction, and any person who shall so sell, furnish, or give away any such liquor shall be deemed guilty of an evasion of the provisions of this chapter, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than two hundred fifty dollars, or by imprisonment in the county jail or house of correction for not less than three months nor more than six months, or by both such fine and imprisonment. [*Spl. S. 1933 c. 13; 1935 c. 187*]

176.34 Sale on election day. If any person shall sell, give away, or barter any intoxicating liquors on the day of the annual spring election, the biennial fall election, special election, or primary election, until after the polls at any such election are closed, such person so offending shall be punished by a fine of not less than one hundred nor more than two hundred fifty dollars, or by imprisonment in the county jail or house of correction not to exceed sixty days or by both such fine and imprisonment. [*Spl. S. 1933 c. 13; 1935 c. 187*]

176.341 Sale from original container. Any person who shall dilute or add to any intoxicating liquor for the purpose of selling or offering the same for sale from or in an original container shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not less than two hundred fifty dollars nor more than five hundred dollars or by imprisonment for not less than sixty days nor more than six months or by both such fine and imprisonment. Possession of an original container containing any intoxicating liquor so diluted or added to shall be prima facie proof that the possessor thereof intended to violate the provisions of this section. [*1935 c. 187*]

176.35 Action for injury by unlawful sale. Any person or persons who shall be injured in person, property, or means of support by, or in consequence of, the intoxication of any minor or habitual drunkard shall have a right of action jointly or severally in his, her, or their name against any person or persons who have been notified or requested in writing, by the officers authorized by law to forbid the sale or giving away of intoxicating liquors to such minor or habitual drunkard, or by the husband, wife, parents, relatives, guardian, or persons having the care or custody of such minor or habitual drunkard, not to sell or give intoxicating liquors to him, and who, notwithstanding such notice or request, shall knowingly sell or give away intoxicating liquors, thereby causing the intoxication of such minor or drunkard; and the person so selling or giving away such liquors or drinks shall be liable for all damages resulting therefrom. A married woman shall have the same right to bring such suit and to control the same as a feme sole, and all damages so recovered shall belong to her and her separate property. [*Spl. S. 1933 c. 13*]

Note: In this section the words "knowingly sell" mean selling with knowledge of the identity of the person to whom the liquor is sold; and hence a tavern keeper who knew that a person of a certain name was posted as an habitual drunkard, but who did not know such posted person and did not know that the person to whom he sold liquor was such posted person, was not liable under the statute. *Crist v. Kiltz*, 232 W 567, 288 NW 175.

Under the common law it is not an actionable wrong either to sell or to give intoxicating liquors to an able-bodied man. In the absence of statutes covering the case, a plaintiff whose automobile was run into by an automobile operated by an intoxicated driver had no cause of action for his injuries against the tavern keeper who sold the liquor to the driver. *Seibel v. Leach*, 233 W 66, 288 NW 774.

176.36 Excise laws; enforcement by local officers; penalty. Every sheriff, undersheriff and deputy sheriff, police officer, marshal or deputy marshal, or constable of any town, village, or city who shall know, or be credibly informed, that any offense has been committed against the provisions of any law of this state relating to the sale of intoxicating liquors, shall make complaint against the person so offending within their respective towns, villages, or cities to a proper justice of the peace or other magistrate therein, and for every neglect or refusal so to do, every such officer shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding fifty dollars and the costs of prosecution. [*Spl. S. 1933 c. 13*]

176.37 What is a sale; form of complaint; order traffic. (1) The giving away of intoxicating liquors or other shift or device to evade the provisions of any law of this state relating to the sale of such liquors shall be deemed and held to be an unlawful selling within its provisions, and in all cases not otherwise specially provided for any person convicted of any misdemeanor under the provisions of any such law shall be punished by a fine not exceeding two hundred fifty dollars and shall pay the costs of prosecution, and in

default of immediate payment of such fine and costs shall be committed to the county jail or house of correction for not less than sixty days nor more than six months unless sooner discharged by the payment of such fine and costs; the words "any law of the state relating to excise or the sale of intoxicating liquors" or any words of similar import when used in the statutes, shall be held to include and apply to all excise laws heretofore enacted which shall remain in force as well as to all provisions of this chapter and to all excise laws which may be hereafter enacted so long as the same shall remain in force.

(2) In any prosecution for an offense against, or violation of, any law of this state relating to the sale of intoxicating liquors it shall not be necessary to allege or state in the complaint, information, or indictment the kind or quantity of such liquor sold or the person to whom the same was sold, but it shall be sufficient to allege generally that the accused sold intoxicating liquor at a time and place mentioned, together with a brief statement of the fact showing such sale to be unlawful. In all cases proofs of the sale or giving away of any such liquor of any name or nature whatsoever shall be deemed proof of the sale or giving away of intoxicating liquors without proof that the intoxicating liquor so sold or given away was in fact intoxicating. [*Spl. S. 1933 c. 13; 1935 c. 187*]

176.38 Local option. (1) **PETITION; ELECTION.** Whenever a number of the qualified electors of any town, village, or city equal to, or more than, fifteen per centum of the number of votes cast therein for governor at the last general election shall present to the clerk thereof a petition in writing, signed by them, praying that the electors thereof may have submitted to them the question whether or not any person shall be licensed to deal or traffic in any intoxicating liquors as a beverage, or the question whether or not liquor stores as provided for in section 176.08 shall be established, maintained and operated, or that both such questions be submitted to them, and shall file such petition with the clerk at least thirty days prior to the first Tuesday of April next succeeding, and provided that within five days of the filing of such petition such clerk shall determine by careful examination the sufficiency or insufficiency of such petition and state his findings in a signed certificate dated and attached thereto, and within five days give written notice to the beverage tax division, at Madison, Wisconsin, that such petition has been filed with him relating to such question, stating the date of filing such petition, the name of the town, village or city and the county in which such town, village or city is located, and such clerk, after and not until he shall have determined that said petition is sufficient and shall have given the notice to the beverage tax division as herein set forth, shall forthwith make an order providing that such question or questions shall be so submitted on the first Tuesday of April next succeeding the date of such order. Such petition must be circulated by one or more qualified voters residing in the town, village or city wherein such local option question will be submitted. The preparation of such petition shall be governed as to the use of more than a single piece of paper, the dates of signatures, the places of residence of signers, and the verification thereof, by the provisions of section 5.05 so far as applicable. No petition shall be circulated prior to sixty days before the date on which such petition must be filed according to law and no signature shall be counted unless it has been affixed to such petition and bears date within sixty days prior to the time for filing such petition.

(2) **NOTICE.** The city clerk making such order shall give notice of the election to be held on such question or questions in the manner notice is given of the regular city election; town and village clerks who make such orders shall give such notice by posting written or printed notices in at least five public places in the town or village not less than ten days before the day of election. The election on such question or questions shall be held and conducted, and the returns canvassed, in the manner in which elections in such city, town or village on other questions are conducted and the returns thereof canvassed. The result shall be certified by the canvassers immediately upon the determination thereof, and be entered upon the records of the town, village or city, and shall remain in effect for a period of two years and thereafter until changed by ballot at another election held for the same purpose. Within ten days such clerk shall notify the beverage tax division of the results of such election. [*Spl. S. 1933 c. 13; 1939 c. 365*]

Note: Electors may, on one petition, request referenda on issuance of intoxicating liquor and fermented malt beverage licenses. 24 Atty. Gen. 411.

Local option election was probably invalid where notice was posted only six days in advance of election and it was commonly believed that election would be invalid, many people not voting for that reason, chairman announcing election to be invalid and votes not having been recorded by clerk. 25 Atty. Gen. 361.

Petition for referendum on question of granting intoxicating liquor licenses filed prior to April 1937 election but not filed at

least thirty days prior thereto may not be made basis of submission of said question at spring election in 1938. Vote at referendum election against granting of intoxicating liquor licenses does not terminate intoxicating liquor licenses then in force. 27 Atty. Gen. 123.

When electors of town vote at spring election to change from licensing to non-licensing status or vice versa, town board has authority under 176.38 (2) and 176.05 to grant liquor licenses which will be effective at once and terminate upon July first of that year. 28 Atty. Gen. 275.

See note to 66.05, citing 30 Atty. Gen. 229.

Failure to notify beverage tax division and voting intoxicating liquors in, 176.05 within time prescribed by 176.38 (1) and (10) (b) prohibits issuing Class B liquor 66.05 (10) (d) 3 does not render election void. license. 30 Atty. Gen. 351.
Where election resulted in voting beer out

176.39 Effect of election. The ballots upon the question or questions so submitted shall be deposited in a separate ballot box in each town and election district and shall contain the words "For License," and "Against License," or "For Liquor Store" and "Against Liquor Store," and shall otherwise conform to the provisions of subsection (8) of section 6.23. Both questions may be submitted on the same ballot. [*Spl. S. 1933 c. 13*]

Note: Questions of issuing intoxicating liquor and fermented malt beverage licenses cannot be on same ballot. 24 Atty. Gen. 411.

176.40 Compulsory testimony. Any person may be compelled to testify in regard to any violation of this chapter of which he may have knowledge, even though such testimony may tend to incriminate him, upon being granted immunity from prosecution in connection therewith, and upon the giving of such testimony, such person shall not be prosecuted for, or because of, the violation relative to which he has testified. [*Spl. S. 1933 c. 13*]

176.401 Exemptions. (1) The tax imposed by chapter 139 shall not apply to alcohol intended for use and used in the manufacture and sale of any of the following when unfit for beverage purposes, namely:

(a) Denatured alcohol produced and used pursuant to acts of congress and regulations promulgated thereunder;

(b) Patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;

(c) Flavoring extracts, syrups, and food products;

(d) Scientific, chemical, mechanical, and industrial products.

(2) Any person who shall knowingly sell any of the products enumerated in paragraphs (a), (b), (c), or (d) for intoxicating beverage purposes, or who shall sell any of the same under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purposes, shall be subject to the penalties provided for in section 176.41 of this chapter. [*Spl. S. 1933 c. 13; 1935 c. 187*]

176.402 Sacramental wine permit. (1) Organized religious bodies may be issued a "sacramental wine permit" which shall allow such organizations to purchase from any person holding a permit issued under subsection (1a) of section 176.05 and to use sacramental wine when not intended for purposes of resale.

(2) Shipments made of such wine shall be conspicuously labeled "for sacramental purposes" and shall meet such other requirements as the state treasurer may prescribe by regulation.

(3) Such permit shall be issued free of charge by the state treasurer. [*1935 c. 187, 387; 1937 c. 418*]

176.403 Industrial alcohol permit. (1) Any person who proves to the state treasurer that he uses alcohol for industrial purposes may be issued an "industrial alcohol permit" which shall allow such person to purchase and use alcohol for such purposes only.

(2) Shipments made of such alcohol shall be conspicuously labeled "for industrial purposes" and shall meet such other requirements as the state treasurer may prescribe by regulation.

(3) Such permit shall be issued by the state treasurer for the fee of ten dollars. [*1935 c. 187*]

176.404 Medicinal permit. (1) Any person who proves to the state treasurer that he uses alcohol for medicinal purposes may be issued a "medicinal alcohol permit" which shall allow such person to purchase and use alcohol for such purposes only.

(2) Shipments made of such alcohol shall be conspicuously labeled "for medicinal purposes" and shall meet such other requirements as the state treasurer may prescribe by regulation.

(3) Such permit shall be issued by the state treasurer without fee. [*1935 c. 187*]

176.405 Denatured alcohol. (1) No person shall recover and reuse by redistillation or by any other process or means whatsoever any alcohol or alcoholic liquid from denatured alcohol or use, sell, conceal or otherwise dispose of alcohol or alcoholic liquid from denatured alcohol or use, sell, conceal or otherwise dispose of alcohol or alcoholic liquid so recovered or redistilled.

(2) Any person who shall violate any provision of this section shall be deemed guilty of a felony and shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars or by imprisonment in the state prison for not less than one year nor more than ten years or by both such fine and imprisonment.

(3) Any person who causes the death of a human being through the selling or otherwise disposing of, for beverage purposes, denatured alcohol, or through the selling or otherwise disposing of, for beverage purposes, alcohol or alcoholic liquid redistilled from denatured alcohol, shall be deemed guilty of manslaughter in the first degree. [1935 c. 137]

176.406 Wholesale alcohol permit. (1) The state treasurer may issue a wholesale alcohol permit which shall permit the holder to sell ethyl alcohol of one hundred ninety proof or more, to persons holding permits issued pursuant to section 176.18, section 176.403 and section 176.404.

(2) Such permit shall be issued for an annual fee of fifty dollars and shall expire annually on July first and shall meet such other requirements as shall be prescribed by the state treasurer by regulation.

(3) Holders of wholesale alcohol permits under this section, who do not hold permits issued under section 176.05, shall be exempted from the provisions of section 176.70 in so far as special permits for agents or representatives of such wholesale alcohol permit holders are concerned.

(4) Holders of wholesale alcohol permits under this section, who do not hold permits issued under section 176.05, shall be required to obtain a bond as provided in section 176.10 [Stats. 1937].

(5) Holders of wholesale alcohol permits under this section, who do not hold permits issued under section 176.05, shall be permitted to sell, deal or traffic in ethyl alcohol, in quantities of not less than one pint at any one time, no part of which shall be sold for consumption on the premises of the permittee.

(6) Nothing herein, however, shall be construed to require manufacturers, rectifiers and wholesalers holding permit issued under section 176.05 to obtain such permit. [1937 c. 261]

176.41 Penalties. Any person who shall violate any of the provisions of this chapter for which a specific penalty is not herein provided shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail or house of correction for not more than ninety days, or by both such fine and imprisonment, and any license issued to him shall be subject to revocation by a court of record in its discretion. In the event that any such person shall be convicted of a second offense, under the provisions of this chapter such offender, in addition to the penalties herein provided, shall forthwith forfeit the right to purchase any stamps from the state treasurer, and any license which may have been issued to him by any city, village, or town shall without notice be forthwith forfeited. In the event that such person shall be convicted of a felony, in addition to the penalties provided for such felony, the court shall revoke the license of such offender. Every town, village or city shall have the right to revoke any license by it issued to any person who shall violate any of the provisions of this chapter or any municipal ordinance adopted pursuant to this chapter as provided in sections 176.11 and 176.12. [Spl. S. 1933 c. 13; 1939 c. 94]

Note: The provision for forfeiture and prior conviction be obtained in same license revocation of license without notice upon year. 29 Atty. Gen. 48.
second conviction, does not require that

176.42 The state treasurer to prescribe standards of containers. The state treasurer may by order prescribe the standard size, form, or character of bottles, kegs, barrels, packages, or other containers in which intoxicating liquor shall be sold in this state. Each such order shall specify the effective date thereof and shall first be published in the official state paper at least once. [Spl. S. 1933 c. 13]

176.43 Municipal and state regulations; penalties. (1) Any city, village or town may by ordinance prescribe additional regulations in or upon the sale of intoxicating liquor, not in conflict with the provisions of this chapter. Such ordinance may prescribe different penalties than those provided in this chapter, but no ordinance shall provide a greater penalty than the maximum allowed by law. The provisions of this chapter shall in no way affect the power of cities, villages and towns to enact zoning ordinances or to enforce zoning regulations now in force or hereinafter enacted. Whenever any person shall be committed to the county jail or house of correction for the violation of a municipal ordinance, his board shall be paid by the municipality where such violation was committed.

(2) The state treasurer in furtherance of effective control may promulgate rules and regulations consistent with chapter 66 or chapter 139. Such rules and regulations shall be published once in the official state paper and shall become effective five days after such official publication.

(2a) Any person who shall violate any rules and regulations of the state treasurer shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred

dollars nor more than five hundred dollars or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment in the discretion of the court.

(2b) Any violation of any section of chapters 139 or 176 of the statutes shall be sufficient grounds for revocation by the state treasurer of any license or permit issued by him to such violator. [*Spl. S. 1933 c. 13; 1935 c. 217*]

Note: See note to sec. 3, art. VI, Const., ject permittee or licensee to penalty for any sale of intoxicating liquor if such sale is otherwise in accordance with statutory regulation. 31 Atty. Gen. 140.
 citing 29 Atty. Gen. 178.
 Subsecs. (c), (d) and (e) of regulation 9 promulgated by state treasurer do not sub-

176.44 Legislative intent. (1) The provisions of this chapter shall be construed as an enactment of state-wide concern for the purpose of providing a uniform regulation of the sale of liquors.

(2) The several terms and provisions of this chapter shall be deemed severable, and if any provision of this chapter or the application thereof to any person or circumstances is held invalid the remainder of the chapter and the application of such provisions to other persons or circumstances shall not be affected thereby. [*Spl. S. 1933 c. 13*]

176.45 Homemade wine or beer legal. Nothing in this chapter shall be construed to prevent any person from manufacturing wine or beer of any alcoholic content at his home, farm, or place of residence to be consumed by himself, his family, and guests without compensation. [*Spl. S. 1933 c. 13*]

176.46 Unadulterated cider, manufacture and sale legal. Nothing in this chapter shall be construed to affect the manufacture of unadulterated apple cider or the sale thereof. [*Spl. S. 1933 c. 20*]

176.50 Free lunch prohibited; free alcoholic beverages in restaurants prohibited.

(1) No person licensed to sell any fermented malt beverage or intoxicating liquors shall, either directly or indirectly, give away or furnish free of charge or permit the giving away or furnishing free of charge any lunch or meals, excepting pop corn, cheese, crackers, pretzels, sausage, fish, bread, and butter on his licensed premises. No person holding a permit to operate a restaurant shall, directly or indirectly, give away or furnish free of charge or permit the giving away or furnishing free of charge any fermented malt beverage or intoxicating liquor on his restaurant premises.

(2) Any person violating any of the provisions of this section shall be punished by a fine of not less than fifty nor more than one hundred dollars. [*Spl. S. 1933 c. 11; 1935 c. 187*]

176.60 Labels on containers. (1) No manufacturer, rectifier or wholesaler shall sell or deliver any package containing alcoholic liquor manufactured or distributed by him, unless the same shall have affixed thereto all canceled revenue stamps which may be provided by federal law and under the terms of this chapter, and shall also bear thereon a clear and legible label containing the name and address of the manufacturer and the kind of alcoholic liquor contained therein. No alcoholic liquor shall be labeled whiskey, brandy, cognac, gin, rum, kummel or by the name of any other definitely known distillate unless the entire alcoholic content thereof is a distillate of fermented mash of grain or mixture of grains or of fruit, or vegetables or to which during the process of distillation herbs have been added for the purpose of extracting the flavor, quality, or medicinal properties of the herbs. No spirits shall contain any substance, compound, or ingredient which is injurious to health or deleterious for human consumption. No package shall be delivered by any manufacturer or distributor or importing distributor unless the same shall be securely sealed so that the contents thereof cannot be removed without breaking the seal so placed thereon by said manufacturer, and no other licensee shall sell, have in his possession, or use any package or container which does not comply with this section or does not bear evidence that said package when delivered to him complied herewith.

(2) Any person violating any of the provisions of this section shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars or by imprisonment in the county jail for not less than three months or more than one year, or by both such fine and imprisonment.

(3) No intoxicating liquor shall be labeled except as provided in this section and by regulations promulgated by the state treasurer.

(4) Every manufacturer, rectifier or blender of intoxicating liquor shall list with the state treasurer all the names, brands, and descriptions which such manufacturer, rectifier or blender manufactures, rectifies or blends, giving alcoholic content by volume and all other pertinent information as required by him. Before placing a new blend on the market such information concerning such blend shall be previously submitted to the state treasurer. The state treasurer may also require by regulation that samples of the product be furnished him for proper examination and analysis. [*Spl. S. 1933 c. 7; 1935 c. 187*]

176.62 Confiscation. (1) All intoxicating liquor or fermented beverages, owned, possessed, kept, stored, manufactured, sold, distributed or transported in violation of this chapter, or chapter 66 or chapter 139, and all personal property used in connection therewith is declared to be unlawful property and subject to seizure by the state treasurer or any peace officer.

(2) The court, upon the conviction of any person for owning, possessing, keeping, storing, manufacturing, selling, distributing or transporting intoxicating liquor or fermented malt beverages in violation of this chapter or chapter 66 or chapter 139, shall, in case the person convicted be the owner thereof, order such intoxicating liquor or fermented malt beverages which was seized in connection with such violation to be destroyed, and in such case, shall order the personal property which was seized in connection with the violation to be sold at public auction, or if a sale is not practicable, to be destroyed by the state treasurer or his duly authorized agents. The state treasurer or such agent, after deducting the expense of keeping the property and the costs of the sale, shall pay all liens according to their priorities, which are established, by intervention or otherwise, in the proceedings for conviction as being bona fide and as having been created without the lienor having notice that such property was being used or was to be used in connection with such violation, and shall pay the balance of the proceeds into the state treasury where said balance shall be credited to the common school fund. All such liens against property sold under the provisions of this subsection shall be transferred from the property to the proceeds of the sale of the property. No motor vehicle or motor boat confiscated pursuant to this section shall be sold within a period of thirty days after date of seizure.

(3) If property, including intoxicating liquor or fermented malt beverages, be seized in connection with such a violation of this chapter or chapter 66 or chapter 139, and there be no one in possession thereof at the time of seizure, or if in such case there be a person in possession who does not claim ownership thereof, or if there be a person in possession and he be convicted for such violation and it be found at the time of his conviction that he is not the owner thereof, the taking of the same, with a description thereof, may be advertised by the state treasurer in the official state paper once a week for two weeks, and, if no claimant, either of a lien or of ownership, shall have notified the state treasurer in writing within ten days after the last publication of the advertisement, the property shall be sold and the proceeds, after deducting the expenses and costs, shall be paid into the state treasury and credited to the common school fund, or, if a sale is not practicable, the property shall be destroyed. If a claimant of a lien or of ownership notifies the state treasurer within the prescribed period, the state treasurer or the peace officer seizing the property shall apply to a court of record in the county where the property was seized for an order requiring such claimant to show cause why such property should not be confiscated. If, upon the hearing of the order, a claimant of a lien, but no claimant of ownership, has appeared, or if a claimant of ownership has appeared and fails to establish his title to the seized property, and the court shall find that the property was used in connection with such violation, it shall order the same to be sold, or destroyed, if a sale is not practicable, as provided in subsection (2). If such claimant of ownership shall establish title, the court shall likewise order the property to be sold or destroyed unless the claimant shall establish also that the property was not used in connection with such violation or that it was so used without his knowledge or consent and without his knowledge of such facts as should have given him reason to believe that it would be put to such use. If the court shall order the property sold, the person making the sale, after deducting the expenses of keeping the property and the costs of the sale, shall pay all liens according to their priorities which are established at the hearing upon the order as being bona fide and as having been created without the lienor having notice that such property was being used or was to be used in connection with such violation. In case of all sales, the net proceeds remaining after payment of expense and costs and the payment of liens, if any be paid, shall be paid into the state treasury and credited to the common school fund. All such liens against property sold under the provisions of this subsection shall be transferred from the property to the proceeds of the sale of the property.

(4) The term "lienor" or "lien claimant" as herein used shall include the vendor under a conditional sales agreement and the mortgagee under a chattel mortgage.

(5) The provisions of this section relating to confiscation shall not exclude resort to the provisions of chapter 288, and the state treasurer or the peace officer seizing property may in any case proceed under the provisions of that chapter. [1935 c. 40, 452; 1937 c. 337]

176.63 Arrest without warrant. Any peace officer may arrest without warrant any person, committing in his presence violations of any provisions of this chapter, chapter 66, or chapter 139, and may without a search warrant seize any personal property used in connection with such violation. [1935 c. 187]

176.65 Impersonating an officer. (1) Any person who shall impersonate an inspector, agent or other accredited employe of the state treasurer shall be guilty of a misdemeanor.

(2) Any person violating this section shall be punished by a fine of not less than five hundred dollars nor more than one thousand or by imprisonment in the county jail for not less than six months nor more than a year, or by both such fine and imprisonment. [1935 c. 187]

176.66 Place to place delivery. No person shall peddle any intoxicating liquor from house to house by means of a truck or otherwise, where the sale is consummated and delivery made concurrently. [1935 c. 187]

176.67 Actions to recover price of intoxicating liquor. No actions may be maintained to recover the price of any intoxicating liquor or fermented malt beverages sold in violation of the provisions of this chapter, chapter 66 or chapter 139. [1935 c. 187]

176.70 Sale of intoxicating liquor; permit required; application; revocation; penalties. (1) No individual, firm, partnership, corporation, or association shall solicit orders for, or engage in the sale for future delivery of, intoxicating liquors within the state unless and until said individual, firm, partnership, corporation, or association shall first have secured from the state treasurer a permit so to do, and no agent or representative of any individual, firm, partnership, corporation, or association shall solicit orders for, or sell for future delivery, any intoxicating liquor within the state without securing a permit from the state treasurer.

(2) Any individual, firm, partnership, corporation, or association desiring the permit required by subsection (1) shall file with the state treasurer an application for such permit. Said application shall be in such form as shall be prescribed by the state treasurer and shall set forth:

- (a) The kind of permit desired;
- (b) The name and address of the applicant; if the applicant be a firm, partnership, or association, the name and address of each member thereof; if the applicant be a corporation, the name and address of each of its officers;
- (c) The place or places where the business is to be conducted;
- (d) The business or occupation, if any, theretofore engaged in by the applicant; or if a firm, partnership, or association, by each member thereof; or if a corporation, by each officer thereof, for a period of at least three years immediately preceding the date of such application;
- (e) Such further information as the state treasurer may require to enable him to determine the trustworthiness of each applicant, including each member of the firm, partnership, or association, or each officer of the corporation, and the quality of the intoxicating liquor sold or for which orders are to be solicited.

(3) Such application shall be verified by the applicant; if made by a firm, partnership or association, it shall be verified by at least two members thereof; if made by a corporation, it shall be verified by the president and secretary thereof. Such application for permit shall be accompanied by a fee of ten dollars. All such permits shall expire on the thirty-first day of December next following their date of issue unless sooner revoked by the state treasurer. Individuals, firms, partnerships, corporations or associations employing persons to solicit orders for, or to sell for future delivery, intoxicating liquors within the state, shall send to the state treasurer a list of all such persons and notify him at once whenever a salesman or solicitor leaves their employ. Upon leaving such employment, the salesman or solicitor shall immediately send the permit to the state treasurer for cancellation.

(4) Every agent, representative or salesman shall, upon request, permit any prospective purchaser to examine his permit. The refusal of any such agent, representative or salesman to so furnish for examination such permit upon request shall be considered a violation of this section.

(5) Any person, firm, partnership, corporation or association who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment, and shall, in addition thereto, have his or its permit automatically revoked. Any person, firm, partnership, corporation or association having his or its permit so revoked shall not be granted another permit for a period of two years following such revocation.

(6) It shall not be required that an individual or any of the members of a firm, partnership or association, or, if a corporation, it or any of its officers, stockholders or directors be citizens or residents of this state in order to secure the permit required by subsection (1) hereof; provided, however, that a permit issued hereunder to any non-

resident person, firm, partnership, association or corporation shall give such nonresident authority only to solicit orders for the sale of alcoholic liquor to Wisconsin manufacturers, rectifiers or wholesalers, and to Wisconsin retailers if such orders are solicited for and are to be filled by a Wisconsin manufacturer, rectifier or wholesaler. [*Spl. S. 1933 c. 5; Spl. S. 1933 c. 14 s. 1; 1935 c. 187, 217; 1937 c. 346*]

176.705 Sale of alcohol. No person holding a retail license for the sale of intoxicating liquor in this state shall buy or sell alcohol which exceeds fifty per cent by volume, or one hundred proof. [*1935 c. 217, 420*]

176.71 Bonded wreckers. The state treasurer may contract bonded wreckers to destroy any illicit stills seized. [*1935 c. 187*]

176.72 Nuisances. Any building or place of any kind where intoxicating liquor, fermented malt beverages or alcohol is sold, possessed, stored, brewed, bottled, manufactured or rectified without a lawful permit or license as provided in subsection (10) of section 66.05 or in chapters 139 or 176, or where persons are permitted to resort for the purposes of drinking intoxicating liquor, fermented malt beverages or alcohol, in violation of law is declared a public nuisance and may be closed and abated as such. [*1937 c. 174*]

176.75 Liquor in public warehouses. Whenever intoxicating liquor is stored in a public warehouse licensed as provided in this chapter, by a Wisconsin manufacturer, rectifier or wholesaler as a pledge for the loan of money, it shall not be necessary to affix to such liquor either front labels or state tax stamps until such liquor is sold or removed from such public warehouse. Whenever it shall become necessary for a pledgee to sell such intoxicating liquor in good faith pursuant to the terms of the pledge, and not for the purpose of avoiding the provisions of this chapter or chapter 139, such liquor shall be sold to a Wisconsin manufacturer, rectifier or wholesaler for the purpose of affixing front labels and state revenue stamps. [*1935 c. 429*]

Note: Wisconsin state bank may loan receipts for liquor stored in Wisconsin public money to Wisconsin manufacturer, rectifier warehouses licensed under chapter 176, or wholesaler of intoxicating liquor upon Stats., in absence of any banking statutes collateral security consisting of warehouse to contrary. 26 Atty. Gen. 598.