

1999 ASSEMBLY BILL 638

January 11, 2000 – Introduced by Representatives CULLEN, LA FAVE, BOCK, TURNER, SINICKI and RILEY, cosponsored by Senators FARROW and ROSENZWEIG. Referred to Committee on State Affairs.

1 **AN ACT** *to renumber and amend* 125.12 (2) (d), 125.26 (6) and 125.51 (10); *to*
 2 *amend* 125.04 (3) (f) 3., 125.04 (3) (g) (intro.), 125.04 (4), 125.04 (5) (d) 3. c.,
 3 125.04 (5) (d) 3. d., 125.04 (11) (b) 1., 125.07 (3) (a) 12., 125.09 (6), 125.12 (2) (b)
 4 1., 125.12 (2) (b) 4., 125.12 (3m), 125.26 (1), 125.51 (1) (a) and 125.51 (1) (c) 2.;
 5 and *to create* 125.12 (2) (d) 2., 125.265 (title), 125.265 (1), 125.265 (2) (title),
 6 125.265 (2) (b), 125.265 (3) and 125.51 (10) (b) and (c) of the statutes; **relating**
 7 **to:** judicial review of a 1st class city’s alcohol beverage licensing action and
 8 creating temporary Class “A”, “Class A”, Class “B” and “Class B” alcohol
 9 beverage licenses.

Analysis by the Legislative Reference Bureau

Under current law, a municipality may, for specified reasons, issue, renew, suspend or revoke an annual license for the retail sale or manufacture of alcohol beverages. A municipality that suspends, revokes or refuses to issue or renew a license must specify the reasons for that action.

Under current law, any applicant for an alcohol beverage license, licensee or resident of the municipality may have a court review the municipality’s action concerning an alcohol beverage license. Court review of the municipality’s action

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proceeds like any civil lawsuit without a jury. The court receives evidence on the merits of the application, determines facts based on evidence presented to it and issues a binding but appealable decision based on those facts.

This bill changes the procedure for judicial review of a challenged alcohol beverage licensing action in 1st class cities (currently only the city of Milwaukee). Under the bill, the reviewing court may consider as evidence only the records of the proceedings of the common council and its alcohol licensing committee, if any, relating to the action being challenged. The court may not take new evidence, must defer to the committee's or common council's determination of facts and may not delay enforcement of the common council's action pending its review. A common council's lawful exercise of discretion is not reviewable. Under the bill, the reviewing court may consider only the following:

1. Whether the common council exceeded its right or power to interpret and apply the law.
2. Whether the common council proceeded according to law.
3. Whether the common council's action was arbitrary, oppressive or unreasonable and represented its will rather than its judgment.
4. Whether, taking into account all evidence in the record, reasonable minds could arrive at the same conclusion that the common council did.

Following review, the court may entirely affirm the common council's action or send the challenged action back to the common council for further proceedings, but may not modify the common council's action.

The bill also requires a 1st class city to issue a temporary Class "A", "Class A", Class "B" or "Class B" license to a person who makes a late application to renew a valid Class "A", "Class A", Class "B" or "Class B" license and pays \$1,500. Class "A" licenses authorize the retail sale of beer for consumption away from the premises where sold (stores); "Class A" licenses authorize the sale of wine and intoxicating liquor for consumption away from the premises where sold; Class "B" licenses authorize the retail sale of beer for consumption on or off the premises where sold (taverns, restaurants and hotels); and "Class B" licenses authorize the retail sale of liquor for consumption on the premises where sold. The temporary licenses are valid until the city's governing body acts on the application for renewal or for a period of 60 days, whichever occurs sooner.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 125.04 (3) (f) 3. of the statutes is amended to read:
- 2 125.04 **(3)** (f) 3. For licenses issued under s. ~~125.26 (6)~~ 125.265 (2) (a) for a picnic
- 3 or other gathering lasting less than 4 days, the governing body of the municipality

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1 shall establish the time, prior to the granting of a license, by which an application
2 shall be filed with the clerk.

3 **SECTION 2.** 125.04 (3) (g) (intro.) of the statutes is amended to read:

4 125.04 (3) (g) *Publication of application for license.* (intro.) The municipal
5 clerk shall publish each application for a Class “A”, Class “B”, “Class A”, “Class B”
6 or “Class C” license, except licenses under ss. ~~125.26 (6)~~ 125.265 (2) (a) and 125.51
7 (10) (a), prior to its issuance in a newspaper according to the following conditions:

8 **SECTION 3.** 125.04 (4) of the statutes is amended to read:

9 125.04 (4) LIST OF LICENSEES. By July 15 annually, the clerk of a municipality
10 issuing licenses shall mail to the department a list containing the name, address and
11 trade name of each person holding a license issued by that municipality, other than
12 a manager’s or operator’s license or a license issued under s. ~~125.26 (6)~~ 125.265 (2)
13 (a), the type of license held and, if the person holding the license is a corporation or
14 limited liability company, the name of the agent appointed under sub. (6).

15 **SECTION 4.** 125.04 (5) (d) 3. c. of the statutes is amended to read:

16 125.04 (5) (d) 3. c. Applicants for temporary Class “B” licenses under s. ~~125.26~~
17 ~~(6)~~ 125.265 (2) (a) who are not required to hold a seller’s permit under subch. III of
18 ch. 77.

19 **SECTION 5.** 125.04 (5) (d) 3. d. of the statutes is amended to read:

20 125.04 (5) (d) 3. d. Applicants for temporary “Class B” licenses under s. 125.51
21 (10) (a) who are not required to hold a seller’s permit under subch. III of ch. 77.

22 **SECTION 6.** 125.04 (11) (b) 1. of the statutes is amended to read:

23 125.04 (11) (b) 1. The ~~municipal governing body~~ common council or council of
24 a 1st class city may issue a retail license for the sale of alcohol beverages at any time

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1 during a year. Each license shall be valid for one year and shall specify its date of
2 expiration.

3 **SECTION 7.** 125.07 (3) (a) 12. of the statutes is amended to read:

4 125.07 (3) (a) 12. An underage person who enters and remains on premises for
5 which a temporary Class “B” license is issued under s. ~~125.26 (6)~~ 125.265 (2) (a) if the
6 licensee is authorized by the official or body of the municipality that issued the
7 license to permit underage persons to be on the premises under s. ~~125.26 (6)~~ 125.265
8 (2) (a) and if the licensee permits underage persons to be on the premises.

9 **SECTION 8.** 125.09 (6) of the statutes is amended to read:

10 125.09 (6) MUNICIPAL STORES. No municipality may engage in the sale of alcohol
11 beverages, except as authorized under s. ~~125.26 (6)~~ 125.265 (2) (a). This subsection
12 does not apply to municipal stores in operation on November 6, 1969.

13 **SECTION 9.** 125.12 (2) (b) 1. of the statutes is amended to read:

14 125.12 (2) (b) 1. If the licensee does not appear as required by the summons,
15 the allegations of the complaint shall be taken as true and if the municipal governing
16 body or the committee finds the allegations sufficient, the license shall be revoked.
17 The clerk shall give written notice of the revocation to the person whose license is
18 revoked and to each person swearing to the complaint.

19 **SECTION 10.** 125.12 (2) (b) 4. of the statutes is amended to read:

20 125.12 (2) (b) 4. The municipal clerk shall give written notice of each
21 suspension or revocation or any decision not to suspend, revoke or renew for cause
22 to the person whose license is suspended or revoked licensee and to each person
23 swearing to the complaint.

24 **SECTION 11.** 125.12 (2) (d) of the statutes is renumbered 125.12 (2) (d) 1. and
25 amended to read:

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1 125.12 (2) (d) 1. 'In general.' The action of any municipal governing body in
2 granting or failing to grant, suspending or revoking any license, or the failure of any
3 municipal governing body to revoke or suspend any license for good cause, may be
4 reviewed by the circuit court for the county in which the application for the license
5 was issued, upon application by any applicant, licensee or resident of the
6 municipality. The procedure on review shall be the same as in civil actions instituted
7 in the circuit court. The person desiring review shall file pleadings, which shall be
8 served on the municipal governing body in the manner provided in ch. 801 for service
9 in civil actions and a copy of the pleadings shall be served on the applicant or licensee.
10 The municipal governing body, applicant or licensee shall have 45 days to file an
11 answer to the complaint. Following filing of the answer, the matter shall be deemed
12 at issue and hearing may be had within 5 days, upon due notice served upon the
13 opposing party. The hearing shall be before the court without a jury. Subpoenas for
14 witnesses may be issued and their attendance compelled. The decision of the court
15 shall be filed within 10 days after the hearing and a copy of the decision shall be
16 transmitted to each of the parties. The decision shall be binding unless it is appealed
17 to the court of appeals. This subdivision does not apply to review of actions by 1st
18 class cities.

19 **SECTION 12.** 125.12 (2) (d) 2. of the statutes is created to read:

20 125.12 (2) (d) 2. 'Judicial Review in 1st class cities.' The action of the common
21 council or council of any 1st class city in granting or failing to grant, suspending or
22 revoking any license, or the failure of the common council of any 1st class city to
23 revoke or suspend any license for good cause, may be reviewed only by commencing
24 an action seeking the remedy available by certiorari. An action for certiorari shall
25 be commenced in the circuit court for the county in which the application for the

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1 license was issued, and may be commenced by any applicant, licensee or resident of
2 the 1st class city. No court may issue any injunction, stay, restraining order or other
3 order that has the effect of delaying or preventing any action under par. (b) pending
4 completion of the court's review under this paragraph. An action for certiorari under
5 this paragraph shall be commenced under s. 801.02 (5) within 30 days after the
6 mailing of notice under sub. (2) (b) 1. or 4. or (3m). If a license is issued or renewed,
7 an action shall be commenced within 45 days after filing with the municipal clerk a
8 receipt showing payment of a license fee under s. 125.04 (8). The court may not take
9 evidence on the merits of the case and the scope of review shall be limited to the
10 record of the proceedings of the committee, including any report submitted under
11 par. (b) 3. or sub. (3), and to the record of the proceedings of the common council or
12 council of the 1st class city. If the court finds any error in the proceedings of the
13 committee or of the common council or council of the 1st class city that renders the
14 decision or proceedings void, the court shall remand the decision to the common
15 council or council of the 1st class city for further proceedings in accordance with the
16 court's determination. Any party to the certiorari proceedings may appeal the
17 decision of the court. The decision shall be binding unless it is appealed to the court
18 of appeals.

19 **SECTION 13.** 125.12 (3m) of the statutes is amended to read:

20 125.12 (3m) REFUSALS BY LOCAL AUTHORITIES TO ISSUE LICENSES. If a municipal
21 governing body or duly authorized committee of a city council decides not to issue a
22 new license under this chapter, it shall notify the applicant for the new license and
23 the person swearing to the complaint under sub. (2) (ag) of the decision not to issue
24 the license. The notice shall be in writing and state the reasons for the decision.

25 **SECTION 14.** 125.26 (1) of the statutes is amended to read:

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1 125.26 (1) Every municipal governing body may issue Class “B” licenses for the
2 sale of fermented malt beverages from premises within the municipality and may
3 authorize an official or body of the municipality to issue temporary Class “B” licenses
4 under ~~sub. (6)~~ s. 125.265 (2) (a). A Class “B” license authorizes retail sales of
5 fermented malt beverages to be consumed either on the premises where sold or off
6 the premises. A license may be issued after July 1. That license shall expire on the
7 following June 30. Persons holding a Class “B” license may sell beverages containing
8 less than 0.5% of alcohol by volume without obtaining a license under s. 66.053 (1).

9 **SECTION 15.** 125.26 (6) of the statutes is renumbered 125.265 (2) (a) and
10 amended to read:

11 125.265 (2) (a) Temporary Class “B” licenses may be issued to bona fide clubs,
12 to county or local fair associations or agricultural societies, to churches, lodges or
13 societies that have been in existence for at least 6 months before the date of
14 application and to posts of veterans’ organizations authorizing the sale of fermented
15 malt beverages at a particular picnic or similar gathering, at a meeting of the post,
16 or during a fair conducted by the fair association or agricultural society. The amount
17 of the fee for ~~the a license~~ issued under this paragraph shall be determined by the
18 municipal governing body issuing the license but may not exceed \$10. An official or
19 body authorized by a municipal governing body to issue temporary Class “B” licenses
20 may, upon issuance under this paragraph of any temporary Class “B” license,
21 authorize the licensee to permit underage persons to be on the premises for which
22 the license is issued. A license issued to a county or district fair licenses the entire
23 fairgrounds where the fair is being conducted and all persons engaging in retail sales
24 of fermented malt beverages from leased stands on the fairgrounds. The county or
25 district fair to which the license is issued may lease stands on the fairgrounds to

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1 persons who may engage in retail sales of fermented malt beverages from the stands
2 while the fair is being held. A municipal governing body may issue a temporary
3 Class “B” license for premises that are covered by a “Class B” permit issued under
4 s. 125.51 (5) (b) 2. if the applicant meets the requirements of this subsection
5 paragraph. No 1st class city may issue a license under this paragraph, except as
6 provided in guidelines established under sub. (3).

7 **SECTION 16.** 125.265 (title) of the statutes is created to read:

8 **125.265 (title) Temporary Class “A” and Class “B” licenses.**

9 **SECTION 17.** 125.265 (1) of the statutes is created to read:

10 125.265 (1) TEMPORARY CLASS “A” LICENSES. The common council or council of
11 a 1st class city shall, consistent with guidelines established under sub. (3), issue a
12 temporary Class “A” license upon receipt of a completed application to renew a valid
13 Class “A” license issued by that city after the date specified by the city for filing the
14 application and payment of a nonrefundable fee of \$1,500. A temporary license
15 issued under this subsection is valid until the common council or council acts upon
16 the application for renewal or for a period of 60 days after the date of issuance,
17 whichever occurs sooner.

18 **SECTION 18.** 125.265 (2) (title) of the statutes is created to read:

19 125.265 (2) (title) TEMPORARY CLASS “B” LICENSES.

20 **SECTION 19.** 125.265 (2) (b) of the statutes is created to read:

21 125.265 (2) (b) The common council or council of a 1st class city shall, consistent
22 with guidelines established under sub. (3), issue a temporary Class “B” license upon
23 receipt of a completed application to renew a valid Class “B” license issued by that
24 city after the date specified by the city for filing the application and payment of a
25 nonrefundable fee of \$1,500. A temporary license issued under this paragraph is

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1 valid until the common council or council acts upon the application for renewal or for
2 a period of 60 days after the date of issuance, whichever occurs sooner.

3 **SECTION 20.** 125.265 (3) of the statutes is created to read:

4 125.265 (3) A 1st class city shall establish written guidelines for issuing
5 licenses under this section.

6 **SECTION 21.** 125.51 (1) (a) of the statutes is amended to read:

7 125.51 (1) (a) Every municipal governing body may grant and issue “Class A”
8 and “Class B” licenses for retail sales of intoxicating liquor, and “Class C” licenses
9 for retail sales of wine, from premises within the municipality to persons entitled to
10 a license under this chapter as the issuing municipal governing body deems proper
11 and may authorize an official or body of the municipality to issue temporary “Class
12 B” licenses under sub. (10) (a). No “Class B” license may be issued to a winery under
13 sub. (3) (am) unless the winery has been issued a permit under s. 125.53 and the
14 winery is capable of producing at least 5,000 gallons of wine per year in no more than
15 2 locations.

16 **SECTION 22.** 125.51 (1) (c) 2. of the statutes is amended to read:

17 125.51 (1) (c) 2. The ~~governing body~~ common council or council of a 1st class
18 city shall establish and publish notice of the dates on which it, or its duly authorized
19 committee, will meet and act on license applications.

20 **SECTION 23.** 125.51 (10) of the statutes is renumbered 125.51 (10) (a) and
21 amended to read:

22 125.51 (10) (a) Notwithstanding s. 125.68 (3), temporary “Class B” licenses
23 may be issued to bona fide clubs, to county or local fair associations or agricultural
24 societies, to churches, lodges or societies that have been in existence for at least 6
25 months before the date of application and to posts of veterans’ organizations

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1 authorizing the sale of wine in an original package, container or bottle or by the glass
2 if the wine is dispensed directly from an original package, container or bottle at a
3 particular picnic or similar gathering, at a meeting of the post, or during a fair
4 conducted by the fair association or agricultural society. The amount of the fee for
5 the license shall be \$10, except that no fee may be charged to a person who at the
6 same time applies for a temporary Class “B” license under s. ~~125.26 (6)~~ 125.265 (2)
7 (a) for the same event. A license issued to a county or district fair licenses the entire
8 fairgrounds where the fair is being conducted and all persons engaging in retail sales
9 of wine from leased stands on the fairgrounds. The county or district fair to which
10 the license is issued may lease stands on the fairgrounds to persons who may engage
11 in retail sales of wine from the stands while the fair is being held. Not more than 2
12 licenses may be issued under this subsection paragraph to any club, county or local
13 fair association, agricultural association, church, lodge, society or veterans’ post in
14 any 12-month period. No 1st class city may issue a license under this paragraph,
15 except as provided in written guidelines established under par. (c).

16 **SECTION 24.** 125.51 (10) (b) and (c) of the statutes are created to read:

17 125.51 **(10)** (b) Notwithstanding s. 125.68 (3), the common council or council
18 of a 1st class city shall, consistent with guidelines established under par. (c), issue
19 a temporary “Class B” license upon receipt of a completed application to renew a valid
20 “Class B” license issued by that city, and a temporary “Class A” license upon receipt
21 of a completed application to renew a valid “Class A” license issued by that city, if the
22 application is submitted after the date specified by the city for filing the application.
23 A 1st class city shall charge a nonrefundable fee of \$1,500 for a temporary license
24 issued under this paragraph, except that no fee may be charged to a person who at
25 the same time applies for a temporary Class “B” license under s. 125.265 (2) (b). A

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1 temporary license issued under this paragraph is valid until the common council or
2 council acts upon the application for renewal or for a period of 60 days after the date
3 of issuance, whichever occurs sooner.

4 (c) A 1st class city shall establish written guidelines for issuing licenses under
5 this section.

6 **SECTION 25. Initial applicability.**

7 (1) This act first applies to an action of a municipal governing body granting
8 or failing to grant, suspending or revoking, or refusing to revoke or suspend, any
9 license taken on the effective date of this subsection.

10 (END)