

1999 DRAFTING REQUEST**Bill**Received: **01/21/99**Received By: **nilsepe**Wanted: **As time permits**

Identical to LRB:

For: **David Cullen (608) 267-9836**By/Representing: **Mike**This file may be shown to any legislator: **NO**Drafter: **nilsepe**

May Contact:

Alt. Drafters:

Subject: **Beverages - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Temporary alcohol licenses; judicial review of local licensing

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
/?	nilsepe 01/21/99	ptellez 01/26/99		_____			S&L
/1	nilsepe 02/15/99	ptellez 02/15/99	jfrantze 01/26/99	_____	lrb-docadmin 01/26/99		S&L
/2		ygeller 04/27/99	martykr 02/16/99	_____	lrb-docadmin 02/16/99		S&L
/3			jfrantze 04/28/99	_____	lrb-docadmin 04/28/99	lrb-docadmin 04129199	

FE Sent For:

<END>

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/2		13 4/27/99 ptellez	martykr 02/16/99	_____	lrb_docadmin 02/16/99		

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Handwritten signatures and dates: 4/28, 4/28, and <END>



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/1			jfrantze 01/26/99	_____	lrb_docadmin 01/26/99		

FE Sent For:

1/2 post 2/15/99 km 2/16 25/9 km 2/16

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I?	nilsepe	1/1 post 1/22/98	Jb/26	Jb/Rh 1/26			

FE Sent For:

<END>

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~~1997 ASSEMBLY BILL~~

1915/1

1999 BILL

gen. cat.

1 **AN ACT** ^{gen. cat.} *to renumber and amend* 125.26 (6) and 125.51 (10); *to amend* 125.04
2 (3) (f) 3., 125.04 (3) (g) (intro.), 125.04 (4), 125.04 (5) (d) 3. c., 125.04 (5) (d) 3. d.,
3 125.04 (11) (b) l., 125.07 (3) (a) 12., 125.09 (6), 125.12 (2) (b) l., 125.12 (2) (b)
4 4., 125.12 (2) (d), 125.12 (3m), 125.26 (1), 125.51 (1) (a) and 125.51 (1) (c) 2.; and
5 **to create** 125.265 (title), 125.265 (l), 125.265 (2) (title), 125.265 (2) (b), 125.265
6 (3) and 125.51 (10) (b) and (c) of the statutes; **relating to:** judicial review of a
7 municipality's alcohol beverage licensing action and creating temporary Class
8 "A", "Class A", Class "B" and "Class B" licenses.

for specified reasons,

Analysis by the Legislative Reference Bureau

Under current law, a municipality may ~~issue~~ 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 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.

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ASSEMBLY BILL

This bill changes the procedure for judicial review of a challenged alcohol beverage licensing action. Under the bill, the reviewing court may consider as evidence only the record of the proceedings leading to the action being challenged. The court may not take new evidence, must defer to the municipality's determination of facts and may not delay enforcement of the municipality's action pending its review. A municipality's lawful exercise of discretion is not reviewable. Under the bill, the reviewing court may consider only the following:

1. Whether the municipality exceeded its right or power to interpret and apply the law.
2. Whether the municipality proceeded according to law.
3. Whether the municipality'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 municipality did.

Following review, the court may entirely affirm the municipality's action or send the challenged action back to the municipality for further proceedings, but may not modify the municipality'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 30 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:

SECTION 1. 125.04 (3) (f) 3. of the statutes is amended to read:

125.04 (3) (f) 3. For licenses issued under s. X45.26 (6) 125.265 (2) (a) for a picnic or other gathering lasting less than 4 days, the governing body of the municipality shall establish the time, prior to the granting of a license, by which an application shall be filed with the clerk.

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

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parenth]

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Floor Stats.

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ASSEMBLY BILL

1 125.04 (3) **(g) Publication of application for license.** (intro.) The municipal
2 clerk shall publish each application for a Class "A", Class "B", "Class A", "Class B"
3 or "Class C" license, except licenses under ss. ~~125.26 (6)~~ 125.265 (2) (a) and 125.51
4 (10) (a), prior to its issuance in a newspaper according to the following conditions:

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

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

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

13 125.04 (5) (d) 3. c. Applicants for temporary Class "B" licenses under s. ~~125.26~~
14 ~~(6)~~ 125.265 (2) (a) who are not required to hold a seller's permit under subch. III of
15 ch. 77.

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

17 125.04 (5) (d) 3. d. Applicants for temporary "Class B" licenses under s. 125.51
18 (10) &ho are not required to hold a seller's permit under subch. III of ch. 77.

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

20 125.04 (11) (b) 1. The ~~municipal governing body~~ common council or council of
21 a 1st class city may issue a retail license for the sale of alcohol beverages at any time
22 during a year. Each license shall be valid for one year and shall specify its date of
23 expiration.

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

Proof w/ STATS.

ASSEMBLY BILL

1 125.07 (3) (a) 12. An underage person who enters and remains on premises for
2 which a temporary Class "B" license is issued under s. ~~125.26 (6)~~ 125.265 (2) (a) if the
3 licensee is authorized by the official or body of the municipality that issued the
4 license to permit underage persons to be on the premises under s. ~~125.26 (6)~~ (a) and
5 if the licensee permits underage persons to be on the premises.

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

7 125.09 (6) **MUNICIPAL STORES.** No municipality may engage in the sale of alcohol
8 beverages, except as authorized under s. ~~125.26 (6)~~ 125.265 (2) (a). This subsection
9 does not apply to municipal stores in operation on November 6, 1969.

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

11 125.12 (2) (b) 1. If the licensee does not appear as required by the summons,
12 the allegations of the complaint shall be taken as true and if the municipal governing
13 body or the committee finds the allegations sufficient, the license shall be revoked.
14 The clerk shall give written notice of the revocation to the person whose license is
15 revoked and to each person swearing to the complaint.

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

17 125.12 (2) (b) 4. The municipal clerk shall give written notice of each
18 suspension or revocation or any decision not to suspend, revoke or renew for cause
19 to the person whose license is suspended or revoked licensee and to each person
20 swearing to the complaint.

21 SECTION 11. 125.12 (2) (d) of the statutes is amended to read:

22 125.12 (2) (d) *Judicial review.* The action of any municipal governing body in
23 granting or failing to grant, suspending or revoking any license, or the failure of any
24 municipal governing body to revoke or suspend any license for good cause, may be
25 reviewed only by commencing an action seeking the remedy available by certiorari.

proof w/ STATS.

125.265 (2)

ASSEMBLY BILL

1 An action for certiorari shall be commenced in the circuit court for the county in
2 which the application for the license was issued, upon a- and may be
3 commenced by any applicant, licensee or resident of the municipality. ~~The procedure~~
4 ~~on review shall be the same as in civil actions instituted in the circuit court. The~~
5 ~~person desiring review shall file pleadings, which shall be served on the municipal~~
6 ~~governing body in the manner provided in ch. 801 for service in civil actions and a~~
7 ~~copy of the pleadings shall be served on the applicant or licensee. The municipal~~
8 ~~governing body, applicant or licensee shall have 10 days to file an answer to the~~ +5
9 ~~complaint. Following filing of the answer, the matter shall be deemed at issue and~~
10 ~~hearing may be had within 5 days, upon due notice served upon the opposing party.~~
11 ~~The hearing shall be before the court without a jury. Subpoenas for witnesses may~~
12 ~~be issued and their attendance compelled. The decision of the court shall be filed~~
13 ~~within 10 days after the hearing and a copy of the decision shall be transmitted to~~
14 ~~each of the parties. No court may issue any injunction, stay, restraining order or~~
15 ~~other order that has the effect of delaying or preventing any action under nar. (b)~~
16 pending completion of the court's review under this paragraph. ✓
17 certiorari under this paragraph shall be commenced under s. 801.02 (5) within 30 ✓
18 days after the mailing of notice under sub. (2)(b) 1. or 4. or (3m). ✓
19 If a license is issued or renewed, an action shall be commenced within 45 days after filing with the ✓
20 municipal clerk a receipt showing payment of a license fee under s. 125.04 (8). ✓
21 The court may not take evidence on the merits of the case and the scope of review shall
22 be limited to the record of the proceedings of the municipal body. If the court finds
23 any error in the proceedings of the municipal body that renders the decision or
24 proceedings void, the court shall remand the decision to the municipal body for
25 further proceedings in accordance with the court's determination. Any party to the

97
Act
157

PL00 w/ STATS

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ASSEMBLY BILL

SECTION 11

1 certiorari proceedings may anneal the decision of the court. The decision shall be
2 binding unless it is appealed to the court of appeals.

3 **SECTION 12.** 125.12 (3^m) of the statutes is amended to read:

4 125.12 (3m) REFUSALS BY LOCAL AUTHORITIES TO ISSUE LICENSES. If a municipal
5 governing body or duly authorized committee of a city council decides not to issue a
6 new license under this chapter, it shall notify the applicant for the new license and
7 the person swearing to the complaint under sub. (2) (ag) of the decision not to issue
8 the license. The notice shall be in writing and state the reasons for the decision.

9 **SECTION 13.** 125.26 (1) of the statutes is amended to read:

10 125.26 (1) Every municipal governing body may issue Class "B" licenses for the
11 sale of fermented malt beverages from premises within the municipality and may
12 authorize an official or body of the municipality to issue temporary Class "B" licenses
13 under ~~sub. (6)~~ s. 125.265 (2) (a). A Class "B" license authorizes retail sales of
14 fermented malt beverages to be consumed either on the premises where sold or off
15 the premises. A license may be issued after July 1. That license shall expire on the
16 following June 30. Persons holding a Class "B" license may sell beverages containing
17 less than 0.5% of alcohol by volume without obtaining a license under s. 66.053 (1).

18 **SECTION 14.** 125.26 (6) of the statutes is renumbered 125.265 (2) (a) and
19 amended to read:

20 125.265 (2) (a) Temporary Class "B" licenses may be issued to bona fide clubs,
21 to county or local fair associations or agricultural societies, to churches, lodges or
22 societies that have been in existence for at least 6 months before the date of
23 application and to posts of veterans' organizations authorizing the sale of fermented
24 malt beverages at a particular picnic or similar gathering, at a meeting of the post,
25 or during a fair conducted by the fair association or agricultural society. The amount

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ASSEMBLY BILL

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1 of the fee for ~~the~~ a license issued under this paragraph shall be determined by the
 2 municipal governing body issuing the license but may not exceed \$10. An official or
 3 body authorized by a municipal governing body to issue temporary Class "B" licenses
 4 may, upon issuance under this paragraph of any temporary Class "B" license,
 5 authorize the licensee to permit underage persons to be on the premises for which
 6 the license is issued. A license issued to a county or district fair licenses the entire
 7 fairgrounds where the fair is being conducted and all persons engaging in retail sales
 8 of fermented malt beverages from leased stands on the fairgrounds. The county or
 9 district fair to which the license is issued may lease stands on the fairgrounds to
 .0 persons who may engage in retail sales of fermented malt beverages from the stands
 11 while the fair is being held. A municipal governing body may issue a temporary
 12 Class "B" license for premises that are covered by a "Class B" permit issued under
 13 s. 125.51 (5) (b) 2. if the applicant meets the requirements of this ~~subsection~~
 14 paragraph. No 1st class city may issue a license under this paragraph, except as
 15 provided in guidelines established under sub. (3).

SECTION 15. 125.265 (title) of the statutes is created to read:

125.265 (title) **Temporary Class "A" and Class "B" licenses.**

SECTION 16. 125.265 (1) of the statutes is created to read:

125.265 (1) **TEMPORARY CLASS "A" LICENSES.** The common council or council of
 a 1st class city shall, consistent with guidelines established under sub. (3), issue a
 temporary Class "A" license upon receipt of a completed application to renew a valid
 Class "A" license issued by that city after the date specified by the city for filing the
 application and payment of a nonrefundable fee of \$1,500. A temporary license
 issued under this subsection is valid until the common council or council acts upon

1 the application for renewal or for a period of 60 days after the date of issuance,
2 whichever occurs sooner.

3 SECTION 17. 125.265 (2) (tit% of the statutes is created to read:

4 125.265 (2) (title) TEMPORARY CLASS "B" LICENSES.

5 SECTION 18. 125.265 (2) (b) of the statutes is created to read:

6 125.265 (2) (b) The common council or council of a 1st class city shall, consistent
7 with guidelines established under sub. (3), issue a temporary Class "B" license upon
8 receipt of a completed application to renew a valid Class "B" license issued by that
9 city after the date specified by the city for filing the application and payment of a
10 nonrefundable fee of \$1,500. A temporary license issued under this paragraph is
11 valid until the common council or council acts upon the application for renewal or for
12 a period of 60 days after the date of issuance, whichever occurs sooner.

13 SECTION 19. 125.265 (3) of the statutes is created to read:

14 125.265 (3) A 1st class city shall establish written guidelines for issuing
15 licenses under this section.

16 SECTION 20. 125.51 (1) (a) of the statutes is amended to read:

17 125.51 (1) (a) Every municipal governing body may grant and issue "Class A"
18 and "Class B" licenses for retail sales of intoxicating liquor, and "Class C" licenses
19 for retail sales of wine, from premises within the municipality to persons entitled to
20 a license under this chapter as the issuing municipal governing body deems proper
21 and may authorize an official or body of the municipality to issue temporary "Class
22 B" licenses under sub. (10) (a). No "Class B" license may be issued to a winery under
23 sub. (3) (am) unless the winery has been issued a permit under s. 125.53 and the
24 winery is capable of producing at least 5,000 gallons of wine per year in no more than
25 2 locations.

proof w/ STATS.

ASSEMBLY BILL

proof w/ STATS.

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SECTION 21. 125.51 (1) (c) 2. of the statutes is amended to read:

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

SECTION 22. 125.51 (10) of the statutes is renumbered 125.51 (10) (a) and amended to read:

125.51 (10) (a) Notwithstanding s. 125.68 (3), temporary "Class B" licenses may be issued to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least 6 months before the date of application and to posts of veterans' organizations authorizing the sale of wine containing not more than 6% alcohol by volume in an original package, container or bottle or by the glass if the wine is dispensed directly from an original package, container or bottle at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association/ or agricultural society. The amount of the fee for the a license issued under this paragraph shall be determined by the municipal governing body issuing the license, except that it may not exceed \$10 ~~and except that no fee may be charged to a person who at the same time applies for a temporary Class "B" license under s. 125.26 (6)~~ 125.265 (2) (a) for the same event. A license issued to a county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of wine containing not more than 6% alcohol by volume from leased stands on the fairgrounds. The county or district fair to which the license is issued may lease stands on the fairgrounds to persons who may engage in retail sales of wine containing not more than 6% alcohol by volume from the stands while the fair

ASSEMBLY BILL

SECTION 22

1 is being held. ~~No 1st class city may issue a license under this paragraph, except as~~
2 ~~provided-in-written guidelines established under par. (c).~~ a - -

3 **SECTION 23.** 125.51 (10) (b) and (c) of the statutes are created to read:

4 125.51 (10) (b) Notwithstanding s. 125.68 (3), the common council or council
5 of a 1st class city shall, consistent with guidelines established under par. (c), issue
6 a temporary "Class B" license upon receipt of a completed application to renew a valid
7 "Class B" license issued by that city, and a temporary "Class A" license upon receipt
8 of a completed application to renew a valid "Class A" license issued by that city, if the
9 application is submitted after the date specified by the city for filing the application.
10 A 1st class city shall charge a nonrefundable fee of \$1,500 for a temporary license
11 issued under this paragraph, except that no fee may be charged to a person who at
12 the same time applies for a temporary Class "B" license under s. 125.265 (2) (b). A
13 temporary license issued under this paragraph is valid until the common council or
14 council acts upon the application for renewal or for a period of 60 days after the date
15 of issuance, whichever occurs sooner.

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

18 **SECTION 24. Initial applicability.**

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

22 (END)

Insert
9-7

~~Section # 125.51 (10) of the statutes is amended to read:~~

125.51 (16) ^(a) ~~TEMPORARY LICENSES~~ Notwithstanding s. 125.68 (3), temporary "Class B" licenses may be issued to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least 6 months before the date of application and to posts of veterans' organizations authorizing the sale of wine in an original package, container or bottle or by the glass if the wine is dispensed directly from an original package, container or bottle at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. The amount of the fee for the license shall be \$10, except that no fee may be charged to a person who at the same time applies for a temporary Class "B" license under s. ~~125.26 (6)~~ ^{125.265 (2) (a)} for the same event. A license issued to a county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of wine from leased stands on the fairgrounds. The county or district fair to which the license is issued may lease stands on the fairgrounds to persons who may engage in retail sales of wine from the stands while the fair is being held. Not more than 2 licenses may be issued under this ~~subsection~~ ^{paragraph} to any club, county or local fair association, agricultural association, church, lodge, society or veterans' post in any 12-month period.

History: 1981 c. 79, 202, 220; 1983 a. 27 ss. 1489c, 2202 (38); 1983 a. 250,516; 1985 a. 74, 239, 302; 1987 a. 27, 91, 103, 249, 354,399; 1989 a. 16, 30, 31, 252, 253, 359; 1991 a. 39; 1993 a. 112; 1995 a. 27; 1997 a. 27, 41, 248, 259.

No 1st class city may issue a license under this paragraph, except as provided in written guidelines established under par. (c).

nilsepe(lrbunx13) [end of Insert]

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 1/26/99

To: Representative Cullen

Relating to LRB drafting number: LRB- 19 15

Topic

Temporary alcohol licenses; judicial review of local licensing

Subject(s)

Beverages - miscellaneous

1. **JACKET** the draft for introduction _____

in the Senate or the Assembly (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached David G. Cullen _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Paul E. Nilsen, Legislative Attorney
Telephone: (608) 261-6926

Please amend
to apply this legislation
to "Class A"
cities only.



12

1999 BILL

draft note

index

Regen. cat.

1 **AN ACT** *to renumber and amend* 125.26 (6) and 125.51 (10); **to amend** 125.04

2 (3) (f) 3., 125.04 (3) (g) (intro.), 125.04 (4), 125.04 (5) (d) 3. c., 125.04 (5) (d) 3. d.,

3 125.04 (11) (b) 1., 125.07 (3) (a) 12., 125.09 (6), 125.12 (2) (b) 1., 125.12 (2) (b)

4 4., 125.12 (2) (d), 125.12 (3m), 125.26 (1), 125.51 (1) (a) and 125.51 (1) (c) 2.; and

5 **to create** 125.265 (title), 125.265 (1), 125.265 (2) (title), 125.265 (2) (b), 125.265

6 (3) and 125.51 (10) (b) and (c) of the statutes; **relating to:** judicial review of a

7 *municipality's 1st class city's* alcohol beverage licensing action and creating temporary Class

8 "A", "Class A", Class "B" and "Class B" licenses.

alcohol beverage

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 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.

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in 1st class cities (the city of Milwaukee)

This bill changes the procedure for judicial review of a challenged alcohol beverage licensing action. Under the bill, the reviewing court may consider as evidence only the record of the proceedings leading to the action being challenged. The court may not take new evidence, must defer to the municipality's determination of facts and may not delay enforcement of the municipality's action pending its review. A municipality's lawful exercise of discretion is not reviewable. Under the bill, the reviewing court may consider only the following:

Common Councils

1. Whether the municipality exceeded its right or power to interpret and apply the law.
2. Whether the municipality proceeded according to law.
3. Whether the municipality'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 municipality did.

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

Common Councils

common council

Common Councils

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

4 shall establish the time, prior to the granting of a license, by which an application

5 shall be filed with the clerk.

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

BILL

1 125.04 (3) (g) *Publication of application for license.* (intro.) The municipal
2 clerk shall publish each application for a Class “A”, Class “B”, “Class A”, “Class B”
3 or “Class C” license, except licenses under ss. ~~125.26 (6)~~ 125.265 (2) (a) and 125.51
4 (10) (a), prior to its issuance in a newspaper according to the following conditions:

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

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

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

13 125.04 (5) (d) 3. c. Applicants for temporary Class “B” licenses under s. ~~125.26~~
14 ~~(6)~~ 125.265 (2) (a) who are not required to hold a seller’s permit under subch. III of
15 ch. 77.

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

17 125.04 (5) (d) 3. d. Applicants for temporary “Class B” licenses under s. 125.51
18 (10) (a) who are not required to hold a seller’s permit under subch. III of ch. 77.

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

20 125.04 **(11)** (b) 1. The ~~municipal governing body~~ common council or council of
21 a 1st class city may issue a retail license for the sale of alcohol beverages at any time
22 during a year. Each license shall be valid for one year and shall specify its date of
23 expiration.

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

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1 125.07 (3) (a) 12. An underage person who enters and remains on premises for
2 which a temporary Class "B" license is issued under s. ~~125.26(6)~~ 125.265(2)(a) if the
3 licensee is authorized by the official or body of the municipality that issued the
4 license to permit underage persons to be on the premises under s. ~~125.26(6)~~ 125.265
5 (2)(a) and if the licensee permits underage persons to be on the premises.

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

7 125.09 (6) **MUNICIPAL STORES.** No municipality may engage in the sale of alcohol
8 beverages, except as authorized under s. ~~125.26(6)~~ 125.265(2)(a). This subsection
9 does not apply to municipal stores in operation on November 6, 1969.

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

11 125.12 (2) (b) 1. If the licensee does not appear as required by the summons,
12 the allegations of the complaint shall be taken as true and if the municipal governing
13 body or the committee finds the allegations sufficient, the license shall be revoked.
14 The clerk shall give written notice of the revocation to the person whose license is
15 revoked and to each person swearing to the complaint.

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

17 125.12 (2) (b) 4. The municipal clerk shall give written notice of each
18 suspension or revocation or any decision not to suspend, revoke or renew for cause
19 to the person whose license is suspended or revoked licensee and to each person
20 swearing to the complaint.

21 **SECTION 11.** 125.12 (2) (d) of the statutes is amended to read:

22 125.12 (2) (d) *Judicial review.* The action of any municipal governing body in
23 granting or failing to grant, ~~suspending~~ or revoking any license, or the failure of any
24 municipal governing body to revoke or suspend any license for good cause, may be
25 reviewed only by commencing an action seeking the remedy available by certiorari.

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1 An action for certiorari shall be commenced in the circuit court for the county in
2 which the application for the license was issued, upon application and may be
3 commenced by any applicant, licensee or resident of the municipality. The procedure
4 on review shall be the same as in civil actions instituted in the circuit court. The
5 person desiring review shall file pleadings, which shall be served on the municipal
6 governing body in the manner provided in ch. 801 for service in civil actions and a
7 copy of the pleadings shall be served on the applicant or licensee. The municipal
8 governing body, applicant or licensee shall have 45 days to file an answer to the
9 complaint. Following filing of the answer, the matter shall be deemed at issue and
10 hearing may be had within 5 days, upon due notice served upon the opposing party.
11 The hearing shall be before the court without a jury. Subpoenas for witnesses may
12 be issued and their attendance compelled. The decision of the court shall be filed
13 within 10 days after the hearing and a copy of the decision shall be transmitted to
14 each of the parties. No court may issue any injunction, stay, restraining order or
15 other order that has the effect of delaying or preventing any action under par. (b)
16 pending completion of the court's review under this paragraph. An action for
17 certiorari under this paragraph shall be commenced under s. 801.02 (5) within 30
18 days after the mailing of notice under sub. (2) (b) 1. or 4. or (3m). If a license is issued
19 or renewed, an action shall be commenced within 45 days after filing with the
20 municipal clerk a receipt showing payment of a license fee under s. 125.04 (8). The
21 court may not take evidence on the merits of the case and the scope of review shall
22 be limited to the record of the proceedings of the municipal body. If the court finds
23 any error in the proceedings of the municipal body that renders the decision or
24 proceedings void, the court shall remand the decision to the municipal body for
25 further proceedings in accordance with the court's determination. Any party to the

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~~certiorari proceedings may appeal the decision of the court. The decision shall be binding unless it is appealed to the court of appeals.~~

SECTION 12. 125.12 (3m) of the statutes is amended to read:

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

SECTION 13. 125.26 (1) of the statutes is amended to read:

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

SECTION 14. 125.26 (6) of the statutes is renumbered 125.265 (2) (a) and amended to read:

125.265 (2) (a) Temporary Class "B" licenses may be issued to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least 6 months before the date of application and to posts of veterans' organizations authorizing the sale of fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. The amount

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1 of the fee for the a license issued under this paragraph shall be determined by the
2 municipal governing body issuing the license but may not exceed \$10. An official or
3 body authorized by a municipal governing body to issue temporary Class "B" licenses
4 may, upon issuance under this paragraph of any temporary Class "B" license,
5 authorize the licensee to permit underage persons to be on the premises for which
6 the license is issued. A license issued to a county or district fair licenses the entire
7 fairgrounds where the fair is being conducted and all persons engaging in retail sales
8 of fermented malt beverages from leased stands on the fairgrounds. The county or
9 district fair to which the license is issued may lease stands on the fairgrounds to
10 persons who may engage in retail sales of fermented malt beverages from the stands
11 while the fair is being held. A municipal governing body may issue a temporary
12 Class "B" license for premises that are covered by a "Class B" permit issued under
13 s. 125.51 (5) (b) 2. if the applicant meets the requirements of this ~~subsection~~
14 paraaranh. No 1st class city may issue a license under this naraaraph. except as
15 provided in guidelines established under sub. (3).

16 **SECTION 15.** 125.265 (title) of the statutes is created to read:

17 125.265 (title) **Temporary Class "A" and Class "B" licenses.**

18 **SECTION 16.** 125.265 (1) of the statutes is created to read:

19 125.265 **(1) TEMPORARY CLASS "A" LICENSES.** The common council or council of
20 a 1st class city shall, consistent with guidelines established under sub. (3), issue a
21 temporary Class "A" license upon receipt of a completed application to renew a valid
22 Class "A" license issued by that city after the date specified by the city for filing the
23 application and payment of a nonrefundable fee of \$1,500. A temporary license
24 issued under this subsection is valid until the common council or council acts upon

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1 the application for renewal or for a period of 60 days after the date of issuance,
2 whichever occurs sooner.

3 **SECTION 17.** 125.265 (2) (title) of the statutes is created to read:

4 125.265 (2) (title) **TEMPORARY CLASS “B” LICENSES.**

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

6 125.265 (2) (b) The common council or council of a 1st class city shall, consistent
7 with guidelines established under sub. (3), issue a temporary Class “B” license upon
8 receipt of a completed application to renew a valid Class “B” license issued by that
9 city after the date specified by the city for filing the application and payment of a
10 nonrefundable fee of \$1,500. A temporary license issued under this paragraph is
11 valid until the common council or council acts upon the application for renewal or for
12 a period of 60 days after the date of issuance, whichever occurs sooner.

13 **SECTION 19.** 125.265 (3) of the statutes is created to read:

14 125.265 (3) A 1st class city shall establish written guidelines for issuing
15 licenses under this section.

16 **SECTION 20.** 125.51 (1) (a) of the statutes is amended to read:

17 125.51 (1) (a) Every municipal governing body may grant and issue “Class A”
18 and “Class B” licenses for retail sales of intoxicating liquor, and “Class C” licenses
19 for retail sales of wine, from premises within the municipality to persons entitled to
20 a license under this chapter as the issuing municipal governing body deems proper
21 and may authorize an official or body of the municipality to issue temporary “Class
22 B” licenses under sub. (10) (a). No “Class B” license may be issued to a winery under
23 sub. (3) (am) unless the winery has been issued a permit under s. 125.53 and the
24 winery is capable of producing at least 5,000 gallons of wine per year in no more than
25 2 locations.

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1 **SECTION 21.** 125.51 (1) (c) 2. of the statutes is amended to read:

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

5 **SECTION 22.** 125.51 (10) of the statutes is renumbered 125.51 (10) (a) and
6 amended to read:

7 125.51 **(10)** (a) Notwithstanding s. 125.68 (3), temporary "Class B" licenses
8 may be issued to bona fide clubs, to county or local fair associations or agricultural
9 societies, to churches, lodges or societies that have been in existence for at least 6
10 months before the date of application and to posts of veterans' organizations
11 authorizing the sale of wine in an original package, container or bottle or by the glass
12 if the wine is dispensed directly from an original package, container or bottle at a
13 particular picnic or similar gathering, at a meeting of the post, or during a fair
14 conducted by the fair association or agricultural society. The amount of the fee for
15 the license shall be \$10, except that no fee may be charged to a person who at the
16 same time applies for a temporary Class "B" license under s. ~~125.26 (6)~~ 125.265 (2)
17 (a) for the same event. A license issued to a county or district fair licenses the entire
18 fairgrounds where the fair is being conducted and all persons engaging in retail sales
19 of wine from leased stands on the fairgrounds. The county or district fair to which
20 the license is issued may lease stands on the fairgrounds to persons who may engage
21 in retail sales of wine from the stands while the fair is being held. Not more than 2
22 licenses may be issued under this ~~subsection~~ paragraph to any club, county or local
23 fair association, agricultural association, church, lodge, society or veterans' post in
24 any 12-month period. No 1st class city may issue a license under this paragraph,
25 except as provided in written guidelines established under par. (c).

Redraft - 1915

Rep. Cullen

3/22/99

Specifically include an, special committee's report, including the bases for its recommendations and conclusions, in the record of the Commission Council, thereby subjecting "ABC" committee actions to venioran review.

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1915/2
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1999 BILL

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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) l., 125.07 (3) (a) 12., 125.09 (6), 125.12 (2) (b)
4 l., 125.12 (2) (b) 4., 125.12 (3m), 125.26 (l), 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~~ ^{records} of the common council ~~by proceedings leading~~ to the action being challenged. The court may not take new evidence, must defer to the 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

proceedings of the and its alcohol licensing committee, if any, relating

records
committee or
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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. ~~GE.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

BILL**SECTION 6**

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 proceedings of the committee, including any report submitted under par. (b) 3. or sub. (3), and to
 11 record of the proceedings of the common council or council of the 1st class city. If the
 12 court finds any error in the proceedings of the committee or of the common council
 13 of the 1st class city, the court shall remand the decision to
 14 the common council or council of the 1st class city for further proceedings in
 15 accordance with the court's determination. Any party to the certiorari proceedings
 16 may appeal the decision of the court. The decision shall be binding unless it is
 17 appealed to the court of appeals.

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

18 125.12 (3m) REFUSALS BY LOCAL AUTHORITIES TO ISSUE LICENSES. If a municipal
 19 governing body or duly authorized committee of a city council decides not to issue a
 20 new license under this chapter, it shall notify the applicant for the new license and
 21 the person swearing to the complaint under sub. (2) (ag) of the decision not to issue
 22 the license. The notice shall be in writing and state the reasons for the decision.

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

24 125.26 (1) Every municipal governing body may issue Class "B" licenses for the
 25 sale of fermented malt beverages from premises within the municipality and may

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

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

9 125.265 (2) (a) Temporary Class "B" licenses may be issued to bona fide clubs,
10 to county or local fair associations or agricultural societies, to churches, lodges or
11 societies that have been in existence for at least 6 months before the date of
12 application and to posts of veterans' organizations authorizing the sale of fermented
13 malt beverages at a particular picnic or similar gathering, at a meeting of the post,
14 or during a fair conducted by the fair association or agricultural society. The amount
15 of the fee for ~~the a~~ license issued under this paragraph shall be determined by the
16 municipal governing body issuing the license but may not exceed \$10. An offkial or
17 body authorized by a municipal governing body to issue temporary Class "B" licenses
18 may, upon issuance under this paragraph of any temporary Class "B" license,
19 authorize the licensee to permit underage persons to be on the premises for which
20 the license is issued. A license issued to a county or district fair licenses the entire
21 fairgrounds where the fair is being conducted and all persons engaging in retail sales
22 of fermented malt beverages from leased stands on the fairgrounds. The county or
23 district fair to which the license is issued may lease stands on the fairgrounds to
24 persons who may engage in retail sales of fermented malt beverages from the stands
25 while the fair is being held. A municipal governing body may issue a temporary

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1 Class "B" license for premises that are covered by a "Class B" permit issued under
2 s. 125.51 (5) (b) 2. if the applicant meets the requirements of this ~~subsection~~
3 paragraph. No 1st class city may issue a license under this paragraph, except as
4 provided in guidelines established under sub. (3).

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

6 125.265 (title) **Temporary Class "A" and Class "B" licenses.**

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

8 125.265 (1) **TEMPORARY CLASS "A" LICENSES.** The common council or council of
9 a 1st class city shall, consistent with guidelines established under sub. (3), issue a
10 temporary Class "A" license upon receipt of a completed application to renew a valid
11 Class "A" license issued by that city after the date specified by the city for filing the
12 application and payment of a nonrefundable fee of \$1,500. A temporary license
13 issued under this subsection is valid until the common council or council acts upon
14 the application for renewal or for a period of 60 days after the date of issuance,
15 whichever occurs sooner.

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

17 125.265 (2) (title) **TEMPORARY CLASS "B" LICENSES.**

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

19 125.265 (2) (b) The common council or council of a 1st class city shall, consistent
20 with guidelines established under sub. (3), issue a temporary Class "B" license upon
21 receipt of a completed application to renew a valid Class "B" license issued by that
22 city after the date specified by the city for filing the application and payment of a
23 nonrefundable fee of \$1,500. A temporary license issued under this paragraph is
24 valid until the common council or council acts upon the application for renewal or for
25 a period of 60 days after the date of issuance, whichever occurs sooner.

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

2 125.265 (3) A 1st class city shall establish written guidelines for issuing
3 licenses under this section.

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

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

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

15 125.51 (1) (c) 2. The ~~governing body~~ common council or council of a 1st class
16 city shall establish and publish notice of the dates on which it, or its duly authorized
17 committee, will meet and act on license applications.

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

20 125.51 (10) (a) Notwithstanding s. 125.68 (3), temporary "Class B" licenses
21 may be issued to bona fide clubs, to county or local fair associations or agricultural
22 societies, to churches, lodges or societies that have been in existence for at least 6
23 months before the date of application and to posts of veterans' organizations
24 authorizing the sale of wine in an original package, container or bottle or by the glass
25 if the wine is dispensed directly from an original package, container or bottle at a

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

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

15 125.51 (10) (b) Notwithstanding s. 125.68 (3), the common council or council
16 of a 1st class city shall, consistent with guidelines established under par. (c), issue
17 a temporary "Class B" license upon receipt of a completed application to renew a valid
18 "Class B" license issued by that city, and a temporary "Class A" license upon receipt
19 of a completed application to renew a valid "Class A" license issued by that city, if the
20 application is submitted after the date specified by the city for filing the application.
21 A 1st class city shall charge a nonrefundable fee of \$1,500 for a temporary license
22 issued under this paragraph, except that no fee may be charged to a person who at
23 the same time applies for a temporary Class "B" license under s. 125.265 (2) (b). A
24 temporary license issued under this paragraph is valid until the common council or

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

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

5 **SECTION 25. Initial applicability.**

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

9 (END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 4/28/99

To: Representative Cullen

Relating to LRB drafting number: LRB- 19 15

Topic

Temporary alcohol licenses; judicial review of local licensing

Subject(s)

Beverages - miscellaneous

1. **JACKET** the draft for introduction



in the **Senate** o r t h e **A s s e m b l y** (check only one), Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Paul E. Nilsen, Legislative Attorney
Telephone: (608) 261-6926

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