

## 2009 ASSEMBLY BILL 67

February 17, 2009 – Introduced by Representatives ZEPNICK, HIXSON, BERCEAU, A. WILLIAMS and A. OTT. Referred to Committee on Urban and Local Affairs.

1     **AN ACT** *to renumber and amend* 125.32 (2) and 125.68 (2); *to amend* 125.17  
2           (1), 125.32 (2) (title), 125.32 (3) (b), 125.68 (2) (title) and 945.041 (3); and *to*  
3           **create** 125.12 (7), 125.32 (2) (b) and 125.68 (2) (b) of the statutes; **relating to:**  
4           alcohol beverages operators’ licenses, managers’ licenses, and retail licenses,  
5           and persons responsible for the operation of certain retail licensed premises.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, with specific exceptions, no person may sell alcohol beverages at retail unless the person possesses a license or permit authorizing the sale. Class “B” licenses, issued by municipalities, authorize the retail sale of fermented malt beverages (beer) for consumption on or off the retail premises. “Class B” licenses, also issued by municipalities, authorize the retail sale of intoxicating liquor for consumption on or off the retail premises, which authorization is subject to certain limitations, some of which depend on whether the issuing municipality has adopted an ordinance related to “Class B” licenses.

Current law requires municipalities to issue operators’ licenses (commonly called bartenders’ licenses) and authorizes municipalities to issue managers’ licenses. No retail seller of alcohol beverages may be open for business unless the licensee, the designated agent of a corporate licensee, or a person who possesses a manager’s license or operator’s license is present and responsible for the acts of all persons providing alcohol beverages on the premises.

This bill prohibits a person holding an operator’s license or manager’s license, or a person who is a Class “B” or “Class B” licensee or a designated agent of a

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corporate Class “B” or “Class B” licensee, from being on Class “B” or “Class B” licensed premises where the person is employed or holds an ownership interest, during the person’s working hours, if the person has an alcohol concentration of more than 0.0, as measured from the person’s blood or breath. If a person is convicted of violating this prohibition three or more times, any operator’s license, manager’s license, or Class “B” or “Class B” license issued to the person or to a corporation for which the person is a designated agent must be revoked.

The bill also eliminates a statutory inconsistency as to whether an immediate family member of a Class “B” or “Class B” licensee is considered to hold an operator’s license and treats such an immediate family member like other holders of operators’ licenses.

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

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

1           **SECTION 1.** 125.12 (7) of the statutes is created to read:

2           **125.12 (7) REVOCATION OF RETAIL LICENSES AND PERMITS, MANAGERS’ LICENSES, AND**  
3           **OPERATORS’ LICENSES FOR CERTAIN VIOLATIONS.** (a) Upon receiving notice that a person  
4           issued a retail license under s. 125.26 or 125.51, a manager’s license under s. 125.18,  
5           or an operator’s license under s. 125.17, or that a person named in such a retail  
6           license as an agent for a licensee that is a corporation or limited liability company,  
7           has been convicted 3 or more times of violating s. 125.32 (2) (b) or 125.68 (2) (b) within  
8           the issuing municipality, the municipality shall revoke the license, following the  
9           procedure specified in sub. (2) (ar) to (d).

10           (b) Upon receiving notice that a person issued a retail permit under s. 125.27  
11           or 125.51, or that a person named in such a retail permit as an agent for a permittee  
12           that is a corporation or limited liability company, has been convicted 3 or more times  
13           of violating s. 125.32 (2) (b) or 125.68 (2) (b), the department shall revoke the permit,  
14           following the procedure specified in sub. (5).

15           **SECTION 2.** 125.17 (1) of the statutes is amended to read:

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

6           **SECTION 3.** 125.32 (2) (title) of the statutes is amended to read:

7           125.32 (2) (title) OPERATORS LICENSES AND CLASS "A" OR CLASS "B" PREMISES  
8 SUPERVISION.

9           **SECTION 4.** 125.32 (2) of the statutes is renumbered 125.32 (2) (a) and amended  
10 to read:

11           125.32 (2) (a) Except as provided under sub. (3) (b) and s. 125.07 (3) (a) 10., and  
12 subject to par. (b). no premises operated under a Class "A" or Class "B" license or  
13 permit may be open for business unless there is upon the premises the licensee or  
14 permittee, the agent named in the license or permit if the licensee or permittee is a  
15 corporation or limited liability company, or some person who has an operator's  
16 license and who is responsible for the acts of all persons serving any fermented malt  
17 beverages to customers. An operator's license issued in respect to a vessel under s.  
18 125.27 (2) is valid outside the municipality that issues it. For the purpose of this  
19 subsection paragraph, and subject to par. (b). any person holding a manager's license  
20 under s. 125.18 or any member of the licensee's or permittee's immediate family who  
21 has attained the age of 18 shall be considered the holder of an operator's license. No  
22 ~~person, including a member of the licensee's or permittee's immediate family,~~ other  
23 than the licensee, permittee or agent may serve fermented malt beverages in any  
24 place operated under a Class "A" or Class "B" license or permit unless he or she has  
25 an operator's license, is considered to hold an operator's license, or is at least 18 years

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1 of age and is under the immediate supervision of the licensee, permittee, agent or a  
2 person holding or considered to hold an operator's license, who is on the premises at  
3 the time of the service.

4 **SECTION 5.** 125.32 (2) (b) of the statutes is created to read:

5 125.32 **(2)** (b) No person holding or considered to hold an operator's license  
6 under s. 125.17, and no licensee or permittee or agent named in the license or permit  
7 if the licensee or permittee is a corporation or limited liability company, may be on  
8 premises operated under a Class "B" license or permit where the person is employed  
9 or holds an ownership interest, during the person's working hours, if the person has  
10 an alcohol concentration, as defined in s. 340.01 (1v), of more than 0.0.

11 **SECTION 6.** 125.32 (3) (b) of the statutes is amended to read:

12 125.32 **(3)** (b) Class "A" premises may remain open for the conduct of their  
13 regular business but may not sell fermented malt beverages between 12 midnight  
14 and 8 a.m. Subsection (2) (a) does not apply to Class "A" premises between 12  
15 midnight and 8 a.m. or at any other time during which the sale of fermented malt  
16 beverages is prohibited by a municipal ordinance adopted under par. (d).

17 **SECTION 7.** 125.68 (2) (title) of the statutes is amended to read:

18 125.68 **(2)** (title) OPERATORS' LICENSES; AND "CLASS A", "CLASS B" OR "CLASS C"  
19 PREMISES SUPERVISION.

20 **SECTION 8.** 125.68 (2) of the statutes is renumbered 125.68 (2) (a) and amended  
21 to read:

22 125.68 **(2)** (a) Except as provided under s. 125.07 (3) (a) 10., and subject to par.  
23 (b), no premises operated under a "Class A" or "Class C" license or under a "Class B"  
24 license or permit may be open for business unless there is upon the premises either  
25 the licensee or permittee, the agent named in the license or permit if the licensee or

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1 permittee is a corporation or limited liability company, or some person who has an  
2 operator's license and who is responsible for the acts of all persons selling or serving  
3 any intoxicating liquor to customers. An operator's license issued in respect to a  
4 vessel under s. 125.51 (5) (c) is valid outside the municipality that issues it. For the  
5 purpose of this ~~subsection paragraph, and subject to par. (b)~~, any person holding a  
6 manager's license issued under s. 125.18 or any member of the licensee's or  
7 permittee's immediate family who has attained the age of 18 shall be considered the  
8 holder of an operator's license. No person, ~~including a member of the licensee's or~~  
9 ~~permittee's immediate family~~, other than the licensee, permittee or agent may serve  
10 or sell alcohol beverages in any place operated under a "Class A" or "Class C" license  
11 or under a "Class B" license or permit unless he or she has an operator's license, is  
12 considered to hold an operators license, or is at least 18 years of age and is under the  
13 immediate supervision of the licensee, permittee or agent or a person holding or  
14 considered to hold an operator's license, who is on the premises at the time of the  
15 service.

16 **SECTION 9.** 125.68 (2) (b) of the statutes is created to read:

17 125.68 (2) (b) No person holding or considered to hold an operator's license  
18 under s. 125.17, and no licensee or permittee or agent named in the license or permit  
19 if the licensee or permittee is a corporation or limited liability company, may be on  
20 premises operated under a "Class B" license or permit where the person is employed  
21 or holds an ownership interest, during the person's working hours, if the person has  
22 an alcohol concentration, as defined in s. 340.01 (1v), of more than 0.0.

23 **SECTION 10.** 945.041 (3) of the statutes is amended to read:

24 945.041 (3) Such proceeding shall be in the name of the state and the issues  
25 may be determined by a jury. It shall be instituted by the filing of a petition and

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1 service of a notice as herein provided. The petition shall be directed to the circuit  
2 court and shall set forth a clear and concise statement of the grounds that are alleged  
3 to exist justifying a revocation of the license or permit under sub. (1), and shall  
4 request an order revoking such license or permit. It shall also request an injunction  
5 restraining the defendant from thereafter knowingly suffering or permitting any  
6 such devices or any horse race betting to be set up, kept, managed, used or conducted  
7 upon premises directly or indirectly controlled by the defendant. Upon the filing of  
8 such petition the court shall fix a time for hearing not to exceed 30 days from the date  
9 of filing at a place within the judicial circuit, and a copy of the petition and a notice  
10 of the time and place of hearing shall be served upon the defendant not less than 20  
11 days prior to the date of hearing. Such service shall be made in the same manner as  
12 a summons is served in a civil action, except that it may also be made by leaving a  
13 copy of said petition and notice with any person charged with the operation of the  
14 licensed premises under s. 125.68 (2) (a). The allegations of the petition shall be  
15 deemed controverted and shall be at issue without further pleading by the  
16 defendant. No hearing shall be adjourned except for cause. If upon such hearing the  
17 court finds that the allegations of the petition are true, it shall issue a written order  
18 revoking the license or permit and shall likewise enjoin the defendant from  
19 thereafter knowingly suffering or permitting any gambling devices referred to in  
20 sub. (1) or any horse race betting to be set up, kept, managed, used or conducted upon  
21 premises directly or indirectly controlled by the defendant. The district attorney  
22 shall forthwith cause a copy of the order to be filed with the issuing authority of the  
23 license or permit and shall cause a copy to be served upon the defendant as above  
24 provided or the defendant's attorney. The revocation and injunction shall become

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1 effective upon such service. In cases where a license is issued by a town, city or  
2 village, a copy of the order shall also be filed with the department of revenue.

3 (END)