

CHAPTER 125

ALCOHOL BEVERAGES

SUBCHAPTER I GENERAL PROVISIONS

- 125 01 Legislative intent.
- 125 02 Definitions.
- 125 03 Department rule making.
- 125 035 Civil liability exemption: furnishing alcohol beverages.
- 125 037 Civil liability exemption for municipalities.
- 125 04 General licensing requirements.
- 125 045 Booklet for licensees and permittees.
- 125 05 Local option; remonstrances.
- 125 06 License and permit exceptions.
- 125 07 Underage and intoxicated persons; presence on licensed premises; possession; penalties.
- 125 075 Injury or death by providing alcohol beverages to a minor.
- 125 085 Proof of age.
- 125 09 General restrictions.
- 125 10 Municipal regulation.
- 125 105 Impersonating an officer.
- 125 11 Penalties.
- 125 115 Responsibility for commission of a crime.
- 125 12 Revocations, suspensions, refusals to issue or renew.
- 125 13 Report of suspension, revocation or imposition of penalty.
- 125 14 Enforcement provisions.
- 125 145 Prosecutions by attorney general.
- 125 16 Actions to recover price denied.
- 125 17 Issuance of operators' licenses.
- 125 18 Issuance of managers' licenses.
- 125 19 Alcohol beverage warehouse permit.

SUBCHAPTER II FERMENTED MALT BEVERAGES

- 125 25 Class "A" licenses

- 125 26 Class "B" licenses.
- 125 27 Class "B" permits
- 125 275 Industrial fermented malt beverages permit
- 125 28 Wholesalers' licenses.
- 125 29 Brewers
- 125 30 Out-of-state shippers' permits; delivery to wholesalers.
- 125 31 Multiple licenses and permits; brewers
- 125 315 Evading provisions of law by giving away fermented malt beverages.
- 125 32 General restrictions and requirements.
- 125 33 Restrictions on dealings between brewers, wholesalers and retailers.

SUBCHAPTER III INTOXICATING LIQUOR

- 125 51 Retail licenses and permits
- 125 52 Manufacturers' and rectifiers' permits
- 125 53 Winery permit
- 125 54 Wholesalers' permits
- 125 55 Combination permits
- 125 56 Sacramental wine
- 125 58 Out-of-state shippers' permit; exception to requirement.
- 125 60 Wholesale alcohol permit
- 125 61 Medicinal alcohol permit
- 125 62 Industrial alcohol permit
- 125 63 Industrial wine permit.
- 125 65 Permit to solicit for future sales.
- 125 66 Sale without license; failure to obtain permit; penalties
- 125 67 Evading provisions of law by giving away intoxicating liquor; penalties
- 125 68 General restrictions and requirements
- 125 69 Restrictions on dealings between manufacturers, rectifiers, wholesalers and retailers

NOTE: Chapter 79, laws of 1981, which created this chapter of the statutes, contains extensive notes explaining the revisions. See the 1981 Session Laws.

SUBCHAPTER I GENERAL PROVISIONS

125.01 Legislative intent. This chapter shall be construed as an enactment of statewide concern for the purpose of providing a uniform regulation of the sale of alcohol beverages.

History: 1981 c. 79

State liquor laws, including licensing requirements, are applicable to liquor establishments owned or operated by either tribe members or non-Indians, and located on Indian reservations. Any license issued counts toward the local quota 75 Atty Gen 123.

Indian tribes are within coverage of this chapter; any license issued to tribe counts toward local quota 76 Atty Gen. 80

125.02 Definitions. Except as otherwise provided, in this chapter:

(1) "Alcohol beverages" means fermented malt beverages and intoxicating liquor.

(2) "Brewer" means any person who manufactures fermented malt beverages for sale or transportation.

(3) "Brewery premises" means all land and buildings used in the manufacture or sale of fermented malt beverages at a brewer's principal place of business.

(3m) "Campus" has the meaning given under s. 36.05 (3).

(4) "Club" means an organization, whether incorporated or not, which is the owner, lessee or occupant of a building or portion thereof used exclusively for club purposes, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain and which only sells alcohol beverages incidental to its operation.

(5) "Department" means the department of revenue.

(6) "Fermented malt beverages" means any beverage made by the alcohol fermentation of an infusion in potable water of barley

malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing 0.5% or more of alcohol by volume.

(7) "Hotel" means a hotel, as defined in s. 254.61 (3), that is provided with a restaurant.

(8) "Intoxicating liquor" means all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include "fermented malt beverages".

(8m) "Legal drinking age" means 21 years of age.

(9) "License" means an authorization to sell alcohol beverages issued by a municipal governing body under this chapter.

(10) "Manufacturer" means a person, other than a rectifier, that ferments, manufactures or distills intoxicating liquor.

(11) "Municipality" means a city, village or town.

(12) "Peace officer" means a sheriff, undersheriff, deputy sheriff, police officer, constable, marshal, deputy marshal or any employe of the department or of the department of justice authorized to act under this chapter.

(13) "Permit" means any permit issued by the department under this chapter.

(14) "Person" means a natural person, sole proprietorship, partnership, limited liability company, corporation or association.

(14m) "Premises" means the area described in a license or permit.

(15) "Primary source of supply" means the manufacturer, the rectifier or the exclusive agent designated by the manufacturer or rectifier.

(15m) "Principal business" means the primary activity as determined by analyzing the amount of capital, labor, time, attention and floor space devoted to each business activity and by analyzing the sources of net income and gross income. The name, appearance and advertising of the entity may also be taken into consideration if they are given less weight.

(16) "Rectifier" means any one of the following:

(a) A person that rectifies, purifies or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort or wash, through continuous closed vessels or pipes, until the manufacture thereof is complete.

(b) A person who possesses any still or leach tub or keeps any other apparatus for refining distilled spirits.

(c) A person who after rectifying and purifying distilled spirits, by mixing such spirits with any materials, manufactures any spurious, imitation or compound liquors for sale.

(d) A distiller or any person under substantially the same control as a distiller who, without rectifying, purifying or refining distilled spirits, by mixing such spirits with any materials, manufactures any spurious, imitation or compound liquors for sale under the name of "whiskey", "brandy", "gin", "rum", "spirits", "cordials" or any other name.

(e) A person who places intoxicating liquor in bottles or other containers.

(17) "Regulation" means any rule or ordinance adopted by a municipal governing body.

(18) "Restaurant" means a restaurant, as defined in s. 254.61 (5).

(19) "Retailer" means any person who sells, or offers for sale, any alcohol beverages to any person other than a person holding a permit or a license under this chapter.

(20) "Sell", "sold", "sale" or "selling" means any transfer of alcohol beverages with consideration or any transfer without consideration if knowingly made for purposes of evading the law relating to the sale of alcohol beverages or any shift, device, scheme or transaction for obtaining alcohol beverages, including the solicitation of orders for, or the sale for future delivery of, alcohol beverages.

(20m) "Underage person" means a person who has not attained the legal drinking age.

(21) "Wholesaler" means a person, other than a brewer, manufacturer or rectifier, who sells alcohol beverages to a licensed retailer or to another person who holds a permit or license to sell alcohol beverages at wholesale.

(22) "Wine" means products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits or other agricultural products, imitation wine, compounds sold as wine, vermouth, cider, perry, mead and sake, if such products contain 0.5% or more of alcohol by volume.

History: 1981 c. 79, 202; 1983 a. 74; 1983 a. 189 s. 329 (6); 1983 a. 203 s. 47; 1985 a. 47, 302, 337; 1989 a. 253; 1991 a. 39; 1993 a. 27, 112

Country clubs opening any part of their facilities to the general public lose their eligibility for "country club" liquor or beer licenses. 69 Atty. Gen. 248.

125.03 Department rule making. (1) **RULES.** The department, in furtherance of effective control, may promulgate rules consistent with this chapter and ch. 139.

(2) **CONTAINERS.** The department may by rule prescribe the standard size, form or character of any container in which intoxicating liquor may be sold in this state except that the department may not set the size of containers in which intoxicating liquor, except wine containing not more than 21% of alcohol by volume, may be sold at a capacity greater than 1.75 liters (59.1752 fluid ounces).

(3) **VIOLATIONS.** No person may violate a rule promulgated under sub. (1) or (2).

History: 1981 c. 79, 1989 a. 253

125.035 Civil liability exemption: furnishing alcohol beverages. (1) In this section, "person" has the meaning given in s. 990.01 (26).

(2) A person is immune from civil liability arising out of the act of procuring alcohol beverages for or selling, dispensing or giving away alcohol beverages to another person.

(3) Subsection (2) does not apply if the person procuring, selling, dispensing or giving away alcohol beverages causes their consumption by force or by representing that the beverages contain no alcohol.

(4) (a) In this subsection, "provider" means a person, including a licensee or permittee, who procures alcohol beverages for or sells, dispenses or gives away alcohol beverages to an underage person in violation of s. 125.07 (1) (a).

(b) Subsection (2) does not apply if the provider knew or should have known that the underage person was under the legal drinking age and if the alcohol beverages provided to the underage person were a substantial factor in causing injury to a 3rd party. In determining whether a provider knew or should have known that the underage person was under the legal drinking age, all relevant circumstances surrounding the procuring, selling, dispensing or giving away of the alcohol beverages may be considered, including any circumstance under subs. 1. to 4. In addition, sub. (2) does apply if all of the following occur:

1. The underage person falsely represents that he or she has attained the legal drinking age.

2. The underage person supports the representation with documentation that he or she has attained the legal drinking age.

3. The alcohol beverages are provided in good faith reliance on the underage person's representation that he or she has attained the legal drinking age.

4. The appearance of the underage person is such that an ordinary and prudent person would believe that he or she had attained the legal drinking age.

(5) Subsection (2) does not apply to civil forfeiture actions for violation of any provision of this chapter or any local ordinance in conformity with any provision of this chapter.

History: 1985 a. 47

Sub. (4) (b) applies only to third-party actions; it does not provide cause of action against provider by minor plaintiff whose injuries stem in part from personal alcohol consumption. *Kwiatkowski v Capitol Indemnity Corp.* 157 W (2d) 768, 461 NW (2d) 150 (Ct App 1990).

Liquor Vendors and Social Hosts: Are They Immune From Civil Liability? *Chapin. Wis. Law Dec 1992*

125.037 Civil liability exemption for municipalities. No municipality, as defined in s. 67.01 (5), or municipal governing body, committee, official or employe is civilly liable for damage to any person or property caused by the consumption of alcohol beverages by that person or any other person, by reason of any of the following:

(1) Issuing a license to sell alcohol beverages.

(2) Allowing the holder of a license or permit to sell, dispense or give away alcohol beverages on property owned or leased by the municipality.

(3) Failing to monitor or supervise the activities of the licensee or permittee.

History: 1985 a. 47; 1989 a. 253.

125.04 General licensing requirements. (1) **LICENSE OR PERMIT, WHEN REQUIRED.** No person may sell, manufacture, rectify, brew or engage in any other activity for which this chapter provides a license, permit, or other type of authorization without holding the appropriate license, permit or authorization issued under this chapter.

(2) **LICENSES OR PERMITS ISSUED IN VIOLATION OF CHAPTER.** No license or permit may be issued to any person except as provided in this chapter. Any license or permit issued in violation of this chapter is void.

(3) **APPLICATIONS FOR LICENSES AND PERMITS.** (a) **Contents.** The department shall prepare an application form for each kind of license, other than a manager's or operator's license, and for each kind of permit issued under this chapter. Each form shall require all of the following information:

1. A history of the applicant relevant to the applicant's fitness to hold a license or permit.

125.04 ALCOHOL BEVERAGES

93-94 Wis. Stats. 2456

2. The kind of license or permit for which the applicant is applying.

3. The premises where alcohol beverages will be sold or stored or both.

4. If the applicant is a corporation, the identity of the corporate officers and agent.

4L. If the applicant is a limited liability company, the identity of the company members or managers and agent.

5. The applicant's trade name, if any.

6. Any other information required by this chapter.

(b) *Application for renewing.* The department may prepare a simplified application form for renewal of each kind of license or permit which requires only information pertinent to renewal.

(c) *Distribution.* The department shall make one copy of each kind of license application that it prepares available to each municipality.

(d) *Application form use.* 1. An application form prepared by the department shall be used by each applicant for a permit.

2. A replica of an application form prepared by the department shall be used by each applicant for a license, other than a manager's or operator's license.

(e) *Place of filing applications.* 1. Each application for a license, other than a manager's or operator's license, shall be sworn to by the applicant. The applicant shall file the application for a license with the municipal clerk of the intended place of sale.

2. The applicant shall file the application for a permit with the department.

(f) *Time of filing and issuance.* 1. Except as provided in subds. 2. and 3., all applications for licenses to sell alcohol beverages shall be filed with the clerk of the municipality in which the premises are located at least 15 days prior to the granting of the license.

2. In counties having a population of 500,000 or more, 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.

3. For licenses issued under s. 125.26 (6) 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.

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

1. The publication shall include the name and address of the applicant, the kind of license applied for and the location of the premises to be licensed.

2. The newspaper utilized for publication shall have been regularly published, on a daily or weekly basis for a period of not less than 2 years before the date of publication in the municipality in which is located the premises to be licensed.

3. If the municipality in which the premises is located has no newspaper, the newspaper utilized for publication shall be one having circulation in the municipality and designated by the governing body. If no designation is made, publication shall be in the newspaper having the largest circulation in the municipality.

4. The newspaper utilized for publication shall be one that is published on a daily basis, except that a weekly newspaper may be utilized if a daily newspaper is not published in the municipality.

5. The publication shall be printed in a daily newspaper on 3 successive occasions, or if a weekly newspaper is utilized, it shall be printed at least once.

6. At the time the application is filed, the applicant shall pay to the clerk the cost of publication as determined under s. 985.08.

(h) *Subsequent changes.* Within 10 days of any change in any fact set out in an application for a license or permit to sell alcohol

beverages, the licensee or permittee shall file with the issuing authority a written description of the changed fact.

(i) *Records.* 1. Any person may inspect applications for licenses to sell alcohol beverages.

2. The clerk of the municipality shall retain all applications made to it for licenses to sell alcohol beverages.

3. The clerk of the municipality may destroy all applications more than 4 years old which have been retained under subd. 2.

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

(5) **QUALIFICATIONS FOR LICENSES AND PERMITS** (a) *Natural persons.* Licenses and permits related to alcohol beverages, issued to natural persons under this chapter, may be issued only to persons who fulfill all of the following requirements:

1. Do not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335.

2. Have been residents of this state continuously for at least 90 days prior to the date of application.

3. Have attained the legal drinking age.

4. Have submitted proof under s. 77.61 (11).

5. Have successfully completed within the 2 years prior to the date of application a responsible beverage server training course at any location that is offered by a vocational, technical and adult education [technical college] district and that conforms to curriculum guidelines specified by the board of vocational, technical and adult education [technical college system board] or a comparable training course that is approved by the department or the educational approval board, unless the applicant held, within the past 2 years, a Class "A", "Class A" or "Class C" license or a Class "B" or "Class B" license or permit or a manager's or operator's license.

NOTE: The vocational, technical and adult education system was renamed the technical college system by 1993 Wis. Act 399.

(b) *Criminal offenders.* No license or permit related to alcohol beverages may, subject to ss. 111.321, 111.322 and 111.335, be issued under this chapter to any person who has habitually been a law offender or has been convicted of a felony unless the person has been duly pardoned.

(c) *Corporations and limited liability companies.* No license or permit may be issued to any corporation or limited liability company unless that entity meets the qualifications under pars. (a) 1. and 4. and (b), unless the agent of the entity appointed under sub. (6) and the officers and directors, or members or managers, of the entity meet the qualifications of pars. (a) 1. and 3. and (b) and unless the agent of the entity appointed under sub. (6) meets the qualifications under par. (a) 2. and 5. The requirement that the entity meet the qualifications under pars. (a) 1. and (b) does not apply if the entity has terminated its relationship with all of the individuals whose actions directly contributed to the conviction.

(d) *Operators' and managers' licenses.* 1. Paragraph (a) 2. does not apply to applicants for operators' licenses issued under s. 125.17 or to applicants for managers' licenses issued under s. 125.18. Managers' licenses may be issued only to applicants who are residents of this state at the time of issuance.

2. Paragraph (a) 3. does not apply to applicants for operators' licenses under s. 125.17. Operators' licenses may be issued only to applicants who have attained the age of 18.

3. Paragraph (a) 4. and 5. does not apply to any of the following:

a. Applicants for operators' licenses under s. 125.17.

b. Applicants for managers' licenses under s. 125.18.

c. Applicants for temporary Class "B" licenses under s. 125.26 (6) who are not required to hold a seller's permit under subch. III of ch. 77.

d. Applicants for temporary "Class B" licenses under s. 125.51 (10) who are not required to hold a seller's permit under subch. III of ch. 77.

(6) LICENSES TO CORPORATIONS AND LIMITED LIABILITY COMPANIES; APPOINTMENT OF AGENTS (a) *Agent*. No corporation or limited liability company organized under the laws of this state or of any other state or foreign country may be issued any alcohol beverage license or permit unless:

1. The entity first appoints an agent in the manner prescribed by the authority issuing the license or permit. In addition to the qualifications under sub. (5), the agent must, with respect to character, record and reputation, be satisfactory to the issuing authority.

2. The entity vests in the agent, by properly authorized and executed written delegation, full authority and control of the premises described in the license or permit of the entity, and of the conduct of all business on the premises relative to alcohol beverages, that the licensee or permittee could have and exercise if it were a natural person.

(b) *Successor agent*. A corporation or limited liability company may cancel the appointment of an agent and appoint a successor agent to act in the agent's place, for the remainder of the license year or until another agent is appointed, as follows:

1. The successor agent shall meet the same qualifications required of the first appointed agent.

2. The entity shall immediately notify the issuing authority, in writing, of the appointment of the successor agent and the reason for the cancellation and new appointment.

(c) *Authority of successor*. A successor agent shall have all the authority, perform all the functions and be charged with all the duties of the previous agent of the corporation or limited liability company until the next regular or special meeting of the issuing authority if a license is held. However, the license of the corporation or limited liability company shall cease to be in force if, prior to the next regular or special meeting of the issuing authority, the clerk of the licensing authority receives notice of disapproval of the successor agent by a peace officer of the municipality issuing the license.

(d) *Approval of successor*. The license of the corporation or limited liability company shall not be in force after the next regular or special meeting of the licensing authority unless and until the successor agent or another qualified agent is appointed and approved by the licensing authority.

(e) *Fee*. The corporation or limited liability company shall, following the approval of each successor agent or another qualified agent by the licensing authority, pay to the licensing authority a fee of \$10.

(f) *Resignation*. If an agent appointed under this subsection resigns, he or she shall notify in writing the corporation or limited liability company and the authority issuing the license or permit within 48 hours of the resignation.

(8) PAYMENT OF LICENSE FEE. No license for the sale of alcohol beverages may be delivered to the applicant until the applicant files with the municipal clerk a receipt showing payment of the license fee to the appropriate treasurer. No city or village may require an applicant to pay the license fee more than 15 days prior to the date the license is to be issued. No town may require an applicant to pay the license fee more than 30 days prior to the date the license is to be issued.

(9) SEPARATE LICENSE OR PERMIT REQUIRED. Except as provided under ss. 125.27 (2) (a) and 125.51 (5) (c) 1, wholesalers, manufacturers, rectifiers, brewers and retailers shall have a separate permit or license covering each location or premises, except a licensed public warehouse, from which deliveries and sales of

alcohol beverages are made or at which alcohol beverages are stored.

(10) LICENSE AND PERMIT FRAMED, POSTED (a) *Frame*. Permits for the retail sale of alcohol beverages, and licenses for the sale of alcohol beverages, shall be enclosed in a frame having a transparent front which allows the license or permit to be clearly read.

(b) *Display*. All permits and licenses under par. (a), other than those for the sale of fermented malt beverages for consumption on the premises issued to the state fair or to county or district fairs receiving state aid, shall be conspicuously displayed for public inspection at all times in the room or place where the activity subject to permit or licensure is carried on.

(11) EXPIRATION DATES. Except as otherwise provided in this chapter:

(a) *Permits*. 1. Retail permits to sell alcohol beverages shall expire on June 30 of each year.

2. All permits, other than those under subd. 1., shall expire on December 31 of each year.

(b) *Licenses*. 1. The municipal governing body of a 1st class city may issue a retail license for the sale of alcohol beverages at any time during a year. Each license shall be valid for one year and shall specify its date of expiration.

2. All licenses other than those specified under subd. 1. shall expire on June 30 of each year.

(12) TRANSFER OF LICENSES AND PERMITS (a) *From place to place*. Every alcohol beverage license or permit may be transferred to another place or premises within the same municipality. An alcohol beverage warehouse permit under s. 125.19, a winery permit under s. 125.53 or an intoxicating liquor wholesaler's permit under s. 125.54 may be transferred to another premises within this state. Transfers shall be made by the issuing authority upon payment of a fee of \$10. No retail licensee, retail permittee, intoxicating liquor wholesaler or holder of a warehouse or winery permit is entitled to more than one transfer during the license or permit year.

(b) *From person to person*. 1. Licenses to sell alcohol beverages may be transferred to persons other than the licensee if the licensee, or an applicant for a subsequently granted license, dies, becomes bankrupt or makes an assignment for the benefit of creditors during the license year or after filing the application. If a retail licensee becomes disabled, the municipality may, upon application, transfer the license to the licensee's spouse if that spouse may hold a license under sub. (5) and complies with all of the requirements under this chapter applicable to original applicants, except that the spouse is exempt from payment of the license fee for the year in which the transfer takes place.

2. Upon the happening of any of the events under subd. 1., the personal representative, the surviving spouse if a personal representative is not appointed, the trustee or the receiver may continue or sell or assign the business.

4. If the business is sold or assigned, the license may be transferred to the successor owner or assignee at no charge if:

a. He or she complies with the requirements applicable to original applicants; and

b. He or she is acceptable to the issuing authority and consent to the transfer is given by the issuing authority.

(13) PENALTIES. Any person who violates sub. (1) may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

History: 1981 c. 79, 235, 391; 1983 a. 27, 72, 74, 493, 494, 516; 1985 a. 302; 1987 a. 35, 301, 399; 1989 a. 31, 253; 1991 a. 39; 1993 a. 112, 259, 491.

City council may deny request to expand licensed premises. Sub. (3) (b) [formerly s. 176.14, 1979 Stats.] construed. *Alberti v. City of Whitewater*, 109 W (2d) 592, 327 NW (2d) 150 (Ct. App. 1982).

Licenseses who are natural persons are liable for criminal acts of employees. *State v. Baudry*, 119 W (2d) 96, 349 NW (2d) 106 (Ct. App. 1984). But see s. 125.115.

Registered agent of corporate alcoholic beverage licensee is subject to vicarious criminal liability for employe's violation of closing hour law. *State v. Beaudry*, 123 W (2d) 40, 365 NW (2d) 593 (1985).

Person may be "habitual law offender" under (5) (b) without having been convicted of any crime. *St. ex rel. Smith v. Oak Creek*, 139 W (2d) 788, 407 NW (2d) 901 (1987).

Sub. (1) requires that actual owner of establishment selling intoxicating liquor possess license in own name. *State v. Eastman*, 148 W (2d) 254, 435 NW (2d) 278 (Ct. App. 1988).

Proprietors of a bed and breakfast may solicit voluntary contributions from guests at social event held on the premises to defray cost of alcohol, but proprietors who do not hold license may not serve alcohol at social event only to those who pay admission fee. 80 Atty. Gen. 218.

125.045 Booklet for licensees and permittees.

(1) The department shall prepare a booklet explaining the state statutes and rules relating to the retail sale of alcohol beverages, written concisely in language which is clearly understood by those required to utilize it.

(2) The department shall provide a copy of the booklet under sub. (1) free of charge to each person issued a permit, including a renewal, under s. 125.27 or 125.51 (5). The department shall provide the booklet for a charge not to exceed cost, as provided under s. 20.908, to municipalities.

(3) A municipality shall provide a copy of the booklet under sub. (1) to each person issued a license, including a renewal, under s. 125.17, 125.18, 125.25, 125.26 or 125.51 (1) by the municipality unless the municipality requires the person to complete an instructional program which includes the subject matter of the booklet or unless the person completes the program under s. 125.04 (5) (a) 5. or 125.17 (6). This section does not preclude a municipality from charging a fee for such a program. A municipality may charge for the booklet in an amount not to exceed the amount charged by the department under sub. (2).

History: 1987 a. 300; 1989 a. 56 s. 259; 1989 a. 253; 1993 a. 259.

125.05 Local option; remonstrances. (1) LOCAL

OPTION Electors of any municipality may determine, by ballot at the election held on the first Tuesday in April, the questions of whether the municipality shall issue retail licenses for the sale of fermented malt beverages or intoxicating liquor or whether a retail store operated by the municipality shall cease operation.

(a) *Questions.* The following questions may be submitted to the electors:

1. "Shall Class 'B' licenses (taverns, hotels, restaurants, clubs, societies, lodges, fair associations, etc.) be issued for the retail sale of beer for consumption on or off the premises where sold?"

2. "Shall Class 'A' licenses (stores, etc.) be issued for the retail sale of beer in original packages to be consumed away from the premises where sold?"

3. "Shall 'Class B' licenses (taverns, restaurants, hotels, etc.) be issued for the retail sale of intoxicating liquor for consumption on the premises where sold?"

3m. "Shall 'Class C' licenses (restaurants) be issued for the retail sale of wine for consumption on the premises where sold?"

4. "Shall 'Class A' licenses (stores, etc.) be issued for the retail sale of intoxicating liquor in original packages to be consumed away from the premises where sold?"

5. In the case where a municipal store is operating under s. 176.08, 1967 stats., "Against liquor store?"

(b) *Procedure.* The following procedure shall govern the election under this subsection:

1. A written petition shall be circulated requesting that the question be submitted to the electors of the municipality affected by the question. A separate petition for each question shall be circulated. The contents of the petition shall be governed by s. 8.40.

2. Petitions shall be circulated by qualified electors who reside within the municipality affected by the question. No petition may be circulated prior to 60 days before the date required for filing.

3. No signature on the petition may be counted unless it was written and dated within 60 days prior to the date required for filing.

4. Petitions shall be signed by a number of qualified electors within the municipality affected by the question equal to at least 15% of the number of votes cast for governor in the affected municipality at the last general election.

5. The petition shall be filed with the clerk of the municipality affected by the question at least 30 days prior to the first Tuesday of April.

6. Within 5 days after the petition is filed, the clerk shall determine the sufficiency of the petition, and shall state the finding in a certificate signed by the clerk, dated and attached to the petition.

8. After the conditions of subd. 6. are satisfied, the clerk shall promptly order that each question stated in a petition found to be sufficient shall be submitted to the electors at the election to be held on the first Tuesday of April following the date of the order.

9. City clerks shall give notice of the election as provided in ch. 10 for notice of a regular city election. Village and town clerks shall give notice of the election by posting written or printed notices in at least 5 public places in the village or town not less than 10 days prior to the election.

10. Each question submitted to the electors shall conform to the form prescribed by the elections board under ss. 5.64 (2) and 7.08 (1) (a).

11. The election on any question shall be conducted in the same manner as other elections are conducted in the municipality. The canvassers shall determine and immediately certify the results of the election.

(c) *Term of election results.* The result of an election under par. (b) shall remain in effect for 2 years and thereafter unless changed at another election on the question, except that a vote to discontinue operation of a municipal store may not be changed at another election.

(d) *Wholesalers' licenses.* If the election results prohibit the retail sale of fermented malt beverages, the municipality may nevertheless issue wholesalers' licenses to qualified persons on the condition that the wholesaler may not sell or deliver fermented malt beverages within the municipality to any person residing therein.

(2) REMONSTRANCES (a) *Residence district.* In this subsection, "residence district" means any clearly described compact, contiguous territory in any municipality bounded by corporation or ward lines, public streets, public roads, public alleys or water courses, in which not less than 100 and not more than 750 qualified electors reside.

(b) *No previous licenses.* A residence district may be created in a municipality which has not previously issued a license to sell intoxicating liquor in the residence district if a majority of the district's electors sign and file with the municipal clerk on or before May 1 in any year a written remonstrance describing the boundaries of the residence district and stating that no license may be issued within the district.

(c) *Previous licenses.* A residence district may be created in a municipality which has previously issued a license to sell intoxicating liquor in the residence district if a majority of the district's electors sign and file with the municipal clerk not earlier than May 1 nor later than May 15 in any year, a written remonstrance describing the boundaries of the residence district and stating that no licenses may be issued within the district.

(d) *Limits on district.* The greatest length of a residence district may not be more than 4 times its narrowest width. No part of any one residence district once created by the electors may be used to create another residence district. A residence district or part thereof in which licenses may not be issued may not be used to create another residence district. Property occupied exclusively for educational, religious or charitable purposes and public parks in residence districts may be included in residence districts as resi-

dence property, but shall not be used in determining the boundaries or size of any such district.

(e) *Restrictions on licenses in residence districts.* No license to sell intoxicating liquor may be issued in a residence district created under par. (b) or (c) after a remonstrance is filed except:

1. Licenses may be issued for specific locations within a residence district under par. (b) if a majority of the electors in the district sign and file with the municipal clerk written consent for the issuance of licenses for the specific locations.

2. Licenses may be issued in residence districts created under par. (c) if a majority of the electors in the district sign and file with the municipal clerk a counter petition stating that licenses may be issued in that district.

(f) *Exclusions.* The prohibition on the issuance of licenses within a residence district does not apply to:

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

2. The street or road frontage on either side of such street or road if one-third of the lineal feet of property abutting on both sides thereof between intersecting streets or roads is so used.

3. The frontage on either or both sides of a highway in towns or unincorporated villages within a distance of 400 feet if one-third of the lineal feet of the property abutting upon the highway within that distance is so used.

4. Actual and bona fide hotels maintaining, in 1st class cities, 50 or more sleeping rooms for the accommodation of transient guests; in 2nd class cities, 25 or more such rooms; in 3rd class cities, 18 or more such rooms; and in 4th class cities, 10 or more such rooms.

(g) *Documents; signatures and circulation.* The electors signing a remonstrance, consent or counter petition under par. (b), (c) or (e) shall subscribe to the document their names together with, in cities and villages, the street or lot and block numbers of their residences and, in towns, the quarter-section numbers of their residences. Each elector shall sign the document before a resident of the district who is circulating it. Each person circulating a document shall file an affidavit that each signer is a qualified elector of the residence district referred to in the document and that the signers' names and addresses on the document are genuine. No elector may sign more than one remonstrance or counter petition affecting the elector's residence district. The documents may be separate. Any number of persons may circulate the documents.

(h) *Number of electors.* The number of electors in a residence district shall equal the number of names with residences in the district which appear on a registration list as defined in s. 5.02 (17). If there is no registration list, the number of electors shall equal the number of names with residences in the district which appear on a poll list as defined in s. 5.02 (14) compiled at the last gubernatorial or presidential election, whichever is most recent. A person whose name does not appear on a registration list or poll list may not sign a protest petition, consent or counter petition.

(i) *Notice.* At least 5 days before soliciting signatures to any remonstrance or counter petition, notice of intent to do so, describing the boundaries of the proposed residence district, shall be published as a class 1 notice under ch. 985, in the district described in the remonstrance or counter petition. No remonstrance or counter petition may be filed before proof of compliance with this section is filed with the clerk of the municipality.

(j) *Publication, objections and effects of filing.* Within 10 days after a remonstrance or counter petition has been filed, the officials of the municipality authorized to issue licenses for the sale of intoxicating liquor shall publish a class 1 notice, under ch. 985, within the residence district stating that at a hearing held on a day fixed by the officials:

1. The officials will examine and consider the remonstrance or counter petition.

2. Any person objecting to the sufficiency of the remonstrance or counter petition may appear before the officials and file objections to the remonstrance or counter petition.

3. The officials shall consider the objections.

4. The officials shall identify any material defect in the remonstrance or counter petition and point them out to the persons who filed the remonstrance or counter petition.

5. The persons who filed the remonstrance or counter petition shall be permitted to correct the defects within 15 days after the hearing.

6. If the defects are corrected, no license may be issued within the residence district except as provided in pars. (e) and (f). If the defects are not corrected, licenses may continue to be issued within the district.

History: 1981 c 79, 377; 1989 a 31, 192; 1991 a 39; 1993 a 246

125.06 License and permit exceptions. No license or permit is required under this chapter for:

(1) **BREWERS' PREMISES.** The furnishing, by brewers, of fermented malt beverages free of charge to customers, visitors and employes on the brewery premises if the fermented malt beverages are consumed on the brewery premises and are not furnished or consumed in or near any room or place where intoxicating liquor is sold.

(2) **HOSPITALS; PRACTICE OF MEDICINE OR SURGERY.** (a) The use of alcohol beverages in institutions licensed under subchs. I and II of ch. 50 where the beverages are used solely for medicinal, mechanical or scientific purposes.

(b) The use or prescription of alcohol beverages by a person licensed to practice medicine or surgery in the treatment of the sick.

(c) Notwithstanding pars. (a) and (b), a permit to receive shipments of alcohol under s. 125.61 must be obtained before alcohol beverages may be used or prescribed under pars. (a) and (b).

(3) **HOMEMADE WINE OR FERMENTED MALT BEVERAGES.** The manufacture of wine or fermented malt beverages of any alcoholic content by any person at his or her home, farm or place of residence if the wine or fermented malt beverages is to be consumed by that person or his or her family and guests, and if the person manufacturing the wine or fermented malt beverages receives no compensation.

(4) **UNADULTERATED CIDER.** The manufacture or sale of unadulterated apple cider.

(5) **RAILROADS, AIRCRAFT.** The sale of alcohol beverages on any railroad dining, buffet or cafe car or aircraft, while in transit. Except as authorized under s. 125.26 (3m) or 125.51 (3) (dm), alcohol beverages may be consumed in a railroad dining, buffet or cafe car or aircraft only while it is in transit.

(6) **PUBLIC PARKS.** The sale of fermented malt beverages in any public park operated by a county or municipality. Fermented malt beverages shall be sold by officers or employes of the county or municipality under an ordinance, resolution, rule or regulation enacted by the governing body.

(7) **JUDICIAL, PERSONAL REPRESENTATIVE'S, GUARDIAN'S, RECEIVER'S OR TRUSTEE'S SALE.** The sale of alcohol beverages at any judicial, personal representative's or guardian's sale or any sale by a receiver or trustee in insolvency or bankruptcy, where the estate being administered possesses a license or permit in effect on the date of such sale.

(8) **SALE BY SECURED PARTY.** The sale of alcohol beverages by a secured party in good faith under the terms of a security agreement, if the sale is not for the purpose of avoiding this chapter or ch. 139. The sale must be in the ordinary course of the business of lending money secured by a security interest in alcohol beverages or warehouse receipts or other evidence of ownership.

(9) **CERAMIC BOTTLE COLLECTORS.** The sale of ceramic commemorative bottles or other uniquely designed decanters which contain intoxicating liquor, by collectors of such containers to other collectors of such containers.

(10) **RAFFLES.** The awarding of alcohol beverages in original, unopened packages, containers or bottles as a prize, in a raffle conducted by an organization licensed to conduct the raffle under ch. 563, to any person who has attained the legal drinking age.

(11) **AUCTION SALES.** The sale by an auction house at public auction of a collection of sealed bottles of intoxicating liquor or unopened beer cans for the purpose of settling an estate or disposing of the collection.

(12) **BED AND BREAKFAST ESTABLISHMENTS.** The provision by a bed and breakfast establishment, as defined under s. 50.50 (1) [254.61 (1)], of not more than 2 complimentary 4-fluid-ounce glasses of wine per day to a person renting a room at the bed and breakfast establishment for consumption on the premises of the bed and breakfast establishment.

NOTE: The bracketed language indicates the correct cross-reference.

History: 1981 c. 79, 202; 1983 a. 222, 360, 538; 1985 a. 337; 1987 a. 399; 1989 a. 253; 1991 a. 269; 1993 a. 226

125.07 Underage and intoxicated persons; presence on licensed premises; possession; penalties.

(1) **ALCOHOL BEVERAGES; RESTRICTIONS RELATING TO UNDERAGE PERSONS.** (a) *Restrictions.* 1. No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.

2. No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.

3. No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control. This subdivision does not apply to alcohol beverages used exclusively as part of a religious service.

4. No adult may intentionally encourage or contribute to a violation of sub. (4) (a) or (b).

(b) *Penalties.* 1. In this paragraph, "violation" means a violation of this subsection or of a local ordinance that strictly conforms to par. (a) if the violation results in an imposition of a forfeiture or a conviction. For purposes of determining previous violations under subd. 2., the 30-month period shall be measured from the dates of violations that resulted in an imposition of a forfeiture or a conviction. For the purpose of determining whether or not a previous violation has occurred, if more than one violation occurs at the same time all those violations shall be counted as one violation.

2. A person who commits a violation may be:

a. Required to forfeit not more than \$500 if the person has not committed a previous violation within 30 months of the violation.

b. Fined not more than \$500 or imprisoned for not more than 30 days or both if the person has committed a previous violation within 30 months of the violation.

c. Fined not more than \$1,000 or imprisoned for not more than 90 days or both if the person has committed 2 previous violations within 30 months of the violation.

d. Fined not more than \$10,000 or imprisoned for not more than 9 months or both if the person has committed 3 or more previous violations within 30 months of the violation.

3. A court shall suspend any license or permit issued under this chapter to a person for:

a. Not more than 3 days, if the court finds that the person committed a violation within 12 months after committing one previous violation;

b. Not less than 3 days nor more than 10 days, if the court finds that the person committed a violation within 12 months after committing 2 other violations; or

c. Not less than 15 days nor more than 30 days, if the court finds that the person committed the violation within 12 months after committing 3 other violations.

4. The court shall promptly mail notice of a suspension under this paragraph to the department and to the clerk of each municipality which has issued a license or permit to the person.

5. A person who holds a Class "A" license, a Class "B" license or permit, a "Class A" license or a "Class B" license or permit who commits a violation is subject to subd. 3. but is not subject to subd. 2. or s. 125.11.

(2) **SALES OF ALCOHOL BEVERAGES TO INTOXICATED PERSONS.**

(a) *Restrictions.* 1. No person may procure for, sell, dispense or give away alcohol beverages to a person who is intoxicated.

2. No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with a person who is intoxicated.

(b) *Penalties.* Any person who violates par. (a) shall be fined not less than \$100 nor more than \$500 or imprisoned for not more than 60 days or both.

(3) **PRESENCE IN PLACES OF SALE; PENALTY.** (a) *Restrictions.*

An underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age may not enter, knowingly attempt to enter or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued, for any purpose except the transaction of business pertaining to the licensed premises with or for the licensee or his or her employe. The business may not be amusement or the purchase, receiving or consumption of edibles or beverages or similar activities which normally constitute activities of a customer of the premises. This paragraph does not apply to:

1. An underage person who is a resident, employe, lodger or boarder on the premises controlled by the proprietor, licensee or permittee of which the licensed premises consists or is a part.

2. An underage person who enters or is on a Class "A" or "Class A" premises for the purpose of purchasing items other than alcohol beverages. An underage person so entering the premises may not remain on the premises after the purchase.

3. Hotels, drug stores, grocery stores, bowling centers, service stations, vessels, cars operated by any railroad, regularly established athletic fields, stadiums, public facilities as defined in s. 125.51 (5) (b) 1. d. which are owned by a county or municipality or centers for the visual or performing arts.

4. Premises in the state fair park, concessions authorized on state-owned premises in the state parks and state forests as defined or designated in chs. 27 and 28, and parks owned or operated by agricultural societies.

5. Ski chalets, golf courses and golf clubhouses, racetracks licensed under ch. 562, curling clubs, private soccer clubs and private tennis clubs.

6. Premises operated under both a Class "B" or "Class B" license or permit and a restaurant permit where the principal business conducted is that of a restaurant. If the premises are operated under both a Class "B" or "Class B" license or permit and a restaurant permit, the principal business conducted is presumed to be the sale of alcohol beverages, but the presumption may be rebutted by competent evidence.

6m. Premises operating under both a "Class C" license and a restaurant permit.

7. An underage person who enters or remains on a Class "B" or "Class B" premises for the purpose of transacting business at an auction or market, if the person does not enter or remain in a room where alcohol beverages are sold, furnished or possessed.

8. An underage person who enters or remains in a room on Class "B" or "Class B" licensed premises separate from any room where alcohol beverages are sold or served, if no alcohol beverages are furnished or consumed by any person in the room where the underage person is present and the presence of underage persons is authorized under this subdivision. An underage person may enter and remain on Class "B" or "Class B" premises under this subdivision only if the municipality which issued the Class "B" or "Class B" license adopts an ordinance permitting underage persons to enter and remain on the premises as provided in this subdivision and the law enforcement agency responsible for

enforcing the ordinance issues to the Class "B" or "Class B" licensee a written authorization permitting underage persons to be present under this subdivision on the date specified in the authorization. Before issuing the authorization, the law enforcement agency shall make a determination that the presence of underage persons on the licensed premises will not endanger their health, welfare or safety or that of other members of the community. The licensee shall obtain a separate authorization for each date on which underage persons will be present on the premises.

9. A person who is at least 18 years of age and who is working under a contract with the licensee, permittee or corporate agent to provide entertainment for customers on the premises.

10. An underage person who enters or remains on Class "B" or "Class B" licensed premises on a date specified by the licensee or permittee during times when no alcohol beverages are consumed, sold or given away. During those times, the licensee, the agent named in the license if the licensee is a corporation or limited liability company or a person who has an operator's license shall be on the premises unless all alcohol beverages are stored in a locked portion of the premises. The licensee shall notify the local law enforcement agency, in advance, of the times underage persons will be allowed on the premises under this subdivision.

11. An underage person who enters or remains in a dance hall attached to Class "B" or "Class B" licensed premises if the dance hall is separate from any room where alcohol beverages are sold, if there is a separate entrance to the dance hall and if no alcohol beverages are furnished or consumed by any person in the dance hall where the underage person is present.

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

(b) *Penalties.* A licensee or permittee who directly or indirectly permits an underage person to enter or be on a licensed premises in violation of par. (a) is subject to a forfeiture of not more than \$500.

(4) **UNDERAGE PERSONS; PROHIBITIONS; PENALTIES.** (a) Any underage person who does any of the following is guilty of a violation:

1. Procures or attempts to procure alcohol beverages from a licensee or permittee.

2. Unless accompanied by a parent, guardian or spouse who has attained the legal drinking age, possesses or consumes alcohol beverages on licensed premises.

3. Enters, knowingly attempts to enter or is on licensed premises in violation of sub. (3) (a).

4. Falsely represents his or her age for the purpose of receiving alcohol beverages from a licensee or permittee.

(b) Except as provided in par. (bm), any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age who knowingly possesses or consumes alcohol beverages is guilty of a violation.

(bm) An underage person may possess alcohol beverages in the course of employment during his or her working hours if employed by any of the following:

1. A brewer.

2. A fermented malt beverages wholesaler.

3. A permittee other than a Class "B" or "Class B" permittee.

4. A facility for the production of alcohol fuel.

5. A retail licensee or permittee under the conditions specified in s. 125.32 (2) or 125.68 (2) or for delivery of unopened containers to the home or vehicle of a customer.

6. A campus, if the underage person is at least 18 years of age and is under the immediate supervision of a person who has attained the legal drinking age.

(bs) Any person violating par. (a) is subject to the following penalties:

1. For a first violation, a forfeiture of not less than \$250 nor more than \$500, suspension of the person's operating privilege as provided under s. 343.30 (6) (b) 1., participation in a supervised work program under par. (cg) or any combination of these penalties.

2. For a violation committed within 12 months of a previous violation, either a forfeiture of not less than \$300 nor more than \$500, suspension of the person's operating privilege as provided under s. 343.30 (6) (b) 2., participation in a supervised work program under par. (cg) or any combination of these penalties.

3. For a violation committed within 12 months of 2 previous violations, either a forfeiture of not less than \$500 nor more than \$750, revocation of the person's operating privilege under s. 343.30 (6) (b) 3., participation in a supervised work program under par. (cg) or any combination of these penalties.

4. For a violation committed within 12 months of 3 or more previous violations, either a forfeiture of not less than \$750 nor more than \$1,000, revocation of the person's operating privilege under s. 343.30 (6) (b) 3., participation in a supervised work program under par. (cg) or any combination of these penalties.

(c) Any person violating par. (b) is subject to the following penalties:

1. For a first violation, a forfeiture of not less than \$100 nor more than \$200, suspension of the person's operating privilege as provided under s. 343.30 (6) (b) 1., participation in a supervised work program under par. (cg) or any combination of these penalties.

2. For a violation committed within 12 months of a previous violation, either a forfeiture of not less than \$200 nor more than \$300, suspension of the person's operating privilege as provided under s. 343.30 (6) (b) 2., participation in a supervised work program under par. (cg) or any combination of these penalties.

3. For a violation committed within 12 months of 2 previous violations, either a forfeiture of not less than \$300 nor more than \$500, revocation of the person's operating privilege under s. 343.30 (6) (b) 3., participation in a supervised work program under par. (cg) or any combination of these penalties.

4. For a violation committed within 12 months of 3 or more previous violations, either a forfeiture of not less than \$500 nor more than \$1,000, revocation of the person's operating privilege under s. 343.30 (6) (b) 3., participation in a supervised work program under par. (cg) or any combination of these penalties.

(cd) For purposes of par. (bs) or (c), all violations arising out of the same incident or occurrence shall be counted as a single violation.

(cg) 1. If the court orders a person to participate in a supervised work program under par. (bs) or (c), the court shall set standards for the program within the budgetary limits established by the county board of supervisors. The program may provide the person with reasonable compensation reflecting the market value of the work performed, or it may consist of uncompensated community service work, and shall be administered by the county department under s. 46.215 or 46.22 or a community agency approved by the court.

2. The supervised work program shall be of a constructive nature designed to promote the person's rehabilitation, shall be appropriate to the person's age level and physical ability and shall be combined with counseling from an agency staff member or other qualified person. The program may not conflict with the person's regular attendance at school. The amount of work required shall be reasonably related to the seriousness of the person's offense.

(cm) When a court revokes or suspends a person's operating privilege under par. (bs) or (c), the department of transportation may not disclose information concerning or relating to the revocation or suspension to any person other than a court, district attorney

ney, county corporation counsel, city, village or town attorney, law enforcement agency or the person whose operating privilege is revoked or suspended. A person entitled to receive information under this paragraph may not disclose the information to any other person or agency.

(d) A person who is under 18 years of age on the date of disposition is subject to s. 48.344 unless proceedings have been instituted against the person in a court of civil or criminal jurisdiction after dismissal of the citation under s. 48.344 (3).

(e) 1. In this paragraph, "defendant" means a person found guilty of violating par. (a) or (b) who is 18, 19 or 20 years of age.

2. After ordering a penalty under par. (bs) or (c), the court, with the agreement of the defendant, may enter an additional order staying the execution of the penalty order and suspending or modifying the penalty imposed. The order under this subdivision shall require the defendant to do any of the following:

a. Submit to an alcohol abuse assessment that conforms to the criteria specified under s. 48.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to conduct the alcohol abuse assessment and shall specify the date by which the assessment must be completed.

b. Participate in an outpatient alcohol abuse treatment program at an approved treatment facility, if an alcohol abuse assessment conducted under subd. 2. a. recommends treatment.

c. Participate in a court-approved alcohol abuse education program.

3. If the approved treatment facility, with the written informed consent of the defendant, notifies the agency primarily responsible for providing services to the defendant that the defendant has submitted to an assessment under subd. 2. a. and that the defendant does not need treatment or education, the court shall notify the defendant of whether or not the penalty will be reinstated.

4. If the defendant completes the alcohol abuse treatment program or court-approved alcohol abuse education program, the approved treatment facility or court-approved alcohol abuse education program shall, with the written informed consent of the defendant, notify the agency primarily responsible for providing services to the defendant that the defendant has complied with the order and the court shall notify the defendant of whether or not the penalty will be reinstated. If the court had ordered the suspension of the defendant's operating privilege under par. (bs) or (c), the court may order the secretary of transportation to reinstate the operating privilege of the defendant if he or she completes the alcohol abuse treatment program or court-approved alcohol abuse education program.

5. If an approved treatment facility or court-approved alcohol abuse education program, with the written informed consent of the defendant, notifies the agency primarily responsible for providing services to the defendant that the defendant is not participating in the program or that the defendant has not satisfactorily completed a recommended alcohol abuse treatment program or an education program, the court shall hold a hearing to determine whether the penalties under par. (bs) or (c) should be imposed.

(6) DEFENSES. In determining whether or not a licensee or permittee has violated subs. (1) (a) and (3) (a), all relevant circumstances surrounding the presence of the underage person or the procuring, selling, dispensing or giving away of alcohol beverages may be considered, including any circumstance under pars. (a) to (d). In addition, proof of all of the following facts by a seller of alcohol beverages to an underage person is a defense to any prosecution for a violation of this section:

(a) That the purchaser falsely represented that he or she had attained the legal drinking age.

(b) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the legal drinking age.

(c) That the sale was made in good faith and in reliance on the representation and appearance of the purchaser in the belief that the purchaser had attained the legal drinking age.

(d) That the underage person supported the representation under par. (a) with documentation that he or she had attained the legal drinking age.

(7) BOOK KEPT BY LICENSEES AND PERMITTEES. (a) Every retail alcohol beverage licensee or permittee may keep a book for the purposes of sub. (6). The licensee or permittee or his or her employe may require any of the following persons to sign the book:

1. A person who has shown documentary proof that he or she has attained the legal drinking age, if the person's age is in question.

2. A person who alleges that he or she is the underage person's parent, guardian or spouse and that he or she has attained the legal drinking age, if the licensee or permittee or his or her employe suspects that he or she is not the underage person's parent, guardian or spouse or that he or she has not attained the legal drinking age.

(b) The book may show the date of the purchase of the alcohol beverages, the identification used in making the purchase or the identification used to establish that a person is an underage person's parent, guardian or spouse and has attained the legal drinking age, the address of the purchaser and the purchaser's signature.

History: 1981 c. 79, 202, 391; 1983 a. 74, 472, 538; 1985 a. 28, 29, 47, 120, 176, 221, 317, 337; 1987 a. 51, 354; 1989 a. 31, 121, 135, 253, 336, 359; 1991 a. 28, 39, 171, 269; 1993 a. 112, 472.

Vendor who negligently sells to underage person may be liable for acts of intoxicated underage person. *Sorensen v. Jarvis*, 119 W (2d) 627, 350 NW (2d) 108 (1984).

Host who negligently furnished alcohol to underage guest was negligent per se and liable for injuries to 3rd party arising out of guest's intoxication. *Koback v. Crook*, 123 W (2d) 259, 366 NW (2d) 857 (1985).

Sub. (1)(a) prohibits underage persons, as well as adults, from providing alcoholic beverages to underage persons. *Smith v. Kappel*, 147 W (2d) 380, 433 NW (2d) 588 (Ct. App. 1988).

The purpose of sub. (3) is not to avoid the likelihood that a minor who enters a licensed premises will subsequently commit an off-premises assault; a licensee who violates sub. (3) is not negligent per se if such an assault occurs. *Symes v. Milwaukee Mut. Ins. Co.* 178 W (2d) 564, 505 NW (2d) 143 (Ct. App. 1993).

Liquor liability and blame-shifting defenses: Do they mix? *Kelly* 69 MLR 217 (1986).

Imposition of liability on social hosts in drunk driving cases: A judicial response mandated by principles of common law and common sense. *Goldberg* 69 MLR 251 (1986).

125.075 Injury or death by providing alcohol beverages to a minor. (1) Any person who procures alcohol beverages for or sells, dispenses or gives away alcohol beverages to a person under 18 years of age in violation of s. 125.07 (1) (a) 1. or 2. may be penalized as provided in sub. (2) if:

(a) The person knew or should have known that the underage person was under the legal drinking age; and

(b) The underage person dies or suffers great bodily harm, as defined in s. 939.22 (14), as a result of consuming the alcohol beverages provided in violation of s. 125.07 (1) (a) 1. or 2.

(1m) In determining under sub. (1) (a) whether a person knew or should have known that the underage person was under the legal drinking age, all relevant circumstances surrounding the procuring, selling, dispensing or giving away of the alcohol beverages may be considered, including any circumstance under pars. (a) to (d). In addition, a person has a defense to criminal liability under sub. (1) if all of the following occur:

(a) The underage person falsely represents that he or she has attained the legal drinking age.

(b) The underage person supports the representation under par. (a) with documentation that he or she has attained the legal drinking age.

(c) The alcohol beverages are provided in good faith reliance on the underage person's representation that he or she has attained the legal drinking age.

(d) The appearance of the underage person is such that an ordinary and prudent person would believe that he or she had attained the legal drinking age.

(2) Whoever violates sub. (1) may be fined not more than \$10,000 or imprisoned for not more than 5 years or both.

History: 1987 a 335; 1989 a 253.

125.085 Proof of age. (1) DEFINITION. In this section, "official identification card" means a valid operator's license issued under ch. 343 that contains the photograph of the holder, an identification card issued under s. 343.50 or an identification card issued under s. 125.08, 1987 stats.

(2) USE. No card other than the identification card authorized under this section may be recognized as an official identification card in this state. In place of an official identification card, documentary proof of age may be substituted.

(3) PENALTIES FOR FALSIFICATION OF PROOF OF AGE. (a) 1. No person may make, alter or duplicate an official identification card, provide an official identification card to an underage person or knowingly provide other documentation to an underage person purporting to show that the underage person has attained the legal drinking age. No person may possess an official identification card or other documentation used for proof of age with the intent of providing it to an underage person. Except as provided in subs. 2. and 3., any person who violates this subdivision may be fined not less than \$100 nor more than \$500 or imprisoned for not less than 10 days nor more than 30 days or both.

2. Any person who violates subd. 1. for money or other consideration may be fined not more than \$10,000 or imprisoned for not more than 2 years or both.

3. Subdivisions 1. and 2. do not apply to a person who is authorized to make an official identification card under ch. 343.

(b) Any underage person who does any of the following is guilty of a violation:

1. Intentionally carries an official identification card not legally issued to him or her, an official identification card obtained under false pretenses or an official identification card which has been altered or duplicated to convey false information.

2. Makes, alters or duplicates an official identification card purporting to show that he or she has attained the legal drinking age.

3. Presents false information to an issuing officer in applying for an official identification card.

4. Intentionally carries an official identification card or other documentation showing that the person has attained the legal drinking age, with knowledge that the official identification card or documentation is false.

(bd) Any underage person who violates par. (b) is subject to a forfeiture of not less than \$100 nor more than \$500, suspension of the person's operating privilege under s. 343.30 (6) (bm), participation in a supervised work program under par. (bh) or any combination of these penalties.

(bh) 1. If the court orders a person to participate in a supervised work program under par. (bd), the court shall set standards for the program within the budgetary limits established by the county board of supervisors. The program may provide the person with reasonable compensation reflecting the market value of the work performed, or it may consist of uncompensated community service work, and shall be administered by the county department under s. 46.215 or 46.22 or a community agency approved by the court.

2. The supervised work program shall be of a constructive nature designed to promote the person's rehabilitation, shall be appropriate to the person's age level and physical ability and shall be combined with counseling from an agency staff member or other qualified person. The program may not conflict with the person's regular attendance at school. The amount of work required shall be reasonably related to the seriousness of the person's offense.

(bp) When a court suspends a person's operating privilege under par. (bd), the department of transportation may not disclose information concerning or relating to the suspension to any person other than a court, district attorney, county corporation counsel, city, village or town attorney, law enforcement agency or the person whose operating privilege is suspended. A person entitled to receive information under this paragraph may not disclose the information to any other person or agency.

(bt) A person who is under 18 years of age on the date of disposition is subject to s. 48.344 unless proceedings have been instituted against the person in a court of civil or criminal jurisdiction after dismissal of the citation under s. 48.344 (3).

(c) A law enforcement officer investigating an alleged violation of par. (b) shall confiscate any official identification card or other documentation that constitutes evidence of the violation.

History: 1989 a 31, 253, 336; 1991 a 39.

125.09 General restrictions. (1) PUBLIC PLACE. No owner, lessee or person in charge of a public place may permit the consumption of alcohol beverages on the premises of the public place, unless the person has an appropriate retail license or permit. This subsection does not apply to municipalities, buildings and parks owned by counties, regularly established athletic fields and stadiums, school buildings, churches, premises in a state fair park or clubs.

(2) POSSESSION OF ALCOHOL BEVERAGES ON SCHOOL GROUNDS PROHIBITED. (a) In this subsection:

1. "Motor vehicle" means a motor vehicle owned, rented or consigned to a school.

2. "School" means a public, parochial or private school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.

3. "School administrator" means the person designated by the governing body of a school as ultimately responsible for the ordinary operations of a school.

4. "School premises" means premises owned, rented or under the control of a school.

(b) Except as provided by par. (c) no person may possess or consume alcohol beverages:

1. On school premises;

2. In a motor vehicle, if a pupil attending the school is in the motor vehicle; or

3. While participating in a school-sponsored activity.

(c) Alcohol beverages may be possessed or consumed on school premises, in motor vehicles or by participants in school-sponsored activities if specifically permitted in writing by the school administrator consistent with applicable laws, ordinances and school board policies.

(d) A person who violates this subsection is subject to a forfeiture of not more than \$200, except that ss. 48.344 and 125.07 (4) (c) and (d) provide the penalties applicable to underage persons.

(3) PLACE-TO-PLACE DELIVERIES. No person may peddle any alcohol beverage from house to house where the sale and delivery are made concurrently.

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

History: 1981 c 79, 158; 1983 a 74; 1985 a 218.

This section does not prohibit the consumption of alcohol beverages by bed and breakfast proprietors, their friends or personal guests in areas that are off-limits to the public or to renters. 80 Atty Gen. 218.

125.10 Municipal regulation. (1) AUTHORIZATION. Any municipality may enact regulations incorporating any part of this chapter and may prescribe additional regulations for the sale of alcohol beverages, not in conflict with this chapter. The municipality may prescribe forfeitures or license suspension or revoca-

125.10 ALCOHOL BEVERAGES

93-94 Wis. Stats. 2464

tion for violations of any such regulations. Regulations providing forfeitures or license suspension or revocation must be adopted by ordinance.

(2) **REGULATION OF UNDERAGE PERSONS** A municipality or a county may enact an ordinance regulating conduct regulated by s. 125.07 (1) or (4) (a), (b) or (bm), 125.085 (3) (b) or 125.09 (2) only if it strictly conforms to the statutory subsection. A county ordinance enacted under this subsection does not apply within any municipality that has enacted or enacts an ordinance under this subsection.

(3) **ZONING** Except as provided in ss. 125.05 and 125.68, this chapter does not affect the power of municipalities to enact or enforce zoning regulations.

(4) **REGULATION OF CLOSED RETAIL PREMISES** A municipality may not prohibit the permittee, licensee, employes, salespersons, employes of wholesalers licensed under s. 125.28 (1) or 125.54 (1) or service personnel from being present on premises operated under a Class "A", "Class A" or "Class C" license or under a Class "B" or "Class B" license or permit during hours when the premises are not open for business if those persons are performing job-related activities.

History: 1981 c. 79, 202; 1983 a. 74 ss. 19, 32; 1985 a. 28 ss. 5, 9; 1987 a. 168; 1989 a. 31, 253; 1991 a. 39; 1993 a. 208

125.105 Impersonating an officer. (1) No person may impersonate an inspector, agent or other employe of the department or of the department of justice.

(2) (a) Whoever violates sub. (1) with the intent to mislead another may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(b) Whoever violates sub. (1) to commit, or abet the commission of, a crime may be fined not more than \$10,000 or imprisoned for not more than 5 years or both.

History: 1989 a. 253.

125.11 Penalties. (1) **GENERAL PENALTY** Any person who violates any provision of this chapter for which a specific penalty is not provided, shall be fined not more than \$1,000 or imprisoned for not more than 90 days or both. Any license or permit issued to the person under this chapter may be revoked by the court.

(2) **FELONY** If a person is convicted of a felony under this chapter, in addition to the penalties provided for the felony, the court shall revoke any license or permit issued to the person under this chapter.

History: 1981 c. 79; 1985 a. 120, 302; 1989 a. 253

125.115 Responsibility for commission of a crime.

(1) A person may be convicted of the commission of a crime under this chapter only if the criteria specified in s. 939.05 exist.

(2) This section does not apply to civil forfeiture actions for violation of any provision of this chapter or any local ordinance in conformity with any provision of this chapter.

History: 1985 a. 47.

125.12 Revocations, suspensions, refusals to issue or renew. (1) **REVOCAION, SUSPENSION, NONISSUANCE OR NON-RENEWAL OF LICENSE** Any municipality or the department may revoke, suspend or refuse to renew any license or permit under this chapter, as provided in this section.

(2) **REVOCAION OR SUSPENSION OF LICENSES BY LOCAL AUTHORITIES** (ag) **Complaint.** Any resident of a municipality issuing licenses under this chapter may file a sworn written complaint with the clerk of the municipality alleging one or more of the following about a person holding a license issued under this chapter by the municipality:

1. The person has violated this chapter or municipal regulations adopted under s. 125.10.

2. The person keeps or maintains a disorderly or riotous, indecent or improper house.

3. The person has sold or given away alcohol beverages to known habitual drunkards.

4. The person does not possess the qualifications required under this chapter to hold the license.

5. The person has been convicted of manufacturing or delivering a controlled substance under s. 161.41 (1); of possessing, with intent to manufacture or delivery, a controlled substance under s. 161.41 (1m); or of possessing, with intent to manufacture or deliver, or of manufacturing or delivering a controlled substance under s. 161.41 (1m); or of possessing, with intent to manufacture or delivery, or of manufacturing or delivering a controlled substance under a substantially similar federal law or a substantially similar law of another state.

6. The person knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess, with the intent to manufacture or deliver, or to manufacture or deliver a controlled substance.

(ar) **Summons.** Upon the filing of the complaint, the municipal governing body or a duly authorized committee of a city council shall issue a summons, signed by the clerk and directed to any peace officer in the municipality. The summons shall command the licensee complained of to appear before the municipal governing body or the committee on a day and place named in the summons, not less than 3 days and not more than 10 days from the date of issuance, and show cause why his or her license should not be revoked or suspended. The summons and a copy of the complaint shall be served on the licensee at least 3 days before the time at which the licensee is commanded to appear. Service shall be in the manner provided under ch. 801 for service in civil actions in circuit court.

(b) **Procedure on hearing.** 1. If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the municipal governing body or the committee finds the allegations sufficient, the license shall be revoked. The clerk shall give notice of the revocation to the person whose license is revoked.

2. If the licensee appears as required by the summons and denies the complaint, both the complainant and the licensee may produce witnesses, cross-examine witnesses and be represented by counsel. The licensee shall be provided a written transcript of the hearing at his or her expense. If the hearing is held before the municipal governing body and the complaint is found to be true, the license shall either be suspended for not less than 10 days nor more than 90 days or revoked.

3. If the hearing is held before a committee of a city council, the committee shall submit a report to the city council, including findings of fact, conclusions of law and a recommendation as to what action, if any, the city council should take with respect to the license. The committee shall provide the complainant and the licensee with a copy of the report. Either the complainant or the licensee may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the city council. The city council shall determine whether the arguments shall be presented orally or in writing or both. If the city council, after considering the committee's report and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to a report recommending suspension or revocation, the license shall be suspended or revoked as provided under subd. 2.

4. The municipal clerk shall give notice of each suspension or revocation to the person whose license is suspended or revoked.

5. If the municipal governing body finds the complaint untrue, the proceeding shall be dismissed without cost to the accused. If the municipal governing body finds the complaint to be malicious and without probable cause, the costs shall be paid by the complainant. The municipal governing body or the committee may require the complainant to provide security for such costs before issuing the summons under par. (ar).

(c) *Effect of revocation.* When a license is revoked under this subsection, the revocation shall be recorded by the clerk and no other license issued under this chapter may be granted within 12 months of the date of revocation to the person whose license was revoked. No part of the fee paid for any license so revoked may be refunded.

(d) *Judicial review.* The action of any municipal governing body in granting or failing to grant, suspending or revoking any license, or the failure of any municipal governing body to revoke or suspend any license for good cause, may be reviewed by the circuit court for the county in which the application for the license was issued, upon application by any applicant, licensee or resident of the municipality. The procedure on review shall be the same as in civil actions instituted in the circuit court. The person desiring review shall file pleadings, which shall be served on the municipal governing body in the manner provided in ch. 801 for service in civil actions and a copy of the pleadings shall be served on the applicant or licensee. The municipal governing body, applicant or licensee shall have 20 days to file an answer to the complaint. Following filing of the answer, the matter shall be deemed at issue and hearing may be had within 5 days, upon due notice served upon the opposing party. The hearing shall be before the court without a jury. Subpoenas for witnesses may be issued and their attendance compelled. The decision of the court shall be filed within 10 days after the hearing and a copy of the decision shall be transmitted to each of the parties. The decision shall be binding unless it is appealed to the court of appeals.

(3) **REFUSALS BY LOCAL AUTHORITIES TO RENEW LICENSES.** A municipality issuing licenses under this chapter may refuse to renew a license for the causes provided in sub. (2) (ag). Prior to the time for the renewal of the license, the municipal governing body or a duly authorized committee of a city council shall notify the licensee in writing of the municipality's intention not to renew the license and provide the licensee with an opportunity for a hearing. The notice shall state the reasons for the intended action. The hearing shall be conducted as provided in sub. (2) (b) and judicial review shall be as provided in sub. (2) (d). If the hearing is held before a committee of a city council, the committee shall make a report and recommendation as provided under sub. (2) (b) 3. and the city council shall follow the procedure specified under that subdivision in making its determination.

(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 of the decision not to issue the license. The notice shall be in writing and state the reasons for the decision.

(4) **SUSPENSION OR REVOCATION OF LICENSES ON COMPLAINT OF THE DEPARTMENT.** (ag) *Complaint.* A duly authorized employe of the department may file a complaint with the clerk of circuit court for the jurisdiction in which the premises of a person holding a license issued under this chapter is situated, alleging one or more of the following about a licensee:

1. That the licensee has violated this chapter.
2. That the licensee keeps or maintains a disorderly or riotous, indecent or improper house.
3. That the licensee has sold alcohol beverages to known habitual drunkards.
4. That the licensee has failed to maintain the premises in accordance with the standards of sanitation prescribed by the department of health and social services.
5. That the licensee has permitted known criminals or prostitutes to loiter on the licensed premises.
6. That the licensee does not possess the qualifications required under this chapter to hold the license.
7. That the licensee has been convicted of manufacturing or delivering a controlled substance under s. 161.41 (1); of possessing, with intent to manufacture or deliver, a controlled substance under s. 161.41 (1m); or of possessing, with intent to manufacture

or deliver, or of manufacturing or delivering a controlled substance under a substantially similar federal law or a substantially similar law of another state.

8. That the licensee knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess, with the intent to manufacture or deliver, or to manufacture or deliver a controlled substance.

(ar) *Summons.* Upon the filing of the complaint, the clerk of the court shall issue a summons commanding the licensee to appear before the court not less than 20 days from its date of issuance and show cause why his or her license should not be revoked or suspended. The summons and a copy of the complaint shall be served at least 20 days before the date on which the person is commanded to appear. Service shall be in the manner provided in ch. 801 for civil actions in circuit court.

(b) *Procedure on hearing.* If the licensee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the court finds the allegations sufficient, it shall order the license either suspended for not more than 90 days or revoked. The clerk of the court shall give notice of the suspension or revocation to the person whose license is suspended or revoked. If the licensee appears and answers the complaint, the court shall fix a date for the hearing not more than 30 days after the return date of the summons. The hearing shall be had before the court without a jury. If upon the hearing the court finds the allegations of the complaint to be true, it shall order the license either suspended for not more than 90 days or revoked. If the court finds the allegations of the complaint to be untrue, the complaint shall be dismissed.

(c) *Effect of revocation or suspension.* When a license is revoked or suspended under this subsection, the clerk of court shall notify the authority which issued the license. If the license is revoked, no other license may be issued under this chapter to the person whose license was revoked or to any person related to him or her as owner, lessor, bailor or lender, within the 12 months after the date of revocation and no other license may be granted for the premises covered by the revoked license within 60 days of the date of revocation. The findings and order of the court shall be filed within 10 days after the hearing and the order shall be final unless appeal is taken to the court of appeals. If an appeal is taken from a revocation, any period during which the order is stayed shall be added to the 12 months and 60 days, respectively. No part of the fee paid for any license which is revoked may be refunded. Whenever any court has revoked or suspended any license under this subsection, no further proceedings shall be commenced under this subsection except upon grounds arising after the original revocation or suspension.

(5) **REVOCATIONS OR SUSPENSIONS OF, OR REFUSALS TO RENEW, PERMITS BY THE DEPARTMENT.** The department may, after notice and an opportunity for hearing, revoke, suspend or refuse to renew any retail permit issued by it for the causes provided in sub. (4) and any other permit issued by it under this chapter for any violation of this chapter or ch. 139. A revocation, suspension or refusal to renew is a contested case under ch. 227.

History: 1981 c. 79; 1983 a. 516; 1987 a. 93; 1993 a. 98.

Due process and equal protection rights of licensees discussed. Tavern League v. City of Madison, 131 W (2d) 477, 389 NW (2d) 54 (Ct. App. 1986).

125.13 Report of suspension, revocation or imposition of penalty. Whenever a municipal governing body or court revokes or suspends a license or permit or imposes a penalty on a licensee or permittee for the violation of this chapter, the clerk of the municipality or court revoking or suspending the license or imposing the penalty shall, within 10 days after the revocation, suspension or imposition of penalty, mail a report to the department at Madison, Wisconsin, giving the name of the licensee, the address of the licensed premises and a full description of the penalty imposed.

History: 1981 c. 79.

125.14 Enforcement provisions. (1) **ARREST.** Any peace officer may arrest without warrant any person committing

125.14 ALCOHOL BEVERAGES

93-94 Wis. Stats. 2466

in his or her presence a violation of this chapter or ch. 139 and may, without a search warrant, seize any personal property used in connection with the violation.

(2) **CONFISCATION; DISPOSAL.** (a) *Contraband.* All alcohol beverages owned, possessed, kept, stored, manufactured, sold, distributed or transported in violation of this chapter or ch. 139 and all personal property used in connection therewith is unlawful property and may be seized by any peace officer. Any peace officer confiscating personal property under this section may proceed under this section.

(c) *Identification.* Any person seizing alcohol beverages or personal property and electing to dispose of it under this subsection shall exercise reasonable diligence to ascertain the name and address of the owner of the alcohol beverages or property and of all persons holding a security interest in the property seized. The person shall report his or her findings in writing to the department.

(d) *Order.* Upon conviction of any person for owning, possessing, keeping, storing, manufacturing, selling, distributing or transporting alcohol beverages in violation of this chapter or ch. 139, the court shall order part or all of the alcohol beverages or personal property seized to be destroyed if it is unfit for sale. Alcohol beverages and other personal property fit for sale shall be turned over to the department for disposition. Upon receipt of the confiscated property, the department shall exercise reasonable diligence to ascertain the names and addresses of all owners of the property and of all persons holding a security interest in the property. If a motor vehicle is confiscated, the department shall obtain the written advice of the department of transportation as to the ownership of the motor vehicle and shall make a reasonable search for perfected security interests in the vehicle.

(e) *Disposal.* The department shall dispose of the alcohol beverages turned over to it by the court by either giving it to state-operated veterans' hospitals in amounts needed for medicinal purposes, selling it to the highest bidder if the bidder is a person holding a license or permit issued under this chapter, or destroying it, at the discretion of the department. If the department elects to sell the alcohol beverages, it shall publish a class 2 notice under ch. 985 asking for sealed bids from qualified bidders. Any items or groups of items in the inventory subject to a security interest, the existence of which was established in the proceedings for conviction as being bona fide and as having been created without the secured party having notice that the items were being used or were to be used in connection with the violation, shall be sold separately. The net proceeds from the sale, less all costs of seizure, storage and sale, shall be turned over to the state treasurer and credited to the common school fund.

(f) *Sale.* Any personal property, other than alcohol beverages, seized under par. (a) and fit for sale, shall be turned over by the department to the department of administration for disposal at public auction to the highest bidder, at a time and place stated in a notice of sale which describes the property to be sold. The sale shall be held in a conveniently accessible place in the county where the property was confiscated. A copy of the notice shall be published as a class 2 notice under ch. 985. The last insertion shall be at least 10 days before the sale. The department of revenue shall serve a copy of the notice of sale at least 2 weeks before the date thereof on all persons who are or may be owners or holders of security interests in the property. Any confiscated property worth more than \$100 shall be sold separately, and the balance of the confiscated property shall be sold in bulk or separately at the discretion of the department of administration. The net proceeds from the sale, less all costs of seizure, storage and sale, shall be turned over to the state treasurer. No motor vehicle or motorboat confiscated under this section may be sold within 30 days after the date of seizure.

(3) **RECOVERY OF CONFISCATED PROPERTY** (a) *Application.* Prior to sale under sub. (2) (f), the owner of confiscated property may apply to a court of record in the county where the property was seized for an order restoring the property to the owner. After the sale, the owner may apply to the court for a refund of the

amount realized on the sale. After the sale, any holder of a security interest in the property may apply to the court for a refund of the sum realized on the sale of property subject to the security interest, but not more than the amount due under the security agreement.

(b) *Deadline.* The application shall be made within one year after the sale of the property. A copy of the application and the order setting a hearing on it shall be served on the department at least 20 days before the date set for hearing.

(c) *Grounds.* Relief shall be granted only after a showing by the applicant that he or she is the true owner or holder of a bona fide security interest in the property seized; that the violation which led to the confiscation was not with his or her knowledge, consent or connivance; and, that he or she had no reasonable grounds to believe or suspect that the property would be used in a violation.

(d) *Costs.* The court may determine whether the applicant shall pay the costs of seizure and sale as a condition of obtaining relief. Allowance of costs and disbursements shall be within the discretion of the court.

(5) **NUISANCES.** Any building or place where alcohol beverages or alcohol is sold, possessed, stored, brewed, bottled, manufactured or rectified without a valid permit or license issued under this chapter or ch. 139, or where persons are permitted to drink alcohol beverages in violation of this chapter is a public nuisance and may be closed until the activity in violation of this chapter is abated. When the activity is abated, the building or place may be used for any lawful purpose.

(6) **FORM OF COMPLAINT.** In a prosecution for a violation of a statute relating to the sale of alcohol beverages it is not necessary to allege in the complaint, information or indictment the kind or quantity of alcohol beverages sold or the person to whom it was sold. It is sufficient to allege generally that the defendant sold alcohol beverages at a time and place mentioned, together with a brief statement of the facts showing that the sale was a violation of this chapter.

History: 1981 c. 79; 1989 a. 253

125.145 Prosecutions by attorney general. Upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any case arising under this chapter.

History: 1985 a. 302

125.16 Actions to recover price denied. No action may be brought to recover the price of any alcohol beverages sold in violation of this chapter or ch. 139.

History: 1981 c. 79

125.17 Issuance of operators' licenses. (1) **AUTHORIZATION.** Every municipal governing body may issue operators' licenses. Operators' licenses may not be required other than for the purpose of complying with ss. 125.32 (2) and 125.68 (2). Operators' licenses may be issued only upon written application.

(2) **VALIDITY.** Operators' licenses are valid only within the issuing municipality.

(3) **FEE.** The municipal governing body shall establish by ordinance a fee for the operator's license. Except as provided under sub. (4), a license shall be valid for one or 2 years, as determined by the municipal governing body, and shall expire on June 30, except in 1st class cities the license shall expire on December 31.

(4) **TEMPORARY LICENSE.** Any municipal governing body may issue a temporary operator's license under the terms of subs. (1) to (3), except that:

(a) This license may be issued only to operators employed by, or donating their services to, nonprofit corporations.

(b) No person may hold more than one license of this kind per year.

(c) The license is valid for any period from one day to 14 days, and the period for which it is valid shall be stated on the license.

(5) **PROVISIONAL LICENSE.** (a) A municipal governing body that issues operators' licenses shall issue provisional operators' licenses. The municipal governing body may by ordinance establish standards under which provisional licenses shall be issued and shall by ordinance designate the municipal official having authority to issue them.

(b) A provisional license may be issued only to a person who has applied for an operator's license under sub. (1). A provisional license may not be issued to any person who has been denied a license under sub. (1) by the municipal governing body.

(c) The municipal governing body shall establish the fee for a provisional license. The fee may not exceed \$15.

(d) A provisional license expires 60 days after its issuance or when a license under sub. (1) is issued to the holder, whichever is sooner.

(e) The official who issued the provisional license may revoke the license if he or she discovers that the holder of the license made a false statement on the application.

(6) **TRAINING COURSE.** (a) Except as provided in par. (b), no municipal governing body may issue an operator's license unless the applicant has successfully completed a responsible beverage server training course at any location that is offered by a technical college district and that conforms to curriculum guidelines specified by the technical college system board or a comparable training course that is approved by the department or the educational approval board, or unless the applicant fulfills one of the following requirements:

1. The person is renewing an operator's license.
2. Within the past 2 years, the person held a Class "A", "Class A" or "Class C" license or a Class "B" or "Class B" license or permit or a manager's or operator's license.
3. Within the past 2 years, the person has completed such a training course.

(b) A municipal governing body shall issue a provisional operator's license to a person who is enrolled in a training course under par. (a) and who meets the standards established by the municipality by ordinance, if any. The municipal governing body shall revoke that license if the applicant fails successfully to complete the course in which he or she enrolls.

(c) No municipal governing body may require that applicants for operators' licenses undergo training in addition to that under par. (a) but may require applicants to purchase at cost materials that deal with relevant local subjects not covered in the course under par. (a).

History: 1981 c. 79, 170; 1983 a. 263; 1989 a. 253; 1991 a. 39, 269; 1993 a. 259, 399, 491.

125.18 Issuance of managers' licenses. (1) **AUTHORIZATION.** A municipal governing body may provide by ordinance for the issuance of managers' licenses. Managers' licenses may not be required other than for the purpose of complying with ss. 125.32 (1) and 125.68 (1). Managers' licenses may be issued only upon written application.

(2) **VALIDITY.** Managers' licenses are valid only within the issuing municipality.

(3) **FEE.** The municipal governing body may establish by ordinance a fee for the manager's license, but the fee may not exceed \$25 per year. The license shall be valid for no more than one year and shall expire on June 30.

History: 1981 c. 79, 391.

125.19 Alcohol beverage warehouse permit.

(1) **ISSUANCE.** The department shall issue an alcohol beverage warehouse permit which authorizes the permittee to store and warehouse alcohol beverages in warehouse premises covered by the permit, subject to rules adopted by the department. The permit does not authorize the sale of any alcohol beverages.

(2) **ELIGIBILITY.** Alcohol beverage warehouse permits may be issued to any person qualified under s. 125.04 (5), except a person acting as an agent for or in the employ of another. Notwithstand-

ing s. 125.04 (5) (a) 5., a person is not required to complete a responsible beverage server training course to be eligible for a permit under this section.

(3) **FEE.** The annual fee for an alcohol beverage warehouse permit is \$100 for each place covered by a permit.

History: 1981 c. 79; 1993 a. 259.

SUBCHAPTER II

FERMENTED MALT BEVERAGES

125.25 Class "A" licenses. (1) Every municipal governing body may issue Class "A" licenses for the sale of fermented malt beverages from premises within the municipality. A Class "A" license authorizes retail sales of fermented malt beverages for consumption off the premises where sold and in original packages, containers and bottles. A license may be issued after July 1. That license shall expire on the following June 30.

(2) (a) Class "A" licenses may be issued to any person qualified under s. 125.04 (5), except a person acting as an agent for or in the employ of another.

(b) 1. Beginning on May 5, 1994, a Class "A" license may not be issued to a person holding a wholesaler's license issued under s. 125.28 or to a person who has a direct or indirect ownership interest in a premises operating under a wholesaler's license issued under s. 125.28.

2. Notwithstanding subd. 1., a person who holds a Class "A" license and a wholesaler's license issued under s. 125.28, both of which licenses were issued before May 5, 1994, may, subject to ss. 125.04 and 125.12, renew and continue to hold both licenses.

3. If a person holding a Class "A" license and a wholesaler's license under subd. 2. fails to renew either license, is denied renewal of either license under s. 125.12 or has either license suspended or revoked under s. 125.12, the person is subject to subd. 1.

(3) Class "A" licenses shall particularly describe the premises for which issued and are not transferable, except under s. 125.04 (12). A Class "A" license is subject to revocation for violation of any of the terms or provisions thereof.

(4) The fee for a Class "A" license shall be determined by the municipal governing body issuing the license. The fee for a license for less than 12 months shall be prorated according to the number of months or fraction thereof for which the license is issued.

History: 1981 c. 79; 1989 a. 253; 1993 a. 378.

125.26 Class "B" licenses. (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). 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).

(2) (a) Class "B" licenses may be issued to any person qualified under s. 125.04 (5). Such licenses may not be issued to any person acting as agent for or in the employ of another except that this restriction does not apply to a hotel or restaurant which is not a part of or located on the premises of any mercantile establishment, or to a bona fide club, society or lodge that has been in existence for at least 6 months before the date of application. A Class "B" license for a hotel, restaurant, club, society or lodge may be issued in the name of an officer who shall be personally responsible for compliance with this chapter.

(b) 1. Except as provided in s. 125.31, Class "B" licenses may not be issued to brewers.

125.26 ALCOHOL BEVERAGES

2. a. Except as provided in s. 125.29, beginning on May 5, 1994, a Class "B" license may not be issued to a person holding a wholesaler's license issued under s. 125.28 or to a person who has a direct or indirect ownership interest in a premises operating under a wholesaler's license issued under s. 125.28.

b. Notwithstanding subd. 2. a., a person who holds a Class "B" license and a wholesaler's license issued under s. 125.28, both of which licenses were issued before May 5, 1994, may, subject to ss. 125.04 and 125.12, renew and continue to hold both licenses.

c. If a person holding a Class "B" license and a wholesaler's license under subd. 2. b. fails to renew either license, is denied renewal of either license under s. 125.12 or has either license suspended or revoked under s. 125.12, the person is subject to subd. 2. a.

(2m) Notwithstanding s. 125.04 (3) (a) 3. and (9), a Class "B" license authorizes a person operating a hotel to furnish a registered guest who has attained the legal drinking age with a selection of fermented malt beverages in the guest's room which is not part of the Class "B" premises. Fermented malt beverages furnished under this subsection shall be furnished in original packages or containers and stored in a cabinet, refrigerator or other secure storage place. The cabinet, refrigerator or other secure storage place must be capable of being locked. The cabinet, refrigerator or other secure storage place shall be locked, or the fermented malt beverages shall be removed from the room, when the room is not occupied and when fermented malt beverages are not being furnished under this subsection. A key for the lock shall be supplied to a guest who has attained the legal drinking age upon request at registration. The hotel shall prominently display a price list of the fermented malt beverages in the hotel room. Fermented malt beverages may be furnished at the time the guest occupies the room, but for purposes of this chapter, the sale of fermented malt beverages furnished under this subsection is considered to occur at the time and place that the guest pays for the fermented malt beverages. Notwithstanding s. 125.32 (3), the guest may pay for the fermented malt beverages at any time if he or she pays in conjunction with checking out of the hotel. An individual who stocks or accepts payment for alcohol beverages under this subsection shall be the licensee, the agent named in the license if the licensee is a corporation or limited liability company or the holder of a manager's or operator's license or be supervised by one of those individuals.

(3) Class "B" licenses shall particularly describe the premises for which issued and are not transferable, except as provided in s. 125.04 (12). A Class "B" license is subject to revocation for violation of any of the terms or provisions thereof.

(3m) A municipality may issue a Class "B" license authorizing retail sales of fermented malt beverages on a railroad car while the railroad car is standing in a specified location in the municipality.

(4) The fee for a Class "B" license shall be determined by the municipal governing body issuing the license but the fee may not exceed \$100 per year. The fee for a license for less than 12 months shall be prorated according to the number of months or fraction thereof for which the license is issued.

(5) Class "B" licenses may be issued at any time for a period of 6 months in any calendar year, for which 50% of the license fee shall be paid. Such licenses are not renewable during the calendar year in which issued.

(6) 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 of the fee for the license shall be determined by the municipal governing body issuing the license but may not exceed \$10. An official or body authorized by a municipi-

pal governing body to issue temporary Class "B" licenses may, upon issuance of any temporary Class "B" license, authorize the licensee to permit underage persons to be on the premises for which the license is issued. 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 fermented malt beverages 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 fermented malt beverages from the stands while the fair is being held.

History: 1981 c. 79; 1985 a. 302; 1987 a. 249, 399; 1989 a. 253; 1991 a. 269; 1993 a. 112, 378

125.27 Class "B" permits. (1) SPORTS CLUBS. (a) The department shall issue Class "B" permits to clubs that are operated solely for the playing of golf or tennis and are commonly known as country clubs and to clubs that are operated solely for curling, ski jumping or yachting, if the club is not open to the general public and if no Class "B" licenses are issued by the governing body of the municipality in which the club is located. A Class "B" permit authorizes retail sales of fermented malt beverages to be consumed on the premises where sold. Persons holding a Class "B" permit may sell beverages containing less than 0.5% of alcohol by volume without obtaining a license under s. 66.053 (1).

(b) A club applying for a Class "B" permit under this subsection shall have occupied the premises on which it is located on the date of filing the application for a period of 6 months prior to that date.

(c) The annual fee for a Class "B" permit is \$100.

(d) Except as otherwise provided in this subsection, all sections of this chapter relating to Class "B" licenses apply to Class "B" permits issued under this subsection.

(2) VESSELS. (a) 1. The department may issue a Class "B" permit to any person qualified under s. 125.04 (5) authorizing the sale of fermented malt beverages for consumption on any vessel having a regular place of mooring located in any waters of this state as defined under s. 29.01 (9) and (11) if any of the following applies:

a. The vessel serves food and has an approved passenger capacity of not less than 40 individuals and the sale of intoxicating liquor and fermented malt beverages on the vessel accounts for less than 50% of the gross receipts of all of the food and beverages served on the vessel.

b. The vessel has an approved passenger capacity of not less than 100 individuals and the sale of intoxicating liquor and fermented malt beverages on the vessel accounts for less than 50% of the gross receipts of the vessel.

2. The department may issue the permit only if the vessel leaves its place of mooring while the sale of fermented malt beverages is taking place and if the vessel fulfills the requirement under par. (am). A permit issued under this paragraph also authorizes the permittee to store fermented malt beverages purchased for sale on the vessel on premises owned or leased by the permittee and located near the vessel's regular place of mooring. The permittee shall describe on the permit application under s. 125.04 (3) (a) 3. the premises where the fermented malt beverages will be stored. The premises shall be open to inspection by the department upon request.

(am) An applicant for a permit under par. (a) shall provide proof that the vessel is certified by the U.S. coast guard, classed by the American bureau of shipping or covered by liability insurance.

(b) Persons holding a permit under par. (a) may sell beverages containing less than 0.5% of alcohol by volume without obtaining a license under s. 66.053 (1).

(c) The annual fee for the permit under par. (a) is \$100.

(d) Except as provided in this subsection, all sections of this chapter applying to Class "B" licenses apply to Class "B" permits issued under this subsection.

(e) A person holding a permit under par. (a) shall keep all invoices relating to the purchase of fermented malt beverages for sale on a vessel at the location where the fermented malt beverages are customarily stored.

History: 1981 c. 79, 202; 1983 a. 27 s. 2202 (38); 1985 a. 302; 1987 a. 91; 1989 a. 16, 252, 253, 359

125.275 Industrial fermented malt beverages permit. (1) The department may issue an industrial fermented malt beverages permit which authorizes the permittee to purchase and use fermented malt beverages for industrial purposes only. Such permits may be issued only to persons who prove to the department that they use alcohol for industrial purposes.

(2) (a) Industrial fermented malt beverages permits may be issued to any person qualified under s. 125.04 (5), except a person acting as agent for or in the employ of another. Notwithstanding s. 125.04 (5) (a) 5., a person is not required to complete a responsible beverage server training course to be qualified for a permit under this section.

(b) 1. Beginning on May 5, 1994, an industrial fermented malt beverages permit may not be issued to a person holding a wholesaler's license issued under s. 125.28 or to a person who has a direct or indirect ownership interest in a premises operating under a wholesaler's license issued under s. 125.28.

2. Notwithstanding subd. 1., a person who holds an industrial fermented malt beverages permit and a wholesaler's license issued under s. 125.28, both of which permit and license were issued before May 5, 1994, may, subject to ss. 125.04 and 125.12, renew and continue to hold both the permit and license.

3. If a person holding an industrial fermented malt beverages permit and a wholesaler's license under subd. 2. fails to renew either permit or license, is denied renewal of either permit or license under s. 125.12 or has either permit or license suspended or revoked under s. 125.12, the person is subject to subd. 1.

(3) Shipments of industrial fermented malt beverages shall be conspicuously labeled "for industrial purposes" and shall meet other requirements which the department prescribes by rule.

(4) The fee for an industrial fermented malt beverages permit is \$25, and that permit is valid for 2 years, except that, if a person applies for the permit after the beginning of the permit period, the permit is valid until the end of the permit period.

History: 1985 a. 29; 1989 a. 253; 1993 a. 259, 378.

125.28 Wholesalers' licenses. (1) Every municipal governing body may issue licenses to wholesalers for the sale of fermented malt beverages from premises within the municipality. A wholesaler's license authorizes sales of fermented malt beverages only in original packages or containers to retailers or wholesalers, not to be consumed in or about the premises where sold. In the case of a foreign corporation or foreign limited liability company whose wholesale premises is located outside of this state, the wholesaler's license shall be issued by the governing body of the municipality in which some part of the wholesaler's business is conducted in this state. No additional license or permit is required for the solicitation of orders for sale to or by licensed wholesalers.

(2) (a) A wholesaler's license may be issued to any person qualified under s. 125.04 (5) except a person acting as an agent for, or in the employ of, another person. Notwithstanding s. 125.04 (5) (a) 5., a person is not required to complete a responsible beverage server training course to be qualified for a license under this section.

(b) Except as provided in par. (c) and s. 125.29, beginning on May 5, 1994, a wholesaler's license may not be issued to any of the following:

1. A person holding one or more of the following licenses or permits:

- A Class "A" license issued under s. 125.25.
- A Class "B" license issued under s. 125.26.
- A Class "B" permit issued under s. 125.27.

d. An industrial fermented malt beverages permit issued under s. 125.275.

2. A person who has a direct or indirect ownership interest in a premises operating under one or more of the licenses or permits listed in par. (a) 1. to 4. [subd. 1. a. to d.]

NOTE: The bracketed language indicates the correct cross-reference.

(c) 1. A person who holds a wholesaler's license and a license or permit specified in par. (b) 1., all of which licenses or permits were issued before May 5, 1994, may, subject to ss. 125.04 and 125.12, renew and continue to hold all of the licenses or permits.

2. If a person holding a wholesaler's license and a license or permit under subd. 1. fails to renew a license or permit, is denied renewal of a license or permit under s. 125.12 or has one of the licenses or permits suspended or revoked under s. 125.12, the person is subject to par. (b) with respect to holding a license or permit of that type after the failure or denial of renewal or the revocation or suspension of the license or permit.

(3) Wholesalers' licenses shall particularly describe the premises for which issued and are not transferable, except as provided in s. 125.04 (12). A wholesaler's license is subject to revocation for violation of any of the terms or provisions thereof.

(4) The amount of the license fee shall be determined by the municipal governing body issuing the license but may not exceed \$25 per year or fractional part thereof.

History: 1981 c. 79; 1989 a. 31, 253; 1993 a. 112, 259, 378, 491

125.29 Brewers. (1) **PERMIT** No person may operate as a brewer unless that person obtains a permit from the department. Each wholesaler required to register under s. 139.09 shall obtain a permit under this subsection. The fee for a permit under this subsection is \$25, and that permit is valid for 2 years, except that, if a person applies for the permit after the beginning of the permit period, the permit is valid until the end of the permit period.

(2) **LIMITATION** Except as provided in s. 125.31, no person holding a Class "B" license or permit issued under this chapter may register as a brewer.

(3) **ACTIVITIES** A brewer may manufacture, possess and store fermented malt beverages on the brewery premises and transport fermented malt beverages between the brewery premises and any depot or warehouse maintained by the brewer for which the brewer has a wholesaler's license issued under s. 125.28.

(4) **MULTIPLE LICENSES** Notwithstanding ss. 125.26 (2) and 125.28 (2), a brewer may hold a wholesaler's license issued under s. 125.28 and a Class "B" license as provided under s. 125.31.

History: 1981 c. 79; 1989 a. 253; 1993 a. 378

125.30 Out-of-state shippers' permits; delivery to wholesalers. (1) The department shall issue out-of-state shippers' permits which authorize the permittee to ship fermented malt beverages only to holders of a wholesaler's license issued under s. 125.28. No person may receive fermented malt beverages in this state which have been directly shipped from outside this state by any person other than the holder of a permit issued under this section. All shipments of fermented malt beverages from outside this state to a wholesaler of fermented malt beverages in this state shall be unloaded in and distributed from the wholesaler's warehouse in this state.

(2) The application for an out-of-state shipper's permit and the permit shall be on forms prescribed by the department which shall contain provisions determined by the department as necessary to effectuate the purposes of ss. 139.01 to 139.25 and shall include a provision that the permittee agrees:

(a) To comply with s. 139.05 relating to filing a bond, filing returns, paying taxes and record keeping;

(b) To permit inspections and examinations of the permittee's premises and records by the department and its duly authorized employes, as authorized under s. 139.08 (4); and

(c) To pay the expenses reasonably attributable to such inspections and examinations made within the United States.

(3) Out-of-state shippers' permits may be issued to any person qualified under s. 125.04 (5). Notwithstanding s. 125.04 (5) (a), natural persons obtaining out-of-state shippers' permits are not required to be residents of this state. Notwithstanding s. 125.04 (5) (a) 5., a person is not required to complete a responsible beverage server training course to be qualified for a permit under this section. Notwithstanding s. 125.04 (6), corporations or limited liability companies obtaining out-of-state shippers' permits are not required to appoint agents.

(4) The fee for an out-of-state shipper's permit is \$50.

(5) The department may revoke or suspend an out-of-state shipper's permit for such time as the department determines, if the permittee violates any provision of the application or ss. 139.01 to 139.25.

History: 1981 c. 79; 1989 a. 253; 1993 a. 112, 259, 491

125.31 Multiple licenses and permits; brewers.

(1) Notwithstanding ss. 125.29 (2) and 125.33 (1), a brewer may maintain and operate a place on brewery premises and a place on real estate owned by the brewer or a subsidiary or affiliate corporation or limited liability company for the sale of fermented malt beverages for which a Class "B" license is required for each place, but not more than 2 such Class "B" licenses shall be issued to any brewer. Notwithstanding ss. 125.29 (2) and 125.33 (1), a brewer may also own, maintain or operate places for the sale of fermented malt beverages at the state fair park or on any county fairgrounds located in this state. Any Class "B" license necessary in connection with this subsection shall be issued to the brewer. Notwithstanding s. 125.33 (1), a brewer may own the furniture, fixtures, fittings, furnishings and equipment on such premises and shall pay any license fee or tax required for the operation of the premises.

(2) A brewer may own, maintain or operate depots and warehouses from which sales of fermented malt beverages, not for consumption in or about the premises where sold, may be made in original packages to retailers and wholesalers. A separate wholesaler's license is required for each depot or warehouse owned, maintained or operated.

(3) A brewer may sell fermented malt beverages in the original packages or containers, not to be consumed on the premises where sold:

(a) To retailers and wholesalers, if the brewer obtains a wholesaler's license; or

(b) To persons other than licensees and permittees, if the brewer obtains a Class "A" license.

History: 1981 c. 79; 1989 a. 253; 1991 a. 32; 1993 a. 112, 213, 215, 491.

125.315 Evading provisions of law by giving away fermented malt beverages. (1) No person may give away any fermented malt beverages or use any other means to evade any law of this state relating to the sale of fermented malt beverages.

(2) A person who violates sub. (1) may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

History: 1989 a. 253.

125.32 General restrictions and requirements.

(1) **MANAGERS' LICENSES; CLASS "B" PREMISES** (a) If a municipal governing body elects to issue managers' licenses under s. 125.18, no person may manage premises operating under a Class "B" license or permit, unless the person is the licensee or permittee, an agent of a corporation or limited liability company appointed as required by s. 125.04 (6) or the holder of a manager's license. A manager's license issued in respect to a vessel under s. 125.27 (2) is valid outside the municipality that issues it. A person manages Class "B" premises if that person has responsibility or authority for:

1. Personnel management of all employes, whether or not the person is authorized to sign employment contracts;

2. The terms of contracts for the purchase or sale of goods or services, whether or not the person is authorized to sign the contracts; or

3. The daily operations of the Class "B" premises.

(b) The municipal governing body may, by ordinance, define factors in addition to those listed in par. (a) which constitute management of Class "B" premises.

(2) **OPERATORS' LICENSES; CLASS "A" OR CLASS "B" PREMISES** Except as provided under sub. (3) (b) and s. 125.07 (3) (a) 10., no premises operated under a Class "A" or Class "B" license or permit may be open for business unless there is upon the premises the licensee or permittee, the agent named in the license or permit if the licensee or permittee is a corporation or limited liability company, or some person who has an operator's license and who is responsible for the acts of all persons serving any fermented malt beverages to customers. An operator's license issued in respect to a vessel under s. 125.27 (2) is valid outside the municipality that issues it. For the purpose of this subsection, any person holding a manager's license under s. 125.18 or any member of the licensee's or permittee's immediate family who has attained the age of 18 shall be considered the holder of an operator's license. No person, including a member of the licensee's or permittee's immediate family, other than the licensee, permittee or agent may serve fermented malt beverages in any place operated under a Class "A" or Class "B" license or permit unless he or she has an operator's license or is at least 18 years of age and is under the immediate supervision of the licensee, permittee, agent or a person holding an operator's license, who is on the premises at the time of the service.

(2m) **USE BY ANOTHER PROHIBITED** (a) No person may allow another to use his or her Class "A" or Class "B" license or permit to sell alcohol beverages.

(b) The license or permit of a person who violates par. (a) shall be revoked.

(3) **CLOSING HOURS** (a) No premises for which a Class "B" license or permit is issued may remain open between the hours of 2 a.m. and 6 a.m., except as provided in this paragraph and par. (c). On Saturday and Sunday, the closing hours shall be between 2:30 a.m. and 6 a.m. On January 1 premises operating under a Class "B" license or permit are not required to close.

(am) Between 12 midnight and 6 a.m. no person may sell fermented malt beverages on Class "B" licensed premises in an original unopened package, container or bottle or for consumption away from the premises.

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

(c) Hotels and restaurants the principal business of which is the furnishing of food and lodging to patrons, bowling centers, indoor horseshoe-pitching facilities, curling clubs, golf courses and golf clubhouses may remain open for the conduct of their regular business but may not sell fermented malt beverages during the hours specified in par. (a).

(d) A municipality may, by ordinance, impose more restrictive hours than those provided in par. (am) or (b), but may not impose different hours than those provided in par. (a) or (c).

(3m) **LIMITATIONS ON OTHER BUSINESS; CLASS "B" PREMISES** No Class "B" license or permit may be granted for any premises where any other business is conducted in connection with the premises, except that this restriction does not apply if the premises for which the Class "B" license or permit is issued is connected to premises where other business is conducted by a secondary doorway that serves as a safety exit and is not the primary entrance to the Class "B" premises. No other business may be conducted on

premises operating under a Class "B" license or permit. These restrictions do not apply to any of the following:

- (a) A hotel.
- (b) A restaurant, whether or not it is a part of or located in any mercantile establishment.
- (c) A combination grocery store and tavern.
- (d) A combination sporting goods store and tavern in towns, villages and 4th class cities.
- (e) A combination novelty store and tavern.
- (f) A bowling center or recreation premises.
- (g) A club, society or lodge that has been in existence for 6 months or more prior to the date of filing application for the Class "B" license or permit.

(5) SIGNS NEAR TAPS AND BRANDS ON TAP, CLASS "B" PREMISES Every Class "B" licensee or permittee selling or offering for sale draught fermented malt beverages shall display a sign on or near each tap or faucet disclosing the brand of fermented malt beverage drawn from the tap or faucet and the name of its brewer. No Class "B" licensee or permittee may substitute any other brand of fermented malt beverage in place of the brand designated on the sign with the intent to defraud or deceive the customer.

(6) LIMITATIONS ON BEVERAGES ON WHOLESALE AND RETAIL PREMISES. (a) No person, including a fermented malt beverage licensee or permittee or an agent, servant or employe of such licensees or permittees, may possess on the premises covered by a retail or wholesale fermented malt beverages license or permit any alcohol beverages not authorized by law for sale on the premises.

(b) No fermented malt beverage licensee or permittee may keep any beverages of an alcoholic content prohibited by federal law on the premises covered by the license or permit.

(7) LABELS. (a) No fermented malt beverages may be sold, offered or exposed for sale, kept in possession with intent to sell, or served on any premises for which a license or permit for the sale of fermented malt beverages has been issued unless each barrel, keg, cask, bottle or other container bears a label or other identification with the name and address of the brewer. The possession of any fermented malt beverages which are not so identified on any premises for which a license or permit for the sale of fermented malt beverages has been issued is prima facie evidence that the fermented malt beverages are possessed with intent to sell, offer for sale, display for sale or give away.

(b) No container containing fermented malt beverages may be sold, offered or exposed for sale, kept in possession with intent to sell or served on any premises for which a license or permit for the sale of fermented malt beverages has been issued unless there is a label or other identification on the container bearing a statement of its contents in fluid ounces in plain legible type.

History: 1981 c. 79; 1983 a. 27, 74, 192, 452; 1985 a. 28, 33, 221, 317; 1987 a. 27, 121; 1989 a. 253; 1991 a. 28, 39, 315; 1993 a. 112.

125.33 Restrictions on dealings between brewers, wholesalers and retailers. (1) FURNISHING THINGS OF VALUE

(a) Except as provided in this section and s. 125.31, no brewer or wholesaler may furnish, give, lend, lease or sell any furniture, fixtures, fittings, equipment, money or other thing of value to any campus or Class "B" licensee or permittee, or to any person for the use, benefit or relief of any campus or Class "B" licensee or permittee, or guarantee the repayment of any loan or the fulfillment of any financial obligation of any campus or Class "B" licensee or permittee. Such actions may not be taken by the brewer or wholesaler directly or indirectly, or through a subsidiary or affiliate corporation or limited liability company, or by any officer, director, stockholder, partner or member thereof.

(b) No brewer or wholesaler may enter into any agreement whereby any campus or Class "B" licensee or permittee is required to purchase the fermented malt beverages of any brewer to the exclusion of those manufactured by other brewers. Such contracts may not be entered into by the brewer or wholesaler,

directly or indirectly, or through a subsidiary or an affiliate corporation or limited liability company, or by any officer, director, stockholder, partner or member thereof.

(2) EXCEPTIONS Notwithstanding the prohibitions in sub. (1), a brewer or wholesaler may:

(a) Give to any campus or Class "B" licensee or permittee, for placement inside the premises, signs, clocks or menu boards with an aggregate value of not more than \$150. If a gift of any item would cause the \$150 limit to be exceeded, the recipient shall pay the brewer or wholesaler the amount of the item's value in excess of \$150. Each recipient shall keep an invoice or credit memo containing the name of the donor and the number and value of items received under this paragraph. The value of an item is its cost to the donor. Each recipient shall make the records kept under this paragraph available to the department for inspection upon request.

(b) Give to any campus or Class "B" licensee or permittee any of the following:

1. Fermented malt beverage tap knobs.
2. Signs made from paper or cardboard for placement inside the premises.

(c) Sell at fair market value to a campus or Class "B" licensee or permittee miscellaneous advertising matter, the items specified under pars. (a) and (b), nonmechanical coolers and tavern supply items used in the consumption of food or alcohol beverages.

(d) Sell to a campus or Class "B" licensee or permittee at fair market value equipment designed and intended to preserve and maintain the sanitary dispensing of fermented malt beverages or any services necessary to maintain this kind of equipment. A brewer or wholesaler shall charge the same price per unit of equipment to each campus or Class "B" licensee or permittee making the same or a similar purchase, and shall charge the same rate to each campus or Class "B" licensee or permittee purchasing maintenance services under this subdivision. Each brewer or wholesaler shall keep records of each transaction under this subdivision and shall make the records available to the department upon request.

(e) Sell at fair market value or maintain for a fair consideration dispensing equipment such as direct draw boxes, novelty boxes, coil boxes, beer storage boxes or tapping equipment, none of which may include bar additions, to campuses or Class "B" licensees and permittees for cash or on credit for not more than 2 years. Credit sales of equipment shall be evidenced by a written contract stating the terms, conditions and monthly payments. Within 10 days after the execution of the contract, the seller shall record the contract with the register of deeds for the county in which the equipment is installed.

(f) Sell consumable merchandise intended for resale, including the sale or loan of containers thereof, to campuses and Class "B" licensees and permittees in the regular course of business.

(g) Purchase advertising and other services and rights for a fair consideration from any corporate Class "B" licensee or permittee who is a member of a regularly established athletic league and whose principal business is the ownership, maintenance and operation of a professional athletic team playing a regular schedule of games and whose principal source of income is derived from the sale of tickets to games played by such teams.

(h) Contribute money or other things of value to or for the benefit of a nonprofit corporation, exempt under section 501 (c) (3) of the internal revenue code, as defined in s. 71.22 (4), which is conducting festivals of limited duration in a 1st class city if the festivals are sponsored and endorsed in whole or part by a municipal corporation.

(hm) Contribute money or other things of value to or for a nonprofit corporation which conducts an autumn ethnic festival of limited duration in a 2nd class city that had a population in 1986 of at least 49,000 but less than 50,000, if that festival is sponsored and endorsed in whole or part by that municipal corporation.

(i) Lease or lend furniture, fixtures, fittings and equipment to any person in possession of a Class "B" premises where the furni-

ture, fixtures, fittings and equipment were installed on the Class "B" premises prior to May 24, 1941. Any brewer or wholesaler who repossesses any furniture, fixtures, fittings or equipment leased, lent or sold to any Class "B" licensee or permittee may sell them to any Class "B" licensee or permittee, for cash on delivery only, and shall deliver a bill of sale to the purchaser. Any application for a Class "B" license or permit after May 24, 1941, shall contain an affidavit by the applicant, setting forth the ownership of the fixtures in or attached to the premises and if the fixtures are not owned by the applicant, the manner, terms and conditions under which the fixtures are held.

(j) Contribute money or other items of value to, or purchase advertising from, an institution of higher education which is exempt under section 501 (c) (3) of the internal revenue code, as defined in s. 71.22 (4), if the contribution or purchase is for a purpose other than the use, benefit or relief of premises or operations for the sale of fermented malt beverages and is not contingent either upon the use of the product of the brewer or wholesaler by the institution or upon an agreement by the institution wholly or partly to exclude from sale the products of a competing brewer or wholesaler.

(k) Contribute money or other items of value, or purchase advertising from, a campus if the contribution or purchase is for a purpose other than the use, benefit or relief of premises or operations for the sale of fermented malt beverages and is not contingent either upon the use of the product of the brewer or wholesaler by the campus or upon an agreement by the campus partly or wholly to exclude from sale the products of a competing brewer or wholesaler.

(L) Purchase advertising for a fair consideration from a bona fide national or statewide trade association which derives its principle income from membership dues of Class "B" licensees.

(m) Purchase products from a Class "B" licensee or permittee.

(n) 1. Provide, in this state, reasonable business entertainment that is deductible under section 162 of the internal revenue code to a Class "B" licensee or permittee by doing any of the following:

a. Providing tickets or free admissions to athletic events, concerts or similar activities.

b. Providing food and beverages and paying for local ground transportation in connection with activities described in subd. 1. a. and business meetings.

2. Notwithstanding subd. 1., no brewer or wholesaler may provide business entertainment to a Class "B" licensee or permittee under subd. 1. in one day that has a value exceeding \$75.

(2m) EXCEPTION FOR GOLF COURSE Notwithstanding the prohibitions in sub. (1), a wholesaler may have an interest in a corporation that owns and operates a golf course and leases premises on the golf course to the holder of a Class "B" license or permit for the premises, if the wholesaler's license and the Class "B" license or permit were originally issued to the corporation and to the Class "B" licensee or permittee before June 1, 1981. The wholesaler's license and the Class "B" license or permit shall be renewed annually upon application, unless revoked under s. 125.12. An application for a wholesaler's license to which this subsection applies shall have attached to it an affidavit stating the applicant's interest in the Class "B" premises.

(2s) EXCEPTION FOR RETAIL TRADE ASSOCIATION CONTRIBUTIONS Notwithstanding the prohibitions in sub. (1), a brewer that produces 350,000 or more barrels of fermented malt beverages annually may contribute money or other things of value to a bona fide national or statewide trade association which derives its principle income from membership dues of Class "B" licensees.

(3) EXEMPTION FOR CERTAIN REAL ESTATE The restrictions contained in sub. (1) do not apply to real estate owned in whole or part on May 24, 1941, by any brewer or wholesaler, directly or indirectly, or through or by a subsidiary or affiliate corporation, or by any officer, director, stockholder, partner or trustee for any of the foregoing, or upon which any of the foregoing held a valid lien

on May 24, 1941, or to any real estate owned in whole or part by any of the foregoing upon which there is or may be a hotel of 100 or more rooms.

(4) COMMERCIAL CREDIT Nothing in sub. (1) affects the extension of usual and customary commercial credits for products of the fermented malt beverages industry actually sold and delivered.

(5) VIOLATIONS Any licensee or permittee who is a party to any violation of sub. (1) or who receives the benefits thereof shall be guilty of the violation.

(6) VOLUME DISCOUNTS TO RETAILERS Wholesalers of fermented malt beverages shall charge the same price to all campuses and retail licensees and permittees making purchases in similar quantities. Any discount offered on fermented malt beverages shall be delivered to the retailer in a single transaction and single delivery, and on a single invoice.

(7) RETAIL PURCHASE CREDIT RESTRICTIONS (a) *Restrictions on sales.* 1. No fermented malt beverages retail licensee or permittee may:

a. Receive, purchase or acquire fermented malt beverages from any licensee except for cash or credit for a period of not more than 15 days.

b. Receive, purchase or acquire fermented malt beverages from any licensee or permittee if at the time of the receipt, purchase or acquisition he or she is indebted to any licensee or permittee for fermented malt beverages received, purchased, acquired or delivered more than 15 days earlier.

2. No campus or fermented malt beverage retail licensee or permittee may receive any fermented malt beverages on consignment or on any basis other than a bona fide sale.

(b) *Restrictions on issuance of licenses and permits.* No Class "A" or Class "B" license or permit may be issued to a person having an indebtedness for fermented malt beverages outstanding for more than 15 days. In each application for a Class "A" or Class "B" license or permit, the applicant shall state whether he or she has indebtedness for fermented malt beverages to any licensee or permittee which has been outstanding for more than 15 days.

(c) *Wholesalers holding retail licenses and permits.* For purposes of this subsection, a person holding both a fermented malt beverage wholesale license and a fermented malt beverage retail license is deemed a fermented malt beverage retailer.

(d) *Penalties.* A retail licensee or permittee who violates this subsection is subject to the penalties under s. 125.11 except that he or she may not be imprisoned. No brewer or wholesaler may be subjected to any penalty as the result of the sale of fermented malt beverages to a campus or retail licensee or permittee when purchased by the campus or retail licensee or permittee in violation of this subsection.

(8) EXCLUSIVE SALES BY WHOLESALER A wholesaler may not sell or offer to sell a brand of fermented malt beverages exclusively to one Class "A" licensee or to a group of Class "A" licensees affiliated through common ownership, management or control, unless the brand of fermented malt beverages is produced by a brewer which produces less than 300,000 barrels of fermented malt beverages in a calendar year.

(9) CAMPUSES AND RETAILERS TO PURCHASE FROM WHOLESALERS No campus or retail licensee or permittee may purchase or possess fermented malt beverages purchased from any person other than a wholesaler holding a license under this chapter for the sale of fermented malt beverages. Any person who violates this subsection may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

History: 1981 c. 79, 202; 1983 a. 26, 67, 68, 182, 192, 538; 1985 a. 15, 135; 1987 a. 308; 1989 a. 31, 253; 1991 a. 39; 1993 a. 112, 301.

Selective discount ban under 66.054 (8a) (j) [now 125.33 (6)] is constitutional *State v. Kay Distributing Co., Inc.* 110 W. (2d) 29, 327 NW (2d) 188 (Ct. App. 1982).

Sub. (1) (a) prohibits person from having interest in real estate leased to Class "B" licensee while also being director, officer or shareholder of brewery. 77 Atty. Gen. 76.

SUBCHAPTER III

INTOXICATING LIQUOR

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

(b) No member of the municipal governing body may sell or offer to sell to any person holding or applying for a license any bond, material, product or thing which may be used by the licensee in carrying on the business subject to licensure.

(c) 1. Except as provided in subd. 2., the municipal governing body, or the duly authorized committee of a city council, shall meet not later than May 15 annually, and be in session from day to day thereafter so long as may be necessary, for the purpose of acting upon license applications filed with it on or before April 15. The governing body or committee shall grant, issue or deny each application not later than June 15 for the ensuing license year. Licenses may be granted for issuance at a later date when the applicant has complied with all requirements for the issuance of the license. The governing body or committee may accept and act upon any application filed at any other time. The governing body or committee may not deny an application for renewal of an existing license unless a statement of the reason for the denial is included in its clerk's minutes.

2. The governing body 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.

(2) RETAIL "CLASS A" LICENSES. (a) A "Class A" license authorizes the retail sale of intoxicating liquor for consumption off the premises where sold and in original packages and containers.

(b) Except as provided under s. 125.69, "Class A" licenses may be issued to any person qualified under s. 125.04 (5), except a person acting as an agent for or in the employ of another.

(c) "Class A" licenses shall particularly describe the premises for which issued and are not transferable, except as provided in s. 125.04 (12).

(d) The annual fee for a "Class A" license shall be determined by the municipal governing body and shall be the same for all "Class A" licenses, except that the minimum fee is \$50 and the maximum fee is \$500.

(3) RETAIL "CLASS B" LICENSES. (a) A "Class B" license authorizes the retail sale of intoxicating liquor for consumption on the premises where sold by the glass and not in the original package or container. In addition, wine may be sold in the original package or container in any quantity to be consumed off the premises where sold. This paragraph does not apply in municipalities in which the governing body elects to come under par. (b) or to a winery that has been issued a "Class B" license. Paragraph (am) applies to all wineries that have been issued a "Class B" license.

(am) A "Class B" license issued to a winery authorizes the sale of wine to be consumed by the glass or in opened containers only on the premises where sold and also authorizes the sale of wine in the original package or container to be consumed off the premises where sold, but does not authorize the sale of fermented malt beverages or any intoxicating liquor other than wine.

(b) In all municipalities electing by ordinance to come under this paragraph, a retail "Class B" license authorizes the sale of

intoxicating liquor to be consumed by the glass only on the premises where sold and also authorizes the sale of intoxicating liquor in the original package or container, in multiples not to exceed 4 liters at any one time, and to be consumed off the premises where sold. Wine, however, may be sold for consumption off the premises in the original package or otherwise in any quantity. This paragraph does not apply to a winery that has been issued a "Class B" license. Paragraph (am) applies to all wineries that have been issued a "Class B" license.

(bm) Notwithstanding pars. (a) and (b) and s. 125.04 (3) (a) 3. and (9), a "Class B" license authorizes a person operating a hotel to furnish a registered guest who has attained the legal drinking age with a selection of intoxicating liquor in the guest's room which is not part of the "Class B" premises. Intoxicating liquor furnished under this paragraph shall be furnished in original packages or containers and stored in a cabinet, refrigerator or other secure storage place. The cabinet, refrigerator or other secure storage place must be capable of being locked. The cabinet, refrigerator or other secure storage place shall be locked, or the intoxicating liquor shall be removed from the room, when the room is not occupied and when intoxicating liquor is not being furnished under this paragraph. A key for the lock shall be supplied to a guest who has attained the legal drinking age upon request at registration. The hotel shall prominently display a price list of the intoxicating liquor in the hotel room. Intoxicating liquor may be furnished at the time the guest occupies the room, but for purposes of this chapter, the sale of intoxicating liquor furnished under this paragraph is considered to occur at the time and place that the guest pays for the intoxicating liquor. Notwithstanding s. 125.68 (4) (c), the guest may pay for the intoxicating liquor at any time if he or she pays in conjunction with checking out of the hotel. An individual who stocks or accepts payment for alcohol beverages under this paragraph shall be the licensee, the agent named in the license if the licensee is a corporation or limited liability company or the holder of a manager's or operator's license or be supervised by one of those individuals.

(c) Except as provided under s. 125.69, a "Class B" license may be issued to any person qualified under s. 125.04 (5), except a person acting as an agent for or in the employ of another.

(d) "Class B" licenses shall particularly describe the premises for which issued and are not transferable, except as provided in s. 125.04 (12).

(dm) A municipality may issue a "Class B" license authorizing retail sales of intoxicating liquor on a railroad car while the railroad car is standing in a specified location in the municipality.

(e) The annual fee for a "Class B" license shall be determined by the municipal governing body and shall be the same for all "Class B" licenses, except that the minimum fee shall be \$50 and the maximum fee shall be \$500. The minimum fee shall not apply to licenses issued to bona fide clubs and lodges situated and incorporated in the state for at least 6 years.

(f) A "Class B" license may be issued only to a holder of a retail Class "B" license to sell fermented malt beverages unless the "Class B" license is the kind of "Class B" license specified under par. (am).

(3m) RETAIL "CLASS C" LICENSES. (a) In this subsection "barroom" means a room that is primarily used for the sale or consumption of alcohol beverages.

(b) A "Class C" license authorizes the retail sale of wine by the glass or in an opened original container for consumption on the premises where sold.

(c) A "Class C" license may be issued to a person qualified under s. 125.04 (5) for a restaurant in which the sale of alcohol beverages accounts for less than 50% of gross receipts and which does not have a barroom if the municipality's quota under sub. (4) prohibits the municipality from issuing a "Class B" license to that person. A "Class C" license may not be issued to a foreign corpo-

125.51 ALCOHOL BEVERAGES

93-94 Wis. Stats. 2474

ration, a foreign limited liability company or a person acting as agent for or in the employ of another.

(d) A "Class C" license shall particularly describe the premises for which it is issued.

(e) The annual fee for a "Class C" license shall be determined by the municipal governing body issuing the license. The fee shall not exceed \$100 and shall be the same for all "Class C" licenses.

(4) QUOTAS ON "CLASS B" LICENSES (a) In this subsection:

1. "License" means a retail "Class B" license issued under sub. (3) but does not include a "Class B" license issued to wineries under sub. (3) (am).

2. "Population" means the number of inhabitants in the previous year determined by the department of administration under s. 16.96 (2) for purposes of revenue sharing distribution.

3. "Quota" means the number of licenses which a municipality may grant or issue.

(b) Except as provided in pars. (c) and (d), the quota of each municipality is the number of licenses issued in good faith by the municipality under s. 176.05 (21) (h), 1975 stats., plus whichever of the following is the largest:

1. One license per 500 population or fraction thereof.

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

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

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

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

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

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

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

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

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

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

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

quota of a municipality is permanently increased by the number of licenses it issues under this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) RETAIL "CLASS B" PERMITS (a) *Sports clubs.* 1. The department shall issue "Class B" permits to clubs which are operated solely for the playing of golf or tennis and are commonly known as country clubs and to clubs which are operated solely for curling, ski jumping or yachting. A "Class B" permit may be issued only to a club that is not open to the general public and that is located in a municipality that does not issue "Class B" licenses or to a club located in a municipality that issues "Class B" licenses, if the club is not open to the general public, was not issued a license under s. 176.05 (4a), 1979 stats., and does not currently hold a "Class B" license. The permits may be issued by the department without regard to any local option exercised under s. 125.05 and without regard to any quota under sub. (4). The holder of a "Class B" permit may sell intoxicating liquor for consumption by the glass and not in the original package or container on the premises covered by the permit.

2. Except as provided in this paragraph, all sections of this chapter applying to retail "Class B" licenses apply to "Class B" permits issued under this paragraph.

3. "Class B" permits may be issued only to a club which has occupied the premises upon which it is located for a period of at least 6 months prior to the date of application.

4. The department may annually issue a "Class B" permit to any club organized to engage in sports similar to curling, golf, tennis or yachting which held a license from July 1, 1950, to June 30, 1951, as long as it is continuously operated under substantially the same circumstances under which it operated during the year beginning July 1, 1950, if the club is located in a municipality that does not issue "Class B" licenses.

5. The annual fee for the permit is \$300.

(b) *Public facilities and airports.* 1. In this paragraph:

a. "Arena" means a public building with a capacity of 4,000 or more persons used principally for the conduct of sports events.

b. "Coliseum" means a public multipurpose facility designed for activities of the public, which may include but are not limited to sports events, trade shows, conventions, seminars, concerts, banquets and fairs.

c. "Concessionaire" means a person designated by resolution of the governing body of a county or municipality owning an airport or public facility to operate premises in the airport or public facility.

d. "Public facility" means an arena, coliseum, related exposition facilities or center for the performing or visual arts.

e. "Related exposition facility" means buildings constructed on the same grounds as a coliseum and used for the same or ancillary functions.

2. The department shall issue a "Class B" permit to a concessionaire conducting business in an operating airport or public facility, if the county or municipality which owns the airport or public facility has, by resolution of its governing body, annually applied to the department for the permit. The permit authorizes the sale of intoxicating liquor for consumption by the glass and not in the original package or container on the premises.

3. Except as provided in this paragraph, all sections of this chapter relating to "Class B" licenses apply to "Class B" permits issued under this paragraph.

4. The department may not issue a permit under this paragraph to any county or municipality or officer or employe thereof.

5. The fee for a permit is \$300.

(c) *Vessels.* 1. The department may issue a "Class B" permit to any person qualified under s. 125.04 (5) authorizing the sale of intoxicating liquor for consumption on any vessel having a regular place of mooring located in any waters of this state as defined under s. 29.01 (9) and (11) if the vessel either serves food and has an approved passenger capacity of not less than 40 individuals and the sale of intoxicating liquor and fermented malt beverages on the vessel accounts for less than 50% of the gross receipts of all of the food and beverages served on the vessel or if the vessel has an approved passenger capacity of at least 100 individuals and the sale of intoxicating liquor and fermented malt beverages on the vessel accounts for less than 50% of the gross receipts of the vessel. The department may issue the permit only if the vessel leaves its place of mooring while the sale of intoxicating liquor is taking place and if the vessel fulfills the requirement under par. (c) 1m. A permit issued under this subdivision also authorizes the permittee to store intoxicating liquor purchased for sale on the vessel on premises owned or leased by the permittee and located near the vessel's regular place of mooring. The permittee shall describe on the permit application under s. 125.04 (3) (a) 3 the premises where the intoxicating liquor will be stored. The premises shall be open to inspection by the department upon request.

1m. An applicant for a permit under par. (a) shall provide proof that the vessel is certified by the U.S. coast guard, classed by the American bureau of shipping or covered by liability insurance.

2. The annual fee for the permit under subd. 1. is \$300.

3. Except as provided in this paragraph, all provisions of this chapter applying to "Class B" licenses apply to "Class B" permits issued under subd. 1.

4. A person holding a permit under subd. 1. shall keep all invoices relating to the purchase of intoxicating liquor for sale on a vessel at the location where the intoxicating liquor is customarily stored.

(7) *SALES IN NAME OF LICENSEE OR PERMITTEE.* Every holder of a retail license or permit for the sale of intoxicating liquor shall purchase, advertise and sell intoxicating liquor in the holder's name and under the holder's license or permit only.

(8) *CONNECTING PREMISES.* Except in the case of hotels, no person may hold both a "Class A" license and either a "Class B" license or permit, a Class "B" license or permit or a "Class C" license for the same premises or for connecting premises. Except for hotels, if either type of license or permit is issued for the same or connecting premises already covered by the other type of license or permit, the license or permit last issued is void. If both licenses or permits are issued simultaneously, both are void.

(9) *LICENSES FOR LESS THAN ONE YEAR.* (a) A license may be issued after July 1 in any license year. The license shall expire on the following June 30. The fee for the license shall be prorated according to the number of months or fractions thereof remaining until the following June 30.

(b) Licenses valid for 6 months may be issued at any time. The fee for the license shall be 50% of the annual license fee. The license may not be renewed during the calendar year in which issued.

(10) *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 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 license 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) 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 is being held.

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.

125.52 Manufacturers' and rectifiers' permits.

(1) *AUTHORIZED ACTIVITIES.* The department shall issue manufacturers' and rectifiers' permits which authorize the manufacture or rectification, respectively, of intoxicating liquor on the premises covered by the permit. A person holding a manufacturer's or rectifier's permit may manufacture, bottle or wholesale wine, pursuant to the terms of the permit, without procuring a winery permit. A manufacturer's or rectifier's permit entitles the permittee to sell intoxicating liquor from the premises described in the permit. Holders of rectifiers' permits may sell intoxicating liquor rectified by the permittee to retailers without any other permit. No sales may be made for consumption on the premises of the permittee. Possession of a permit under this section does not authorize

the permittee to sell tax-free intoxicating liquor and wines brought into this state under s. 139.03 (5).

(2) **LIMITED MANUFACTURER'S PERMIT** The department shall issue a limited manufacturer's permit which authorizes the use or sale of the intoxicating liquor produced only if it is rendered unfit for use as a beverage and is used or sold for use as fuel. The department shall notify the department of natural resources of the name and address of any person to whom a limited manufacturer's permit is issued.

(3) **PERSONS ELIGIBLE** Except as provided under s. 125.69, a manufacturer's or rectifier's permit may be issued to any person qualified under s. 125.04 (5), except a foreign corporation, a foreign limited liability company or a person acting as an agent for or in the employ of another. Notwithstanding s. 125.04 (5) (a) 5., a person is not required to complete a responsible beverage server training course to be eligible for a permit under this section.

(4) **TERM OF PERMIT** Manufacturers' and rectifiers' permits issued under sub. (1) shall expire on July 1 of each year. Limited manufacturers' permits issued under sub. (2) shall expire on August 1 of each even-numbered year.

(5) **FEES** The annual fees for a manufacturer's or rectifier's permit issued under sub. (1) is \$500. The fee for a limited manufacturer's permit issued under sub. (2) is \$25, and the permit is valid for 2 years, except that, if a person applies for the permit after the beginning of the permit period, the permit is valid until the end of the permit period.

(6) **SALES AREA** No rectifier may sell any intoxicating liquor before filing with the department a written statement that the permittee is a distributor of a particular brand in this state, or an area of this state, and that the sales of that brand by the permittee and anyone purchasing from the permittee will be limited to the area specified. The rectifier shall inform the department of any change in the area within 7 days of the effective date of the change.

(7) **MULTIPLE PERMITS** Not more than 2 manufacturers' or 2 rectifiers' permits may be issued to any one person. In each application for a manufacturer's or rectifier's permit, the applicant shall state that application has not been made for more than one other manufacturer's or rectifier's permit.

History: 1981 c. 79; 1985 a. 302; 1989 a. 253; 1991 a. 39; 1993 a. 112, 259, 491

125.53 Winery permit. (1) The department shall issue only to a manufacturing winery in this state a winery permit authorizing the manufacture and bottling of wine on the premises covered by the permit for sale at wholesale to other licensees or permittees. A permittee under this section may offer on the premises taste samples of wine manufactured on the premises to persons who have attained the legal drinking age. A permittee under this section may also have either a "Class A" or "Class B" license, but not both. If a "Class A" or "Class B" liquor license has also been issued to the winery, the winery may offer the taste samples on the "Class A" or "Class B" premises.

(2) Winery permits may be issued to any person except a foreign corporation, a foreign limited liability company or a person acting as an agent for or in the employ of another.

(3) The annual fee for a winery permit is \$100.

History: 1981 c. 79; 1983 a. 74; 1989 a. 30; 1993 a. 112.

125.54 Wholesalers' permits. (1) **AUTHORIZED ACTIVITIES.** The department shall issue wholesalers' permits authorizing the permittee to sell intoxicating liquor at wholesale from the premises described in the permit. Except as provided under s. 125.69 (1) (b) 3., the permittee may not sell intoxicating liquor for consumption on the premises. If a wholesale permit is issued to a brewery that holds a "Class B" license, the permit shall authorize the wholesale sale of wine only. Possession of a permit under this section does not authorize the permittee to sell tax-free intoxicating liquor and wine brought into this state under s. 139.03 (5).

(2) **PERSONS ELIGIBLE** Except as provided under s. 125.69, a wholesaler's permit may be issued to any person qualified under s. 125.04 (5), except a foreign corporation, a foreign limited liability

company or a person acting as an agent for or in the employ of another. Notwithstanding s. 125.04 (5) (a) 5., a person is not required to complete a responsible beverage server training course to be eligible for a permit under this section.

(3) **TERM OF PERMIT.** Permits issued under this section expire on July 1 of each year.

(4) **FEES.** The annual fee for a wholesaler's permit is \$500.

(5) **SALES AREA.** No wholesaler may sell any intoxicating liquor before filing with the department a written statement that the permittee is a distributor of a particular brand in this state, or an area of this state, and that the sales of that brand by the permittee and anyone purchasing from the permittee will be limited to the area specified. The permittee shall notify the department of any change in the area within 7 days of the effective date of the change.

(6) **MULTIPLE PERMITS** Not more than 2 wholesalers' permits may be issued to any one person. In each application for a wholesaler's permit, the applicant shall state that application has not been made for more than one other wholesaler's permit.

History: 1981 c. 79; 1985 a. 5; 1989 a. 253; 1993 a. 112, 259, 491.

Section 176.05 (1a) (b), 1979 stats. [now s. 125.54 (5)] does not prohibit wholesaler from selling to retailer located outside area described in area statement provided sale takes place within area. 70 Atty Gen 258

125.55 Combination permits. (1) The department may issue the following combination permits:

(a) A combination manufacturer's and rectifier's permit.

(b) A combination rectifier's and wholesaler's permit.

(2) A combination manufacturer's and wholesaler's permit may not be issued.

(3) The annual fee for any combination permit issued under sub. (1) is \$1,000.

History: 1981 c. 79.

125.56 Sacramental wine. (1) **AUTHORIZATION TO SELL.** Any person holding a permit under s. 125.52 (1), 125.53 or 125.54 may sell sacramental wine directly to persons holding permits under sub. (2).

(2) **SACRAMENTAL WINE PERMIT** (a) The department shall issue sacramental wine permits to organized religious bodies authorizing them to purchase for their own use sacramental wine from any permittee under s. 125.52 (1), 125.53 or 125.54. A permit under this subsection does not authorize the resale of sacramental wine by the permittee.

(b) No sacramental wine permit may be issued to a person acting as an agent for or in the employ of another.

(c) Shipments of sacramental wine shall be conspicuously labeled "for sacramental purposes" and shall meet any other requirements the department prescribes by rule.

(d) A sacramental wine permit shall be issued free of charge by the department and is not subject to s. 125.04 (11) (a).

History: 1981 c. 79; 1983 a. 516 s. 8.

125.58 Out-of-state shippers' permit; exception to requirement. (1) The department shall issue out-of-state shippers' permits which authorize persons located outside this state to sell or ship intoxicating liquor into this state. Except as provided under sub. (4), intoxicating liquor may be shipped into this state only to a person holding a manufacturer's, rectifier's, wholesaler's, industrial alcohol or medicinal alcohol permit. Except as provided under sub. (4), a separate out-of-state shipper's permit is required for each location from which any intoxicating liquor is sold or shipped into this state, including the location from which the invoices are issued for the sales or shipments. Any person holding an out-of-state shipper's permit issued under this section may solicit orders for sales or shipments by the permittee without obtaining the sales solicitation permit required by s. 125.65, but every agent, salesperson or other representative who solicits orders for sales or shipments by an out-of-state shipper shall first obtain a permit for soliciting orders under s. 125.65. No holder of an out-of-state shipper's permit issued under this section may sell intoxicating liquor in this state or ship intoxicating liquor into this

state unless the out-of-state shipper is the primary source of supply for that intoxicating liquor.

(2) Out-of-state shippers' permits may be issued to any person except a person acting as an agent for or in the employ of another. Notwithstanding s. 125.04 (5) (a), natural persons obtaining out-of-state shippers' permits are not required to be residents of this state. Notwithstanding s. 125.04 (5) (a) 5., a person is not required to complete a responsible beverage server training course to be eligible for a permit under this section. Notwithstanding s. 125.04 (6), corporations or limited liability companies obtaining out-of-state shippers' permits are not required to appoint agents.

(3) The annual fee for an out-of-state shipper's permit is \$250.

(4) A winery located outside of this state may ship wine into this state as provided under s. 125.68 (10) (bm) if the winery is located in a state which has a reciprocal agreement with this state under s. 139.035. An out-of-state shipper's permit is not required for shipments into this state under this subsection.

History: 1981 c. 79; 1983 a. 27; 1987 a. 399; 1989 a. 253; 1991 a. 39; 1993 a. 112, 259, 491.

125.60 Wholesale alcohol permit. (1) The department may issue a wholesale alcohol permit which authorizes the permittee to sell ethyl alcohol of 190 proof or more to persons holding permits or licenses issued under s. 125.61 or 125.62. Nothing in this section requires manufacturers, rectifiers and wholesalers holding permits issued under s. 125.52 (1) or 125.54 to obtain a wholesale alcohol permit.

(2) Wholesale alcohol permits may be issued to any person qualified under s. 125.04 (5), except a person acting as an agent for or in the employ of another. Notwithstanding s. 125.04 (5) (a) 5., a person is not required to complete a responsible beverage server training course to be qualified for a permit under this section.

(3) Holders of wholesale alcohol permits who do not hold permits issued under s. 125.52 (1) or 125.54 are exempt from s. 125.65 as it relates to special permits for agents or representatives of wholesale alcohol permit holders.

(4) Holders of wholesale alcohol permits under this section who do not hold permits issued under s. 125.52 (1) or 125.54 may sell or deal in ethyl alcohol, except that no alcohol may be sold for consumption on the premises of the permittee.

(5) Wholesale alcohol permits shall be issued for an annual fee of \$50, shall expire on July 1 and shall meet any other requirement the department prescribes by rule.

History: 1981 c. 79; 1989 a. 253; 1993 a. 259.

125.61 Medicinal alcohol permit. (1) The department may issue a medicinal alcohol permit which authorizes the permittee to purchase and use alcohol for medicinal purposes only. The permit may be issued only to persons who prove to the department that they use alcohol for medicinal purposes.

(2) Medicinal alcohol permits may be issued to any person qualified under s. 125.04 (5), except a person acting as an agent for or in the employ of another. Notwithstanding s. 125.04 (5) (a) 5., a person is not required to complete a responsible beverage server training course to be qualified for a permit under this section.

(3) Shipments of medicinal alcohol shall be conspicuously labeled "for medicinal purposes" and shall meet other requirements which the department prescribes by rule.

(4) A medicinal permit shall be issued free of charge by the department and is not subject to s. 125.04 (11) (a).

History: 1981 c. 79; 1983 a. 516 s. 8; 1993 a. 259.

125.62 Industrial alcohol permit. (1) The department may issue an industrial alcohol permit which authorizes the permittee to purchase and use alcohol for industrial purposes only.

Such permits may be issued only to persons who prove to the department that they use alcohol for industrial purposes.

(2) Industrial alcohol permits may be issued to any person qualified under s. 125.04 (5), except a person acting as agent for or in the employ of another. Notwithstanding s. 125.04 (5) (a) 5., a person is not required to complete a responsible beverage server training course to be qualified for a permit under this section.

(3) Shipments of industrial alcohol shall be conspicuously labeled "for industrial purposes" and shall meet other requirements which the department prescribes by rule.

(4) The fee for an industrial alcohol permit is \$25, and the permit is valid for 2 years, except that, if a person applies for the permit after the beginning of the permit period, the permit is valid until the end of the permit period.

History: 1981 c. 79; 1989 a. 253; 1993 a. 259.

125.63 Industrial wine permit. (1) The department may issue an industrial wine permit which authorizes the purchase and use of wine for industrial purposes only. An industrial wine permit may be issued only to persons who prove to the department that they use wine for industrial purposes.

(2) Industrial wine permits may be issued to any person qualified under s. 125.04 (5), except a person acting as an agent for or in the employ of another. Notwithstanding s. 125.04 (5) (a) 5., a person is not required to complete a responsible beverage server training course to be qualified for a permit under this section.

(3) Shipments of industrial wine shall be conspicuously labeled "for industrial purposes" and shall meet other requirements which the department prescribes by rule.

(4) The fee for an industrial wine permit is \$25, and that permit is valid for 2 years, except that, if a person applies for the permit after the beginning of the permit period, the permit is valid until the end of the permit period.

History: 1981 c. 79; 1989 a. 253; 1993 a. 259.

125.65 Permit to solicit for future sales. (1) The department may issue a permit for wholesale sales for future delivery which authorizes the permittee to solicit orders, and to engage in the sale, of intoxicating liquor for delivery at a future date. A person holding a permit under this section may give a sample of a brand of intoxicating liquor to a "Class A" licensee who has not previously purchased that brand from the permittee.

(2) Permits for wholesale sale for future delivery may be issued to any person qualified under s. 125.04 (5) (a) 1. and (b) who is at least 18 years of age.

(3) Both natural persons engaged in actual solicitation of orders or sales and their employers shall obtain permits under this section.

(4) The department shall require the following information in applications for permits under this section:

(a) The type of permit desired.

(b) The name and address of the applicant; if the applicant is a partnership, limited liability company or association, the name and address of each member thereof; or if the applicant is a corporation, the name and address of each of its officers.

(c) The places where the business is to be conducted.

(d) For the period of at least 3 years immediately preceding the date of application, the business or occupation, if any, engaged in by the applicant; if a partnership, limited liability company or association, by each member thereof; or if a corporation, by each officer.

(e) Any other information required by the department.

(5) The fee for a permit issued under this section is \$25, and the permit is valid for 2 years, except that, if a person applies for the permit after the beginning of the permit period, the permit is valid until the end of the permit period.

(6) Employers shall furnish the department with the names of all employees engaged in activities requiring a permit under this section and shall notify the department whenever an employee

begins or terminates employment. Upon leaving employment, an employe shall submit his or her permit to the department for cancellation.

(7) Every person holding a permit under this section shall exhibit it upon request to any prospective purchaser.

(8) Nonresident persons holding permits under this section may solicit sales from retailers in this state only if the orders are solicited for, and will be filled by, persons holding permits under s. 125.52 or 125.54.

(9) Any person who violates this section shall be fined not less than \$100 nor more than \$500 or imprisoned for not less than 30 days nor more than 6 months or both. Conviction for a violation of this section shall result in automatic revocation of any permit issued under this section. If a permit issued under this section is so revoked, another permit may not be issued to the same person for a period of 2 years following revocation.

History: 1981 c. 79; 1985 a. 302; 1989 a. 253; 1993 a. 112.

125.66 Sale without license; failure to obtain permit; penalties. (1) No person may sell, or possess with intent to sell, intoxicating liquor unless that person holds the appropriate license or permit. Whoever violates this subsection may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(2) The issuance of any current permit or special tax stamp of the federal government to any person, authorizing or permitting the person to sell intoxicating liquor, shall be prima facie evidence in any prosecution for violation of this section that the person was engaged in selling intoxicating liquor.

(3) Any person manufacturing or rectifying intoxicating liquor without holding appropriate permits under this chapter, or any person who sells such liquor, shall be fined not more than \$10,000 or imprisoned for not more than 10 years or both. Second or subsequent convictions shall be punished by both the fine and imprisonment.

History: 1981 c. 79; 1989 a. 253

125.67 Evading provisions of law by giving away intoxicating liquor; penalties. No person may give away intoxicating liquor or use any other means to evade any law of this state relating to the sale of intoxicating liquor. Whoever violates this subsection may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

History: 1981 c. 79; 1989 a. 253

125.68 General restrictions and requirements.

(1) **MANAGERS' LICENSES; "CLASS B" AND "CLASS C" PREMISES.** (a) If a municipal governing body elects to issue managers' licenses under s. 125.18, no person may manage premises operating under a "Class B" license or permit or a "Class C" license unless the person is the licensee or permittee, an agent of a corporation or limited liability company appointed as required by s. 125.04 (6) or the holder of a manager's license. A manager's license issued in respect to a vessel under s. 125.51 (5) (c) is valid outside the municipality that issues it. A person manages premises if that person has responsibility or authority for:

1. Personnel management of all employes, whether or not the person is authorized to sign employment contracts;
2. The terms of contracts for the purchase or sale of goods or services, whether or not the person is authorized to sign the contracts; or
3. The daily operations of the premises.

(b) The municipal governing body may, by ordinance, define factors in addition to those listed in par. (a) which constitute management of premises.

(2) **OPERATORS' LICENSES; "CLASS A", "CLASS B" OR "CLASS C" PREMISES.** Except as provided under s. 125.07 (3) (a) 10., no premises operated under a "Class A" or "Class C" license or under a "Class B" license or permit may be open for business unless there is upon the premises either the licensee or permittee, the

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

(2m) **USE BY ANOTHER PROHIBITED.** (a) No person may allow another to use his or her "Class A" or "Class C" license or "Class B" license or permit to sell alcohol beverages.

(b) The license or permit of a person who violates par. (a) shall be revoked.

(3) **RESTRICTIONS ON LOCATION.** No "Class A" or "Class B" license or permit may be issued for premises the main entrance of which is less than 300 feet from the main entrance of any public or parochial school, hospital or church, except that this prohibition may be waived by a majority vote of the governing body of the municipality in which the premises is located. The distance shall be measured by the shortest route along the highway from the main entrance of the school, church or hospital to the main entrance of the premises covered by the license or permit. The prohibition in this subsection does not apply to any of the following:

- (a) Premises covered by a license or permit on June 30, 1947.
- (b) Premises covered by a license or permit prior to the occupation of real property within 300 feet thereof by any school, hospital or church building.
- (c) A restaurant located within 300 feet of a church or school. This paragraph applies only to restaurants in which the sale of alcohol beverages accounts for less than 50% of their gross receipts.

(4) **CLOSING HOURS.** (a) *Wholesalers.* No premises for which a wholesale intoxicating liquor permit has been issued may remain open for the sale of intoxicating liquor between the hours of 5 p.m. and 8 a.m., except on Saturday the premises may remain open until 9 p.m.

(b) *"Class A" retailers.* No premises for which a "Class A" license or permit has been issued may remain open for the sale of intoxicating liquor between the hours of 9 p.m. and 8 a.m.

(c) *"Class B" and "Class C" retailers.* 1. No premises for which a "Class B" license or permit or a "Class C" license has been issued may remain open between the hours of 2 a.m. and 6 a.m., except as otherwise provided in this subdivision and subd. 4. On January 1 premises operating under a "Class B" license or permit are not required to close. On Saturday and Sunday, no premises may remain open between 2:30 a.m. and 6 a.m. This subdivision does not apply to a "Class B" license issued to a winery under s. 125.51 (3) (am).

3. Between 12 midnight and 6 a.m. no person may sell intoxicating liquor on "Class B" licensed premises in an original unopened package, container or bottle or for consumption away from the premises. A municipal governing body may, by ordinance, impose more restrictive hours than are provided in this subdivision. This subdivision does not apply to a "Class B" license issued to a winery under s. 125.51 (3) (am).

3m. No premises for which a "Class B" license has been issued under s. 125.51 (3) (am) may remain open for the sale of intoxicating liquor between the hours of 9 p.m. and 8 a.m.

4. Hotels and restaurants the principal business of which is the furnishing of food, drinks or lodging to patrons, bowling centers, indoor horseshoe-pitching facilities, curling clubs, golf courses and golf clubhouses may remain open for the conduct of their regular business but may not sell intoxicating liquor during the closing hours under subd. 1.

5. A municipality may not, by ordinance, impose different hours than those provided under subd. 1.

(5) **RESTAURANT SANITATION RULES.** No applicant may obtain a "Class B" license or permit or a "Class C" license unless the premises complies with the rules promulgated by the department of health and social services governing sanitation in restaurants. However, the department of health and social services may not restrict the serving of cheese without charge in individual portions to customers as permitted by s. 254.61 (5).

(8) **SALE FROM ORIGINAL CONTAINER.** (a) A person convicted of any of the following prohibited activities shall be fined not less than \$150 nor more than \$500 or imprisoned not less than 60 days nor more than 6 months or both:

1. Diluting any intoxicating liquor for purposes of sale as undiluted intoxicating liquor.

2. Refilling any original container which had previously been used for intoxicating liquor containing 21% or more of alcohol by volume.

3. Possessing diluted intoxicating liquor or refilled original containers on any premises covered by a "Class A" or "Class C" license or "Class B" license or permit.

(b) Possession of an original container which contains diluted intoxicating liquor or which has been refilled is prima facie evidence of intent to violate this subsection.

(9) **LABELS; CONTENTS; PACKAGING.** (b) All containers of intoxicating liquor sold in this state shall be clearly and legibly labeled with the name and address of the manufacturer and the name of the intoxicating liquor. The label shall meet any other labeling requirements created by the federal alcohol administration act.

(c) No intoxicating liquor may contain any added ingredients or substances which are injurious to health or deleterious for human consumption.

(d) All packages or containers of intoxicating liquor delivered in this state shall bear seals affixed by the manufacturer so that the contents cannot be removed without breaking the seals.

(e) No person holding a license or permit issued under this chapter may possess or sell any package or container of intoxicating liquor which does not comply with pars. (b) and (d) or which does not bear evidence that the package or container was in compliance when delivery was taken.

(f) Every person manufacturing, rectifying or blending intoxicating liquor sold in this state shall provide the department with the names, brands, descriptions, alcoholic content by volume and any other information about the intoxicating liquor required by the department. Information required by this paragraph shall be submitted prior to placing any new blend on the market. The department may also require by rule that samples of new products be submitted for examination and analysis.

(g) Persons convicted of violating this subsection shall be fined not less than \$500 nor more than \$1,000 or imprisoned in the county jail for not less than 3 months nor more than one year or both.

(10) **SHIPMENTS INTO STATE.** (a) Except as provided in par. (bm), no intoxicating liquor may be shipped into this state unless consigned to a person holding a permit for the sale of intoxicating liquor, other than a retail "Class B" permit.

(b) Except as provided in par. (bm), no common carrier or other person may transport into and deliver within this state any intoxicating liquor unless it is consigned to a person holding a permit for the sale of intoxicating liquor, other than a retail "Class B" permit.

Any common carrier violating this paragraph shall forfeit \$100 for each violation.

(bm) A winery may ship wine into this state under s. 125.58 (4) from a state which has a reciprocal agreement with this state under s. 139.035 to an individual who is of the legal drinking age if the shipping container is clearly labeled to indicate that the package may not be delivered to an underage person or to an intoxicated person. A person who receives wine under this paragraph may not sell it or use it for a commercial purpose.

(bs) No individual may resell wine received under par. (bm) or receive more than 9 liters of wine annually under par. (bm).

(c) This subsection does not apply to purchases made under a permit issued under s. 125.61.

(11) **ALCOHOL OR WINE FOR NONBEVERAGE USE; PENALTY.** (a) The following products are not intoxicating liquor subject to this chapter, when unfit for beverage purposes:

1. Denatured alcohol produced and used pursuant to acts of congress and regulations promulgated thereunder.

2. Patent, proprietary, medicinal, pharmaceutical, antiseptic and toilet preparations.

3. Flavoring extracts, syrups and food products.

4. Scientific, chemical, mechanical and industrial products.

(b) Any person who sells any of the products enumerated in par. (a) for intoxicating beverage purposes, either knowingly or under circumstances from which a reasonable person may deduce the intention of the purchaser to use them for such purposes, shall be penalized under s. 125.11.

(12) **DENATURED ALCOHOL.** (a) No person may recover any alcohol or alcoholic liquid from denatured alcohol by any process or use, sell, conceal or dispose of, in any manner, any alcohol or alcoholic liquid derived from denatured alcohol.

(b) Whoever violates par. (a) shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned not less than one year nor more than 10 years or both.

(c) Any person causing the death of another human being through the selling or otherwise disposing of, for beverage purposes, either denatured alcohol or alcohol or alcoholic liquid redistilled from denatured alcohol, shall be imprisoned for not more than 10 years.

History: 1981 c. 79, 158, 202; 1983 a. 74; 1983 a. 189 s. 329 (6); 1983 a. 203 s. 47; 1983 a. 349; 1985 a. 28, 221, 317; 1987 a. 27, 121, 399; 1989 a. 30, 253; 1991 a. 28, 39; 1993 a. 27, 112.

It is not illegal, under s. 176.07, 1979 stats., [now s. 125.68 (4) (c) 3.] to allow the carry-out of intoxicating liquor from "Class B" licensed premises between 12 midnight and 8 a.m. if sale of liquor occurred before 12 midnight. "Sale" defined. 69 Atty. Gen. 168.

125.69 Restrictions on dealings between manufacturers, rectifiers, wholesalers and retailers. (1) INTEREST RESTRICTIONS

(a) No intoxicating liquor manufacturer, rectifier or wholesaler may hold any direct or indirect interest in any "Class A" license or establishment and no "Class A" licensee may hold any direct or indirect interest in a wholesale permit or establishment, except that a winery that has a permit under s. 125.53 may have an ownership interest in a "Class A" license.

(b) 1. Except as provided under subds. 2. to 4., no intoxicating liquor manufacturer, rectifier or wholesaler may hold any direct or indirect interest in any "Class B" license or permit or establishment or "Class C" license or establishment and no "Class B" licensee or permittee or "Class C" licensee may hold any direct or indirect interest in a wholesale permit or establishment.

2. A wholesaler may have an interest in a corporation that owns and operates a golf course and leases premises on the golf course to the holder of a "Class B" license or permit for the premises, if the wholesaler's permit and the "Class B" license or permit were originally issued to the corporation and to the "Class B" licensee or permittee before June 1, 1981. The wholesaler's permit and "Class B" license or permit shall be renewed annually, unless revoked under s. 125.12. An application for a wholesaler's

permit to which this paragraph applies shall have attached to it an affidavit stating the applicant's interest in the "Class B" premises.

3. A brewer may hold both a "Class B" license for the sale of intoxicating liquor on brewery premises and a wholesaler's permit for the sale of wine only issued under s. 125.54.

4. A winery that has a permit under s. 125.53 may have an ownership interest in a "Class B" license issued under s. 125.51 (3) (am).

(c) No manufacturer, whether located within or without this state, may hold any direct or indirect interest in any wholesale permit or establishment, except as provided in s. 125.53, and except that a manufacturer that is also a brewer may hold a permit issued under s. 125.54 for the wholesale sale of wine only. This paragraph does not prohibit any of the following persons from obtaining a permit under s. 125.65:

1. An employe of a person who has been issued a permit under s. 125.53.

2. A licensee who was issued a "Class B" license under s. 125.51 (3) (am).

3. A "Class A" licensee who has also been issued a permit under s. 125.53.

(3) VOLUME DISCOUNTS TO CAMPUSES AND RETAILERS. A wholesaler of intoxicating liquor shall charge the same price to all campuses and retail licensees and permittees making purchases in similar quantities. Any discount offered on intoxicating liquor shall be delivered to the retailer in a single transaction and single delivery, and on a single invoice.

(4) RETAIL PURCHASE CREDIT RESTRICTIONS. (a) *Restrictions on sales.* 1. No intoxicating liquor retail licensee or retail permittee may:

a. Receive, purchase or acquire intoxicating liquor from any permittee except for cash or credit for a period of not more than 30 days.

b. Receive, purchase or acquire intoxicating liquor from any permittee if at the time of the receipt, purchase or acquisition, he or she is indebted to any permittee for intoxicating liquor received, purchased, acquired or delivered more than 30 days earlier.

2. No campus or intoxicating liquor retail licensee or permittee may receive any intoxicating liquor on consignment or on any basis other than a bona fide sale.

(b) *Restrictions on issuance of licenses and permits.* No intoxicating liquor retail license or retail permit may be issued under

this chapter to any person having an indebtedness for intoxicating liquor outstanding more than 30 days. In each application for a retail license or retail permit, the applicant shall state whether the applicant has any indebtedness for intoxicating liquor to any licensee or permittee which has been outstanding for more than 30 days.

(c) *Wholesalers holding retail licenses and permits.* For purposes of this subsection, a person holding both an intoxicating liquor wholesale permit and intoxicating liquor retail license is deemed an intoxicating liquor retailer.

(d) *Penalties.* A retail licensee or retail permittee who violates par. (a) is subject to the penalties in s. 125.11, except that he or she may not be imprisoned.

(e) *Costs.* The cost of administering this subsection shall be charged to the manufacturer, rectifier and wholesaler permittees. The department shall determine the costs and shall establish the procedure for apportioning the cost against the permittees and provide for the method of payment to the department.

(5) SOURCE OF SUPPLY. No wholesaler may purchase intoxicating liquor for resale unless he or she purchases it either from the primary source of supply for the brand of intoxicating liquor sought to be sold or from a wholesaler within this state who holds a permit issued under this chapter. No wholesaler may sell intoxicating liquor purchased by the wholesaler to any other licensee or permittee under this chapter if the intoxicating liquor has not been purchased by the wholesaler from the primary source of supply or from a wholesaler within the state holding a permit issued under this chapter.

(6) CAMPUSES AND RETAILERS TO PURCHASE FROM PERSONS HOLDING PERMITS. No campus or retail licensee or permittee may purchase or possess intoxicating liquor purchased from any person other than a manufacturer, rectifier or wholesaler holding a permit under this chapter for the sale of intoxicating liquor. Any person who violates this subsection may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(7) LICENSE OR PERMIT REVOCATION. The violation of sub. (1), (3) or (5) is sufficient cause for the revocation of the license or permit of any licensee or permittee receiving the benefit from the prohibited act as well as the revocation of the license or permit of the licensee or permittee committing the prohibited act.

History: 1981 c. 79, 202; 1983 a. 26, 69, 182; 1985 a. 5, 15, 302; 1987 a. 403; 1989 a. 30, 31, 253; 1991 a. 39.