

CHAPTER 176.

INTOXICATING LIQUORS.

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

(2) "Intoxicating liquors" means all ardent, spirituous, distilled, or vinous liquors, liquids, or compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of one per cent or more of alcohol by volume, which are fit for use for beverage purposes, but shall not include "fermented malt beverages" as defined in section 66.054, which contain less than 5 per centum of alcohol by weight.

(3) The term "peace officer" includes sheriffs, undersheriffs, deputy sheriffs, police officers, constables, marshals, and deputy marshals, and any duly authorized employe of the commissioner of taxation to act as such under section 66.054 and chapters 139 and 176.

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

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

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

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

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

(9) A "manufacturer" is a person, firm or corporation, other than a rectifier, that manufactures or distills intoxicating liquors. Such manufacturer may sell at wholesale such intoxicating liquors manufactured or distilled by the licensee at the premises designated in the license, provided he was selling such intoxicating liquor at wholesale in this state on July 5, 1945.

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

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

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

(13) The word "person" shall include firm, partnership, corporation or association.

History: 1951 c. 400.

176.04 Sale without license; penalty. (1) Any person who shall, without a license or permit, vend, sell, deal or traffic in or have in his possession with intent to vend, sell, deal or traffic in or for the purpose of evading any law of this state, give away any intoxicating liquors in any quantity whatever, shall be guilty of a misdemeanor and be punished by a fine of not less than \$250 nor more than \$1,000, besides the costs; or by imprisonment in the county jail or house of correction not to exceed one year nor less than 3 months and in case of punishment by fine unless the fine and costs be paid forthwith be committed to the county jail or house of correction until they are paid or until discharged by due course of law; and in case of a second or subsequent conviction of the same person during any year the punishment shall be both by fine and imprisonment.

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

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

such intoxicating liquor must first be obtained from the commissioner of taxation as otherwise provided for in section 176.404.

176.041 Expiration of licenses. All licenses or permits issued by the commissioner of taxation pursuant to the provisions of this chapter, unless otherwise specified, shall be issued January 1st of the licensed year and shall expire December 31st of the licensed year.

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

(1a) **PERMITS TO MANUFACTURERS, WHOLESALERS, RECTIFIERS.** No manufacturer, wholesaler or rectifier shall sell, manufacture or rectify any intoxicating liquor within the state without first obtaining a permit from the commissioner of taxation. The application for such permit and the permit shall be in such form as the commissioner shall prescribe. Each permit shall expire on July 1 of each year. The annual fee for such permits shall be as follows: A manufacturer's permit, the sum of \$750; a rectifier's permit, the sum of \$750; and a wholesaler's permit, the sum of \$500, and a combination permit consisting of any 2 permits here listed for \$1,000 which shall be paid into the state treasury and credited to the general fund, except that a wholesaler's permit or a combination wholesaler's and manufacturer's permit shall not be granted to any manufacturer who was not selling intoxicating liquor at wholesale in this state on July 5, 1945. If any manufacturer, wholesaler or rectifier violates any of the provisions of this chapter or chapter 139, the commissioner may suspend or revoke such permit for such period of time as he may determine.

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

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

(1d) **PUBLIC WAREHOUSE LIQUOR PERMIT.** The commissioner of taxation shall also issue a "public warehouse liquor permit." The holder of such permit shall be entitled, subject to rules and regulations issued by the commissioner, to store and warehouse intoxicating liquors and fermented malt beverages in premises of the public warehouse so licensed. Such permit, however, shall not authorize the sale of any intoxicating liquor or fermented malt beverages. The annual fee for such permit shall be \$100 for each place licensed and shall be paid into the state treasury and credited to the general fund. No public warehouse shall store or warehouse intoxicating liquor or fermented malt beverage without such permit.

(1f) **WINERY LICENSE.** There shall also be issued by the commissioner of taxation a license which shall be called a winery license. The annual fee for said license shall be \$100 paid into the state treasury and credited to the general fund, and shall permit the licensee to wholesale or to manufacture and bottle wine on the premises so licensed for sale at wholesale to other licensees. A manufacturer, rectifier or wholesaler holding a permit issued under subsection (1a) may manufacture, rectify, bottle or wholesale wine, pursuant to the terms of the permit without procuring a winery license.

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

(2) **KIND OF LICENSES.** (a) Licenses to sell, deal, or traffic in intoxicating liquors shall be designated either "Retail Class A" or "Retail Class B". A retail license "Class A" shall permit its holder to sell, deal and traffic in intoxicating liquors only in original packages or containers, in quantities of not more than 3 wine gallons at any one time, and to be consumed off the premises so licensed, except that wine may be sold in the original package or otherwise in any quantity. A retail license "Class B" shall permit its holder to sell, deal and traffic in intoxicating liquors to be consumed by the glass only

on the premises so licensed and not in the original package or container. Wine, however, may be sold in the original package or otherwise in any quantity to be consumed off the premises. The provisions of this paragraph relating to retail "Class B" licenses shall apply to all towns, cities and villages except those located in counties containing a city of the first class, and such towns, cities and villages as by their governing bodies elect to come under the provisions of paragraph (b).

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

(3) LIMITATION TO SAME PERSON. Not more than 2 retail "Class A" or "Class B" licenses shall be issued in the state to any one corporation or person, except in case of hotels or clubs, and in each application for a retail "Class A" or "Class B" license the applicant shall state that he has not made application for more than one other retail "Class A" or "Class B" license for any other location in the state. No such license shall be issued to any person acting as agent for or in the employ of another. Except in the case of hotels as defined in section 176.20 (2) (e) a "Class A" liquor license and a "Class B" liquor or fermented malt beverage license shall not both be issued for the same or connecting premises. If either class of license is issued for the same or connecting premises (except hotels) already covered by the other class of license, the license last issued shall be void, and if both are issued simultaneously both shall be void.

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

(4) LICENSE FEES. The sum to be paid for such license shall be at all times the same for each class of licenses and shall be in such amount as the governing body of the town, city or village issuing the same may determine, except that the minimum fee shall be \$50 and the maximum fee shall be \$500 in any town, village or city, and except that licenses may be granted to bona fide clubs and lodges situated and incorporated or chartered in the state of Wisconsin for at least 6 years at a smaller fee, as the governing body of the town, city or village may determine.

(4a) LICENSES TO COUNTRY CLUBS. All "Class A" and "Class B" licenses issued to clubs, as defined in section 176.01 (8), that are operated solely for the playing of golf or tennis, which are commonly known as country clubs, and including yachting clubs, shall be issued by the commissioner of taxation without regard to the provisions of section 176.38 and subsection (10) (b) of this section for an annual fee of \$50 which shall be paid to the treasurer of the town, city or village in which such club is located. Any club for a "similar sport" holding a license during the license year 1950-1951 shall be eligible upon application for a license under this subsection from year to year as long as continuously operated under substantially the same circumstances as it was operated under during the license year 1950-1951. The provisions of section 176.05 (1a) relative to suspending or revoking permits shall apply to all licenses issued by the commissioner hereunder, and, except as herein provided, all provisions of this chapter relating to "Class A" and "Class B" licenses for the sale of intoxicating liquors shall apply to licenses issued to country clubs by the commissioner.

(4b) LICENSES TO AIRPORTS. Any county having a population of 500,000 or more, which owns an airport which is in actual operation, may by resolution of its governing body annually apply to the commissioner of taxation on a form to be supplied by the commissioner for the issuance of a retail "Class B" intoxicating liquor license for use on such airport premises. Such license shall be issued only to a concessionaire designated by said governing body to operate on said airport, and in the event that such concessionaire is a corporation such license shall be issued only to a designated officer or employe of such corporation. No such county nor any officer or employe of such county shall be issued or granted a "Class B" intoxicating liquor license at any such airport. Upon receipt of such application and upon payment to such commissioner of an annual license fee equivalent to the amount currently set by the governing body of the municipal subdivision wherein such airport is located for like licenses issued by it, the commissioner shall issue such license and thereupon transmit the license fee to the municipal subdivision wherein such airport is located. The license year shall commence on July 1 annually. The provisions of sub. (1a) relating to suspending or revoking permits shall apply to all licenses issued by the commissioner hereunder and except as provided herein, all provisions relating to retail "Class B" intoxicating liquor licenses shall apply to such licenses as are issued hereunder.

(4m) "CLASS C" LICENSES IN FIRST CLASS CITIES. In cities of the first class a retail "Class C" license may be issued which shall permit the holder thereof to sell, deal and traffic in intoxicating liquors for consumption off and on the licensed premises. The fee for each such license shall be \$2,000. All the provisions of this chapter relating to retail "Class A" and retail "Class B" intoxicating liquor licenses and the selling, dealing and trafficking in intoxicating liquor thereunder shall apply to retail "Class C" liquor licenses and the selling, dealing and trafficking in intoxicating liquor thereunder. For the purposes of s. 176.05 (21) a "Class C" license shall be counted as a "Class B" intoxicating liquor license.

(5) FORM; DURATION. The application for a license to sell or deal in intoxicating liquor and "fermented malt beverages" as defined in s. 66.054 shall be in writing on a form furnished by the commissioner of taxation and sworn to by the applicant. The original application shall state the kind of license applied for, designate the premises where such liquor is to be sold and such other information as required by this chapter. Such form shall be prepared by the commissioner and shall be suitable for the entire state and so worded as to make clear to any licensing authority the past history of the applicant and fitness for license under this chapter. The commissioner may prescribe a simplified form for renewal applications requiring information pertinent to renewal. The commissioner shall furnish on request such form blanks as may be necessary to each licensing body. Except as provided in sub. (6), all such licenses shall remain in force until July 1 next after the granting thereof, unless sooner revoked; they shall be attested by the town, city or village clerk, and shall not be delivered until the applicant shall produce and file with the clerk a receipt showing the payment of the sum required therefor to the proper treasurer. If any licensee or license applicant dies or becomes bankrupt or makes an assignment for the benefit of creditors during any license year or at any time after filing the application for a license and a license is granted to such applicant, the administrator, executor, receiver or trustee, or, if no administrator is appointed, the surviving husband or wife of such deceased licensee may continue or sell said business, and, if he sells the same, may assign or transfer such license and all rights and privileges of the licensee thereunder if the transferee or assignee is acceptable to the licensing authorities, and secures their consent thereto, and fully complies with the requirements of law applicable to original applicants, provided that the administrator so appointed must be a citizen of the United States; and provided further that the surviving husband or wife of the deceased is an American citizen. No license shall be issued to any person in violation of any provision of this chapter, and any license so issued shall be void. The town, village or city clerk shall keep all applications for license and they may be inspected by any citizen.

(5a) MANUFACTURER NOT TO HOLD WHOLESALE PERMIT. No manufacturer, unless possessing a wholesale permit on July 5, 1945, shall hereafter hold the ownership, in whole or part, directly or indirectly, through stock holdings or however accomplished, of any interest in any wholesale permit or establishment in this state.

(6) SEMI-ANNUAL LICENSES. Licenses may be granted which shall expire on the 30th day of June of each year upon payment of such proportion of the annual license fee as the number of months or fraction of a month remaining until June 30 of each year bears to 12. Licenses may also be issued at any time for a period of 6 months in any calendar year for which one-half of the annual license fee shall be paid. Such 6 months' licenses shall not be renewable during the calendar year in which issued.

(6a) "CLASS B" LICENSE SUBJECT TO RULES ON SANITATION. The rules and regulations made by the state board of health governing sanitation in restaurants shall apply to all "Class B" licenses issued under this section provided that the board shall not restrict the serving of free cheese in individual portions to patrons as permitted by ss. 160.01 (2) and 176.50. No "Class B" license shall be issued unless the premises to be licensed conform to such rules and regulations.

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

(8) ANNUAL LICENSE MEETINGS. All town and village boards and common councils, or the duly authorized committees of such councils, shall meet not later than May 15 of each year and be in session from day to day thereafter, so long as it may be necessary, for the purpose of acting upon such applications for license as may be presented to them on or before April 15, and all applications for license so filed shall be granted, issued or denied not later than June 15 for the ensuing license year, provided that nothing shall prevent any governing body from granting any licenses which are applied for at any

other time. As soon as an application has been approved, a duplicate copy thereof shall be forwarded to the commissioner of taxation. No application for a license which is in existence at the time of such annual license meeting shall be rejected without a statement on the clerk's minutes as to the reasons for such rejection.

(9) WHERE AND TO WHOM LICENSES NOT GRANTED. No license or permit shall be granted to any person or persons under the age of 21 years for the sale of any such intoxicating liquors, or to any person who is not of good moral character and a full citizen of the United States and of this state and who has not resided in this state continuously for at least one year prior to the date of filing the application; nor shall any such license be granted or issued to any person who has habitually been a petty law offender, or has been convicted of an offense against the laws of this state punishable by imprisonment in the state prison, unless the person so committed has been duly pardoned. The provisions of this subsection shall not apply to a Wisconsin corporation; such provisions apply, however, to all officers and directors of any such corporation.

(9m) RESTRICTIONS NEAR SCHOOLS, CHURCHES AND HOSPITALS. (a) No retail "Class A" or "Class B" license shall be issued for premises less than 300 feet from any established public school, parochial school, hospital or church. Such distance shall be measured via the shortest route along the highway from the closest point of the boundary of such school, church or hospital to the closest entrance to such premises.

(b) This subsection shall not apply to premises licensed as such on June 30, 1947.

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

(b) No retail "Class B" license shall be issued to any person who does not have, or to whom is not issued, a "Class B" retailer's license to sell fermented malt beverages under section 66.054.

(11) RESTRICTIONS ON PREMISES UNDER RETAIL "CLASS A" OR "CLASS B" LICENSES. There shall be upon premises operated under a retail "Class A" or "Class B" liquor license, at all times, the licensee or some person who shall have an operator's license under section 66.054 and who shall be responsible for the acts of all persons serving as waiters, or in any other manner, any fermented malt beverages or intoxicating liquor to customers. No person other than the licensee shall serve fermented malt beverages or intoxicating liquor in any place operated under a retail "Class A" or "Class B" liquor license unless he shall possess such operator's license, or unless he shall be under the immediate supervision of the licensee or a person holding an operator's license who shall be at the time of such service upon said premises.

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

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

by the licensing authority and the commissioner. Such corporation shall, in each instance, following the approval of such successor agent or another qualified agent by the licensing authority and the commissioner, pay to the licensing authority a fee of \$10.

(14) TRANSFERS OF LICENSES. Every license or permit issued pursuant to this chapter or section 66.054 may for a fee of \$10 be transferred by the proper issuing authority from one premises to another within the same city, town or village, but no licensee shall be entitled to more than one transfer in any one license year. Whenever a license is transferred the licensing authority shall forthwith notify the commissioner of taxation of such transfer.

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

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

(21) QUOTAS OF "CLASS B" RETAIL LIQUOR LICENSES. (a) Definitions: As used in this subsection "quota" means the number of licenses which a municipality may grant; "population" means the number of inhabitants as determined by the last decennial federal census, or, in the case of newly incorporated villages, as determined by the census prescribed by s. 61.02 less, in either case, inmates of charitable, mental and penal institutions in the municipality; "license" means "Class B" retail intoxicating liquor licenses.

(b) Except as otherwise provided in pars. (c), (d) and (e), the quota of each municipality shall be whichever of the following is the largest:

1. One license for each 500 population or fraction thereof; or
2. The number of licenses lawfully issued and in force on August 27, 1939 plus any increased number subsequently issued when based upon annexation of territory to the municipality; or
3. The number of licenses lawfully issued and in force on the day as of which the last previous decennial federal census was taken.

(c) Annexation of territory containing licensed premises increases the quota if necessary to the relicensing of all existing licensed premises in the municipality after such annexation.

(d) Detachment of territory decreases the quota by the number of licensed premises in the detached portion, until subsequent decennial federal census warrants a greater quota as prescribed by par. (b) 1; but the quota of the municipality after detachment shall be at least one.

(e) Until a subsequent decennial federal census warrants a greater quota, as prescribed by par. (b) 1, the quota of a newly incorporated city or town shall be either:

1. One license; or
2. The number of licenses lawfully issued and in force in the territory at the time of incorporation; or
3. If the municipality previously existed under a different form of government, its quota remains the same, subject to the provisions of pars. (c) and (d) in case of any annexation or detachment at the time of incorporation.

(f) As of July 1 of each year in which a federal census is taken the state department of public welfare shall certify to each municipality concerned and the commissioner of taxation the number of persons in charitable, mental and penal institutions in the municipality.

(22) SURRENDER OF LICENSE TO ENTER ARMED FORCES, EFFECT. No governing body of any city, town, or village shall issue any retail "Class B" intoxicating liquor license to any other person, firm or corporation, in place of any license surrendered, for the reason indorsed thereon and signed by the licensee named therein, that the licensee has discontinued business by reason of entry into the armed forces of the United States to serve in World War II, unless said licensee shall surrender and release in writing all his right, title and interest in and to said license. Notwithstanding any provision of sub. (21), or of this subsection, the governing body to which such license was surrendered may grant a retail "Class B" intoxicating liquor license to any licensee who surrendered such license for the foregoing reason without written release of his right, title and interest therein, upon application therefor made at any time within 6 months after the applicant's dis-

charge from the armed forces, provided the applicant is qualified under subs. (9) and (10). This subsection shall apply only in cases where the licensee is the owner in fee simple of the premises for which the surrendered license is issued and where the premises are not to be used for any other business purpose in the licensee's absence.

History: 1951 c. 104, 210, 227, 589, 734; 1953 c. 6, 156, 358, 373, 540, 622, 681, 676.

Where it is claimed that an additional license issued by a town board was authorized because of an increase in the number of inhabitants, there must be proof of a determination as to the number of inhabitants of the town either by the last national census or by an accurate census taken as specified in 61.02, or by at least proof of equivalent facts duly establishing the method and accuracy of a determination as to the number of inhabitants of the town at the time when such additional license was issued; and in the absence of any such proof there was no showing of a sufficient increase to permit the issuance of the additional license. *State ex rel. Fairchild v. McCarthy*, 257 W 62, 42 NW (2d) 484.

See note to 66.054, citing 38 Atty. Gen. 540.

"Class B" liquor license issued in complete disregard of the jurisdictional requirement of (6a), that no license shall be issued unless the premises conform to the rules and regulations of the state board of health governing sanitation in restaurants, is void under (5). 39 Atty. Gen. 244.

See note to 66.054, citing 40 Atty. Gen. 146.

The term "persons in charitable, mental and penal institutions" as used in (21) (a) refers only to inmates of such institutions and does not include employees. 40 Atty. Gen. 322.

Where territory of town, containing no "Class B" liquor taverns, is annexed to a city, this affects the quota of neither municipality as determined by (21). 41 Atty. Gen. 115.

176.051 Failure to obtain permit; penalty. Any person who shall sell, manufacture or rectify any intoxicating liquor within the state without first obtaining a permit from the commissioner of taxation as required by this chapter shall be guilty of a felony and shall upon conviction be punished by a fine of not less than \$1,000 nor more than \$5,000 or by imprisonment in the state prison for not less than one year nor more than 10 years or by both such fine and imprisonment. A second or subsequent conviction shall be punished by both such fine and imprisonment. Any person aiding or abetting in such illicit sale, manufacture or rectifying of intoxicating liquor shall be guilty in the same degree as the principal offender.

176.055 Warehouse receipts salesman's permit. The commissioner of taxation may issue a warehouse receipt salesman's permit. The fee for such permit shall be \$100 and it shall be issued only to a natural person of good moral character who has resided in the state for one year preceding the application for the issuance thereof and who is also holding a salesman's permit to sell intoxicating liquors in this state issued by the commissioner and who is also duly registered by the commissioner to sell intoxicating liquors for a duly registered Wisconsin manufacturer, rectifier or wholesaler whom he shall represent in selling the warehouse receipts which he is licensed to sell. The permit shall entitle the holder to sell warehouse receipts for intoxicating liquors to duly licensed manufacturers, rectifiers, wholesalers and retailers of intoxicating liquors, but to none other and no permit holder shall sell warehouse receipt to any person to whom he could not sell intoxicating liquors under the provisions of this chapter. Any person who shall sell warehouse receipts for intoxicating liquors without a permit from the commissioner or who shall sell such receipts to a person other than a duly licensed manufacturer, rectifier, wholesaler or retailer shall be punished by imprisonment in the state prison for not less than one year nor more than 3 years or by a fine of not less than \$100 nor more than \$5,000, or by both such fine and imprisonment, and shall in addition thereto, have his or its permit automatically revoked. Any person having his permit so revoked shall not be granted another permit for a period of 2 years following such revocation.

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

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

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

(3) If a retail "Class B" license, in any county of a population of less than 500,000, between 1 a. m. and 8 a. m., except on January 1 when the closing hours shall be between 3 a. m. and 8 a. m.

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

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

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

- (a) On Sunday, between 3:30 a. m. and 10 a. m.
- (b) On week days, between 2 a. m. and 6 a. m.
- (c) On January 1 of each year, no closing.
- (d) On any election day, during such hours as the polls may be open.
- (e) Hotels and restaurants whose principal business is the furnishing of food or drinks, as prescribed in section 176.05 (10), or lodging to patrons shall be permitted to remain open for the conduct of their regular business but shall not be permitted to sell intoxicating liquors or any malt beverages during the hours prohibited in paragraphs (a), (b) and (d).

History: 1953 c. 594.

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

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

176.09 Application; publication; fee. (1) All applications for licenses to sell intoxicating liquors shall be filed with the clerk of the town, village or city in which such premises are situated at least 15 days prior to the granting of any such license except that in counties having a population of 500,000 or more such applications shall be filed with the clerk of the town, village or city at such time prior to the granting of a license as its governing body shall fix; and the application shall, prior to the granting of such license, be published in a daily paper printed in such town, city or village at least 3 times successively, and where there is no such daily paper published, at least once in a weekly paper published in such town, city or village. Such publication shall include the name and address of the applicant, the kind of license applied for and the location of the premises to be licensed.

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

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

Under 331.20, a newspaper without any for publication of the notices required by paid circulation is not a qualified medium 176.09. 39 Atty. Gen. 347.

176.11 Revocation of license by local authorities. Upon complaint made in writing under oath by any resident in, and filing with the clerk of, any town, village or city that any such licensed person therein has violated any provision of this chapter or keeps or maintains a disorderly or riotous, indecent or improper house, or that he has sold or given away any intoxicating liquor to any minor, or to persons intoxicated or bordering upon intoxication, or to known habitual drunkards, or that he has not observed and obeyed any order of such supervisors, trustees, aldermen, or county superintendent of the poor, or any of them, made pursuant to law, the proper town board, village board or common council shall issue a summons, to be signed by the clerk, directed to any peace officer or constable therein, commanding the person so complained of to appear before them on a day and at a place in such summons named, not less than 3 nor more than 10 days from its date, and show cause why his license should not be revoked. Such summons shall be served at least 3 days before the time at which such person is commanded to appear, and may be served either personally or upon the person in charge of the place to which such license relates.

176.12 Procedure on hearing effect of revocation. If such person shall not appear as required by the summons the complaint shall be taken as true; and if the board shall

deem its allegation sufficient the license shall be revoked, and notice thereof shall be given to the person whose license is so revoked; but if such person shall appear and deny the complaint each party may produce witnesses and be heard by counsel. If upon such hearing the board shall find the complaint to be true the license shall be suspended for not less than 10 days nor more than 90 days or revoked, and if untrue the proceeding shall be dismissed without costs to the accused, and if the complaint be found by the board to be malicious and without probable cause the cost shall be paid by the complainant, and the board may require security therefor before issuing the summons as aforesaid. When a license is revoked it shall be so entered of record by the clerk, and no other license shall be granted to such person within 12 months of the date of its revocation nor shall any part of the money paid for any license so revoked be refunded.

176.121 Revocation on complaint of commissioner of taxation. (1) Upon complaint filed by the commissioner of taxation, or any of his employes employed under section 139.03 (11) as he may designate, with the clerk of any court of record in the jurisdiction in which premises of the licensed person complained of are situated, that any such licensed person therein has at any time violated any provision of this chapter, or keeps or maintains a disorderly or riotous, indecent or improper house, or that he has at any time sold or given away any intoxicating liquor to any minor, or to persons intoxicated or bordering on intoxication, or to known habitual drunkards, or has failed to maintain said premises in accordance with the standards of sanitation prescribed by the state board of health, or in whose licensed premises known criminals or prostitutes are permitted to loiter, or that he has at any time violated any federal or state law or been convicted of any felony or any offense against the laws relating to the sale of intoxicating liquors or fermented malt beverages, or that he does not possess the qualifications required by this chapter to entitle him to a license, the clerk of said court shall issue a summons commanding the person so complained of to appear before it not less than 20 days from its date, and show cause why his license should not be revoked or suspended. Such summons and a copy of the complaint shall be served at least 20 days before the time in which such person is commanded to appear, and may be served either personally or upon the person in charge of the place to which such license relates.

(2) If such person shall not appear as required by the summons, the allegations of the complaint shall be taken as true; and if the court shall deem such allegations sufficient, it shall order the license suspended for a period not exceeding 90 days or revoked, and notice thereof shall be given by the clerk of said court to the person whose license is so revoked or suspended; but if such person shall appear and answer the complaint, the court shall fix a date for trial not more than 30 days after the return date of the summons, at a place within the judicial circuit if the complaint is filed in a circuit court. Trial shall be had before the court without a jury. If upon such trial the court shall find the allegations of the complaint to be true it shall order the license suspended for a period not exceeding 90 days or revoked, and if untrue the proceeding shall be dismissed. When a license is revoked or suspended, the local licensing body which issued such license shall be notified by the clerk; and if such license be revoked, no other license shall be granted to such person or to any person in privity of interest with him as owner, lessor, bailor or lender, within 12 months of the date of its revocation, and no other license shall be granted to cover the premises covered by any revoked license within 60 days of the date of the revocation of such license; nor shall any part of the money paid for any license so revoked be refunded. If any appeal be taken from such revocation, any period during which the order is stayed shall be added to the 12 months and to the 60 days, respectively. The findings and order of the court shall be filed within 10 days after the trial and said order shall be final unless appeal be taken to the supreme court in the manner provided for appeals in civil cases.

(3) Whenever any court shall have revoked or suspended any license pursuant to this section, no further proceedings shall be commenced hereunder except upon grounds arising after such original revocation or suspension.

(4) No license issued by any local authority under the provisions of this chapter shall be valid unless and until it shall have affixed thereto an affidavit signed under oath by the clerk issuing said license that a copy of the application for such license and all information required by law to be furnished by the licensing body to the commissioner of taxation relating to such applicant and license has been mailed to the commissioner of taxation at Madison, Wisconsin.

(5) Whenever any local licensing body or any court shall revoke or suspend a license or impose any penalty upon any licensee for the violation of any provision of this chapter or of section 66.054, the clerk of the local licensing body or the clerk of the court revoking or suspending such license or imposing such penalty shall within 10 days after such revocation, suspension or imposition of such penalty, mail a report to the commissioner of

taxation at Madison, Wisconsin, giving the name of the licensee, the address of his licensed premises, and a full detail of the penalty imposed.

176.14 Application for license; subsequent changes. Whenever anything occurs to change any fact set out in the application of any licensee such licensee shall file with the issuing authority a notice in writing of such change within 10 days after the occurrence thereof.

176.15 Furnishing bail. No person licensed to deal in intoxicating liquor or fermented malt beverages shall furnish bail for any person charged with a violation of any of the provisions of this chapter, chapter 66, or chapter 139.

176.17 Restrictions on manufacturers, rectifiers, and wholesalers. (1) No manufacturer, rectifier or wholesaler shall hold the ownership, directly or indirectly, of any interest in any license to sell products of the industry for consumption on the premises covered by such license.

(2) No manufacturer, rectifier or wholesaler shall furnish, give, or lend any money or other thing of value, directly or indirectly, or through a subsidiary or affiliate, or by any officer, director, or firm member of the industry, to any person engaged in selling products of the industry for consumption on the premises where sold, or to any person for the use, benefit, or relief of said person engaged in selling as above; or to guarantee the repayment of any loan or the fulfillment of any financial obligation of any person engaged in selling as above. Nothing herein contained shall affect the extension of usual and ordinary commercial credits for the products of the industry sold and delivered. No person licensed to sell intoxicating liquors for consumption on the premises where sold shall receive, or be the beneficiary of, any of the benefits hereby prohibited.

(3) No manufacturer, rectifier or wholesaler shall furnish, give, rent, lend, or sell any equipment, fixtures, or supplies, directly or indirectly, or through a subsidiary or affiliate, or by any officer, director, or firm member of the industry, to any person engaged in selling products of the industry for consumption on the premises where sold. No person licensed to sell products of the industry shall receive, or be the beneficiary of, any of the benefits hereby prohibited.

(4) No manufacturer, rectifier or wholesaler shall furnish, give, lend, or rent any interior decorations other than signs, or furnish, give, lend, or rent any sign or signs, for inside or outside use, costing collectively more than \$25 in any one calendar year, to any person licensed to sell intoxicating liquors for consumption on the premises where sold, either directly or indirectly, or through a subsidiary or affiliate, or by any officer, director, or firm member of any such manufacturer, rectifier or wholesaler. No person licensed to sell products of the industry shall receive, or be the beneficiary of, any of the benefits hereby prohibited.

(5) No manufacturer, rectifier or wholesaler shall hold any interest in any premises hereafter acquired in which intoxicating liquors are sold at retail for consumption on the premises where sold.

(6) The violation of any provision of this section by any manufacturer, rectifier, wholesaler, retailer, or other licensee shall be sufficient cause for the revocation of the license, of the manufacturer, rectifier or wholesaler if such license shall be required, or of the licensee receiving the benefit from the prohibited act as herein provided.

This section does not prohibit the furnishing of a sign to a Class A licensee. 23 Atty. Gen. 503.
 Atty. Gen. 191. See note to 66.054, citing 41 Atty. Gen. 35.

Sale of carbon dioxide gas in drums by

176.18 Pharmacist's permit; fee; conditions. (1) In any town, village or city the governing body may, upon written application therefor, grant to any registered pharmacist, as such governing body may deem proper, a permit to sell within such town, village or city, intoxicating liquors in quantities less than one gallon for medicinal, mechanical or scientific purposes only and not to be drunk on the premises. The sum to be paid for such permit shall not exceed \$10 and it shall be granted and issued in the manner and terminate at the same time as the license provided for in section 176.05.

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

(3) Such certificate and prescription shall be filed and preserved with the book hereinafter mentioned, and shall be considered a public record at all times open to inspection

by any member of the town or village board or council, or any peace officer, and may be produced in court; and at the end of each month all such certificates and prescriptions received by him shall be filed with the town, village or city clerk; provided, that each town, village or city clerk is authorized every 90 days to destroy the certificates and prescriptions filed by druggists each month.

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

(6) Any person who shall make any false certificate, statement, or representation to any physician to secure a prescription for such intoxicating liquor, or to a registered pharmacist, or to any of his clerks and employes, for the purpose of inducing either of them to sell any intoxicating liquor for use for any other than medicinal, mechanical or scientific purposes, and shall thereby secure such prescription and a sale thereof to be made in violation of law, and any such pharmacist who shall refuse or neglect to comply with any of the requirements of this section, shall be punished by a fine of not less than \$40 nor more than \$200, besides the cost of suit, or by imprisonment in the county jail or house of correction not less than 30 days nor more than 8 months.

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

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

Up to and including 8 ounces.....	\$0.05
More than 8 to and including 16 ounces.....	0.01
More than 16 to and including 32 ounces.....	0.02

The commissioner shall by regulation prescribe the manner in which such stamps shall be affixed.

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

(b) Any person who shall violate any of the provisions of this subsection shall be punished by a fine of not less than \$25 nor more than \$300 or by imprisonment in the county jail for not less than 10 days nor more than 6 months, or by both such fine and imprisonment.

(c) Nothing herein contained shall be construed to prohibit the display or exhibition by a registered pharmacist of the permit required by subsection (1) of this section.

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

(2) Any physician or surgeon violating any of the provisions of this section shall be punished by a fine of not less than \$250 nor more than \$1,000 or by imprisonment in the county jail or house of correction not more than 6 months; and conviction for a second offense within any one year shall be ground for revocation of such defendant's license to practice medicine and surgery in this state.

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

(1) Any clearly described, contiguous, compact territory in cities, villages or towns bounded by corporation or ward lines, public streets, public alleys, or watercourses, in which actually reside not less than 100 nor more than 750 qualified electors may be constituted a residence district. Its greatest length shall not be more than 4 times its nar-

rowest width. No part of any one district once used to determine one residence district, and no territory which in any other manner shall have been constituted a no-license area, while continued as such, shall be used in fixing another residence district.

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

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

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

(c) The frontage of either or both sides of a highway in towns or unincorporated villages within a distance of 400 feet if one-third of the lineal feet of the property abutting upon said highway in such distance is so used.

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

(e) Actual and bona fide hotels maintaining in cities of the first class 50 or more sleeping rooms for the accommodation of transient guests; in cities of the second class, 25 or more such rooms; in cities of the third class, 13 or more such rooms; and in cities of the fourth class, 10 or more such rooms.

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

176.21 Remonstrances against license in no-license districts. (1) Any compact, contiguous territory in any town, village or city in this state, wherein no license to sell, deal or traffic in intoxicating liquors has been issued or granted prior to the filing of the remonstrance hereinafter referred to, and containing not less than 100 nor more than 750 resident electors, which district is bounded by corporation or ward lines, public streets or public alleys, and the greatest length of which shall not be more than 4 times its narrowest width, may be constituted a residence district if a majority of the resident electors therein shall on or before May 1st in any year file with the town, village or city clerk a remonstrance in writing describing the boundaries of such district and signed by said electors together with their residence address. Except as provided in subsection (2), no such license shall be granted or issued in any such district after the filing of such remonstrance unless a majority of the electors in such district shall thereafter consent thereto in writing, specifying the location in such district from which such license may be issued or granted. The provision of section 176.23 shall apply to the remonstrance or consent herein provided for.

(2) The provisions of subsection (1) shall not apply to actual and bona fide hotels specified in paragraph (e) of subsection (2) of section 176.20.

176.22 Remonstrances and counter petitions in license districts. No license shall be issued or granted to any person to sell or traffic in any intoxicating liquors within any residence district as defined in section 176.20 if a majority of the qualified electors residing in such district shall, not earlier than the 1st day of May nor later than the 15th day of May in any year, present to and file with the clerk of any such city, village or town in which such residence district is situated, a remonstrance in writing, signed by a majority of said electors, as hereinafter provided, and describing the boundaries of said residence district objecting to the granting of any such license or permit within said district, until a counter petition signed by a majority of said electors in such district praying that such license may be granted in said district shall be filed with such clerk, when it shall be lawful for the proper authorities to issue license in said district.

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

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

176.24 Notice of intention to secure signatures. At least 5 days before beginning to secure signatures to the remonstrance or counter petition provided for in section 176.22, notice of intention so to do, describing the boundaries of such proposed residence district, shall be published at least once in some newspaper printed in such city or village, if any, and if the district be in a town, in some newspaper published in the county, or at least 3 copies of such notice posted for 5 days in at least 3 conspicuous public places within said district declaring the intention to procure and file such remonstrance or counter petition. The giving of the notice and making and filing proof thereof shall be a condition precedent to the right to file such remonstrance or counter petition.

176.25 Review of petitions. Within 10 days after the filing of said remonstrance or counter petition the proper authorities of any such city, village or town who may be authorized to issue licenses for the sale of intoxicating liquors shall give notice in some newspaper, or by posting in 3 public places in said district, of a day, to be fixed by them, that they will take up and consider and examine said remonstrance or counter petition, as the case may be, and any persons objecting to the sufficiency of said remonstrance or counter petition, or either thereof, may appear before such authorities and make and file their objections thereto, and said authorities shall consider the same, and if they determine that either said remonstrance or counter petition is materially defective in any manner they shall point out such defects and permit the party so filing said remonstrance or counter petition to correct the same and supply defects, if any, within 15 days from the date thereof, and if such remonstrance or counter petition shall be perfected within such time, no license shall issue, or a license may be issued, as the case may be, but if such remonstrance or counter petition be not perfected within such time, such proper authorities may exercise their discretion in respect to the issuing or granting of a license in said territory.

176.26 Liquor; beer and ale; sale forbidden; to whom. (1) When any person shall by excessive drinking of intoxicating liquors, or fermented malt beverages misspend, waste or lessen his estate so as to expose himself or family to want, or the town, city, village or county to which he belongs to liability for the support of himself or family, or so as thereby to injure his health, endanger the loss thereof, or to endanger the personal safety and comfort of his family or any member thereof, or the safety of any other person, or the security of the property of any other person, or when any person shall, on account of the use of intoxicating liquors or fermented malt beverages, become dangerous to the peace of any community, the wife of such person, the supervisors of such town, the mayor, chief of police or aldermen of such city, the trustees of such village, the county superintendent of the poor of such county, the chairman of the county board of supervisors of such county, the district attorney of such county or any of them, may, in writing signed by her, him or them, forbid all persons knowingly to sell or give away to such person any intoxicating liquors or fermented malt beverages, for the space of one year and in like manner may forbid the selling, furnishing, or giving away of any such liquors or fermented malt beverages, knowingly to such person by any person in any town, city or village to which such person may resort for the same. A copy of said writing so signed shall be personally served upon the person so intended to be prohibited from obtaining any such liquor or beverage.

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

History: 1953 c. 235.

176.27 Renewal of prohibition. Such supervisors, aldermen, trustees, county superintendent of the poor, mayor, chairman of the county board or district attorney or any

one of them, may, in the same manner, renew such prohibition from year to year as to all such persons as have not, in their or his opinion, reformed within the year; and if any person so prohibited shall, during such prohibition, sell or give away, to any person to whom such sale shall have been so forbidden, any such liquors or beverages, of any kind whatsoever he shall forfeit for each offense the sum of \$250, to be recovered upon his bond in an action to be prosecuted by the town, county, village or city treasurer.

176.28 Sale to forbidden person; evidence; pleading. (1) When the sale or giving away of any intoxicating liquors or fermented malt beverages to any person shall have been forbidden in the manner provided by law, every person who shall sell or give to, or for, or purchase or procure for, or in behalf of, such prohibited person any such intoxicating liquors or fermented malt beverages, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$250 and the costs of prosecution; and in default of immediate payment thereof he shall be committed to the county jail or house of correction not less than 60 days unless sooner discharged by the payment of such fine and costs.

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

(3) In any such prosecution it shall not be necessary to allege in the complaint or information any facts tending to show that the person to whom such intoxicating liquors or fermented malt beverages were sold or given was a person to whom the sale of such intoxicating liquors or fermented malt beverages might lawfully or properly be forbidden, but it shall be sufficient to allege generally that such intoxicating liquors or fermented malt beverages were given or sold by the accused to such person.

(4) "Fermented malt beverages" as used in sections 176.26 to 176.29 shall be construed to have the same meaning as defined in section 66.054 as amended from time to time.

176.29 Sales to forbidden persons by unlicensed dealers. The provisions of section 176.28 shall be held to apply to all persons, whether licensed dealers or not, and the notice provided for by section 176.26 shall be held to be a notice to all persons, whether licensed dealers or not, in any prosecution brought under the provisions of section 176.28.

176.30 Minors; intoxicated persons; hospitals. (1) SALE TO MINOR OR INTOXICATED PERSON; PENALTY. Any keeper of any place of any name whatsoever for the sale of any intoxicating liquors who shall sell, vend or in any way deal or traffic in, or for the purpose of evading any law of this state relating to the sale of liquors, give away any such liquors in any quantity whatsoever to or with a minor, or to any person intoxicated or bordering on a state of intoxication, and any person whatever who shall procure for, or sell, or give away, to any minor, whether upon the written order of the parents or guardian of such minor or in any other manner whatsoever, or to any intoxicated person, any such liquors shall be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail or house of correction not to exceed 60 days, or by both such fine and imprisonment.

(2) MINOR, 17 OR UNDER. Where the offense is that of selling intoxicating liquor to a minor 17 years of age or under, the guilty person shall be punished by a fine of not less than \$200 nor more than \$500 or by imprisonment in the county jail or house of correction not less than 30 days nor more than 8 months, and in all cases of conviction for a second or any subsequent offense by such imprisonment only.

(3) NEAR INSANE HOSPITALS. No person shall sell, or in any way deal or traffic in, or for the purpose of evading law, give away any such liquors in any quantity whatsoever within one mile of any of the state hospitals for the insane, except the central state hospital at Waupun, and any person who shall so sell or give away any such liquors, shall be punished by a fine of not less than \$100 nor more than \$250, or by imprisonment in the county jail or house of correction not to exceed 6 months or by both such fine and imprisonment.

176.31 Minor's misrepresentation to procure intoxicating liquor; penalty. Any minor who shall represent that he is of age for the purpose of asking for, or receiving, any intoxicating liquors from any keeper of any place of any name whatsoever for the

sale of intoxicating liquors, except in cases authorized by law, shall be punished by a fine of not less than \$10 nor more than \$50, or by imprisonment in the county jail or house of correction not to exceed 10 days, or by both such fine and imprisonment.

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

(2) Any person to whom the sale of any such liquors has been forbidden in the manner provided by law who shall enter any place of any nature or character whatsoever for the sale of such liquors shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$10 nor more than \$50 or by imprisonment in the county jail or house of correction not less than 10 days nor more than 60 days or by both such fine and imprisonment

History: 1951 c. 215, 734; 1953 c. 74.

The words "remain" and "remaining" construed. 38 Atty. Gen. 535.

See note to 66.054, citing 41 Atty. Gen. 340.

176.33 Furnishing liquor at public auctions; penalty. It shall be unlawful for any person to sell, furnish, or give away any intoxicating liquors at any public auction held in this state, or to any person or persons in attendance at any such auction, and any person who shall so sell, furnish, or give away any such liquor shall be deemed guilty of an evasion of the provisions of this chapter, and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$250, or by imprisonment in the county jail or house of correction for not less than 3 months nor more than 6 months, or by both such fine and imprisonment.

176.34 Sale on election day. If any person shall sell, give away or barter any intoxicating liquors on the day of the annual spring election, the biennial fall election, special election, or primary election, until after the polls at any such election are closed, such person so offending shall be punished by a fine of not less than \$100 nor more than \$250, or by imprisonment in the county jail or house of correction not to exceed 60 days or by both such fine and imprisonment.

176.341 Sale from original container; seizure of evidence. (1) Any retailer or any person who shall dilute or add to any intoxicating liquor, or fill or cause to be filled, for the purpose of selling or offering the same for sale, so diluted or filled, from or in an original container which has previously been used for intoxicating liquor containing 21 per cent or more of alcohol by volume, or shall have in his possession on premises licensed under section 176.05 (2) any such diluted liquor or refilled original container, shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not less than \$150 nor more than \$500 or by imprisonment for not less than 60 days nor more than 6 months or by both such fine and imprisonment. Possession of an original container containing any intoxicating liquor so diluted, added to or refilled shall be prima facie proof that the possessor thereof intended to violate the provisions of this section.

(2) Any person vested with police powers may seize any intoxicating liquors which he deems necessary as evidence of a violation of subsection (1). Liquor so seized shall be safely kept by the officer so long as necessary for the purpose of being produced as evidence on any trial. As soon as may be thereafter it shall be disposed of upon the order of the court.

History: 1951 c. 88.

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

176.36 Excise laws; enforcement by local officers; penalty. Every sheriff, under-sheriff and deputy sheriff, police officer, marshal or deputy marshal or constable of any town, village or city shall know, or be credibly informed, that any offense has been committed against the provisions of any law of this state relating to the sale of intoxicating liquors, shall make complaint against the person so offending within their respective towns, villages or cities to a proper justice of the peace or other magistrate therein, and for every neglect or refusal so to do, every such officer shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$50 and the costs of prosecution.

176.37 What is a sale; form of complaint; order traffic. (1) The giving away of intoxicating liquors or other shift or device to evade the provisions of any law of this state relating to the sale of such liquors shall be deemed and held to be an unlawful selling within its provisions, and in all cases not otherwise specially provided for any person convicted of any misdemeanor under the provisions of any such law shall be punished by a fine not exceeding \$250 and shall pay the costs of prosecution, and in default of immediate payment of such fine and costs shall be committed to the county jail or house of correction for not less than 60 days nor more than 6 months unless sooner discharged by the payment of such fine and costs; the words "any law of the state relating to excise or the sale of intoxicating liquors" or any words of similar import when used in the statutes, shall be held to include and apply to all excise laws heretofore enacted which shall remain in force as well as to all provisions of this chapter and to all excise laws which may be hereafter enacted so long as the same shall remain in force.

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

176.38 Local option. (1) **PETITION; ELECTION.** Whenever a number of the qualified electors of any town, village or city equal to, or more than, 15 per centum of the number of votes cast therein for governor at the last general election shall present to the clerk thereof a petition in writing, signed by them, praying that the electors thereof may have submitted to them the question whether or not any person shall be licensed to deal or traffic in any intoxicating liquors as a beverage, or the question whether or not liquor stores as provided for in section 176.08 shall be established, maintained and operated, or that both such questions be submitted to them, and shall file such petition with the clerk at least 30 days prior to the first Tuesday of April next succeeding, and provided that within 5 days of the filing of such petition such clerk shall determine by careful examination the sufficiency or insufficiency of such petition and state his findings in a signed certificate dated and attached thereto, and within 5 days give written notice to the commissioner of taxation, at Madison, Wisconsin, that such petition has been filed with him relating to such question, stating the date of filing such petition, the name of the town, village or city and the county in which such town, village or city is located, and such clerk, after and not until he shall have determined that said petition is sufficient and shall have given the notice to the commissioner of taxation as herein set forth, shall forthwith make an order providing that such question or questions shall be so submitted on the first Tuesday of April next succeeding the date of such order. Such petition must be circulated by one or more qualified voters residing in the town, village or city wherein such local option question will be submitted. The preparation of such petition shall be gov-

erned as to the use of more than a single piece of paper, the dates of signatures, the places of residence of signers, and the verification thereof, by the provisions of section 5.05 so far as applicable. No petition shall be circulated prior to 60 days before the date on which such petition must be filed according to law and no signature shall be counted unless it has been affixed to such petition and bears date within 60 days prior to the time for filing such petition.

(2) NOTICE. The city clerk making such order shall give notice of the election to be held on such question or questions in the manner notice is given of the regular city election; town and village clerks who make such orders shall give such notice by posting written or printed notices in at least 5 public places in the town or village not less than 10 days before the day of election.

(3) BALLOTS. The ballots upon the question or questions so submitted shall be deposited in a separate ballot box in each town and election district and shall contain the words "For License," and "Against License," or "For Liquor Store" and "Against Liquor Store," and shall otherwise conform to the provisions of subsection (8) of section 6.23. Both questions may be submitted on the same ballot.

(4) CANVASS. The election on such question or questions shall be held and conducted, and the returns canvassed, in the manner in which elections in such city, town or village on other questions are conducted and the returns thereof canvassed. The result shall be certified by the canvassers immediately upon the determination thereof, and be entered upon the records of the town, village or city, and shall remain in effect for a period of 2 years and thereafter until changed by ballot at another election held for the same purpose. Within 10 days such clerk shall notify the commissioner of taxation of the results of such election.

History: 1951 c. 247 s. 43.

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

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

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

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

(c) Flavoring extracts, syrups and food products;

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

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

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

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

(3) Such permit shall be issued free of charge by the commissioner of taxation and shall not be subject to the provisions of section 176.041.

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

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

(3) Such permit shall be issued by the commissioner of taxation for the fee of \$10.

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

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

(3) Such permit shall be issued by the commissioner of taxation without fee.

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

(2) Any person who shall violate any provision of this section shall be deemed guilty of a felony and shall be punished by a fine of not less than \$1,000 nor more than \$5,000 or by imprisonment in the state prison for not less than one year nor more than 10 years or by both such fine and imprisonment.

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

176.406 Wholesale alcohol permit. (1) The commissioner of taxation may issue a wholesale alcohol permit which shall permit the holder to sell ethyl alcohol of 190 proof or more, to persons holding permits issued pursuant to section 176.18, section 176.403 and section 176.404.

(2) Such permit shall be issued for an annual fee of \$50 and shall expire annually on July 1st and shall meet such other requirements as shall be prescribed by the commissioner of taxation by regulation.

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

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

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

History: 1953 c. 61.

176.41 Penalties. Any person who shall violate any of the provisions of this chapter for which a specific penalty is not herein provided shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than \$500, or by imprisonment in the county jail or house of correction for not more than 90 days, or by both such fine and imprisonment, and any license issued to him shall be subject to revocation by a court of record in its discretion. In the event that any such person shall be convicted of a second offense, under the provisions of this chapter such offender, in addition to the penalties herein provided, shall forthwith forfeit the right to purchase any stamps from the commissioner of taxation, and any license which may have been issued to him by any city, village or town shall without notice be forthwith forfeited. In the event that such person shall be convicted of a felony, in addition to the penalties provided for such felony, the court shall revoke the license of such offender. Every town, village or city shall have the right to revoke any license by it issued to any person who shall violate any of the provisions of this chapter or any municipal ordinance adopted pursuant to this chapter as provided in sections 176.11 and 176.12.

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

176.43 Municipal and state regulations; penalties. (1) Any city, village or town may by ordinance prescribe additional regulations in or upon the sale of intoxicating liquor, not in conflict with the provisions of this chapter. Such ordinance may prescribe different penalties than those provided in this chapter, but no ordinance shall provide a greater penalty than the maximum allowed by law. The provisions of this chapter shall

in no way affect the power of cities, villages and towns to enact zoning ordinances or to enforce zoning regulations now in force or hereinafter enacted. Whenever any person shall be committed to the county jail or house of correction for the violation of a municipal ordinance, his board shall be paid by the municipality where such violation was committed.

(2) The commissioner of taxation in furtherance of effective control may promulgate rules and regulations consistent with chapter 66 or chapter 139. Such rules and regulations shall be published once in the official state paper and shall become effective 5 days after such official publication.

(2a) Any person who shall violate any rules and regulations of the commissioner of taxation shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$100 nor more than \$500 or by imprisonment in the county jail for not less than 30 days nor more than 6 months, or by both such fine and imprisonment in the discretion of the court.

(2b) Any violation of any section of chapter 139 or 176 of the statutes shall be sufficient grounds for revocation by the commissioner of taxation of any license or permit issued by him to such violator.

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

History: 1951 c. 261 s. 10.

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

176.46 Unadulterated cider, manufacture and sale legal. Nothing in this chapter shall be construed to affect the manufacture of unadulterated apple cider or the sale thereof.

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

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

(2) Any person violating any of the provisions of this section shall be punished by a fine of not less than \$50 nor more than \$100.

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

(2) Any person violating any of the provisions of this section shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment in the county jail for not less than 3 months or more than one year, or by both such fine and imprisonment.

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

(4) Every manufacturer, rectifier or blender of intoxicating liquor shall list with the commissioner of taxation all the names, brands and descriptions which such manufacturer,

rectifier or blender manufactures, rectifies or blends, giving alcoholic content by volume and all other pertinent information as required by him. Before placing a new blend on the market such information concerning such blend shall be previously submitted to the commissioner. The commissioner may also require by regulation that samples of the product be furnished him for proper examination and analysis.

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

(2) (a) The court, upon the conviction of any person for owning, possessing, keeping, storing, manufacturing, selling, distributing or transporting intoxicating liquor or fermented malt beverages in violation of this chapter or chapter 66 or chapter 139, shall order any part or all of such intoxicating liquor, fermented malt beverages or personal property used in connection therewith, which was seized in connection with such violation, to be destroyed if for any reason it is unfit for sale. Such intoxicating liquor and fermented malt beverages and other chattels as are fit for sale shall be turned over to the department of taxation for disposition. The person seizing the same shall exercise reasonable diligence to ascertain the name and address of the owner of said property and of all persons holding a chattel mortgage or conditional sales contract secured by all or part of said property, and he shall make a written report in respect thereto to the department of taxation. Upon receipt of such confiscated property, the department of taxation shall also exercise reasonable diligence to ascertain the names and addresses of any such owners and lienholders, and if a motor vehicle is confiscated, the department of taxation shall obtain the written advice of the motor vehicle department as to the ownership of and liens outstanding against said motor vehicle.

(b) From time to time the department of taxation shall submit to the director of purchases an inventory of such intoxicating liquors and fermented malt beverages in its possession, such inventory showing kinds, quantities, brands and container sizes and taxes due thereon. Upon receipt of such inventory, the director of purchases shall advertise in the official state paper for sealed bids on such inventory from licensees and permittees under this chapter or chapter 139 or 66 and may sell same to the highest bidder, provided such bidder is a licensee or permittee. Any items or groups of items in such inventory subject to a lien or liens established, by intervention or otherwise, in the proceedings for conviction as being bona fide and as having been created without the lienor having notice that such items were being used or were to be used in connection with such violation, shall be sold separately. The net proceeds from any such sale, less all costs of seizure, storage and sale shall be turned over to the state treasurer and credited to the common school fund.

(c) Any personal property, other than intoxicating liquor or fermented malt beverages, seized pursuant to subsection (1) and fit for sale, shall be turned over to the department of taxation for disposition and shall be disposed of by the director of purchases at public auction to the highest bidder at a time and place stated in a notice of sale which shall describe the property to be sold and be subscribed by the director of purchases in his official position. The place of sale shall be in a conveniently accessible place in the county where the property was taken. A copy of the notice shall be published once each week for 2 successive weeks before the time of sale in the official state newspaper and in a newspaper having general circulation in the area where the property is to be sold and shall be posted in a conspicuous place in the court house or on the courthouse grounds in such county at least 10 days before the sale. The department of taxation 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 lien contracts on all or part of the property, according to information received by the department of taxation. Any confiscated chattel worth in excess of \$100 shall be sold separately, and the balance of the confiscated chattels shall be sold in bulk or piecemeal in the discretion of the director of purchases. The net proceeds from such sale less all costs of seizure, storage and sale shall be turned over to the state treasurer. No motor vehicle or motor boat confiscated pursuant to this section shall be sold within a period of 30 days after date of seizure.

(3) (a) Prior to sale, the owner of any confiscated property may apply to any court of record in the county where the property was seized, for an order restoring said property to such owner; and such owner may apply to such court, after sale, for a refund of the amount realized on the sale of the property of such owner; and any holder of a chattel mortgage or a conditional sales contract secured by any part or all of said property may apply to such court for a refund of the sum realized on the sale of property subject to any such lien, but not in excess of the amount due on such lien contract.

(b) Such application shall be made within one year after the sale of the property. A

copy of the application and the order of hearing thereof shall be served on the department of taxation at least 20 days before the date set for hearing.

(c) Relief shall be granted only after a showing by the applicant that he is the true owner or holder of a bona fide lien contract on all or part of the property seized, and that the violation which led to the confiscation was not with his knowledge, consent or connivance, and that he had no reasonable grounds to believe or suspect that such property would be used in such a violation; and as to these matters the burden of proof shall be on the applicant.

(d) Whether or not the applicant shall pay the costs of the seizure and sale as a condition to obtaining relief, and the matter of allowing costs and disbursements shall rest in the discretion of the court. All property seized and the proceeds thereof after sale shall be subject to the order of the court.

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

(5) The provisions of this section relating to confiscation shall not exclude resort to the provisions of chapter 288, and the commissioner of taxation or the peace officer seizing property may in any case proceed under the provisions of that chapter.

History: 1951 c 417.

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

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

(2) Any person violating this section shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment in the county jail for not less than 6 months nor more than a year, or by both such fine and imprisonment.

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

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

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

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

(a) The kind of permit desired;

(b) The name and address of the applicant; if the applicant be a firm, partnership or association, the name and address of each member thereof; if the applicant be a corporation, the name and address of each of its officers;

(c) The place or places where the business is to be conducted;

(d) The business or occupation, if any, theretofore engaged in by the applicant; or if a firm, partnership or association, by each member thereof; or if a corporation, by each officer thereof, for a period of at least 3 years immediately preceding the date of such application:

(e) Such further information as the commissioner of taxation may require to enable him to determine the trustworthiness of each applicant, including each member of the firm, partnership or association, or each officer of the corporation, and the quality of the intoxicating liquor sold or for which orders are to be solicited.

(3) Such application shall be verified by the applicant; if made by a firm, partnership or association, it shall be verified by at least 2 members thereof; if made by a corporation, it shall be verified by the president and secretary thereof. Such application for permit shall be accompanied by a fee of \$10. All such permits shall expire on the 31st

day of December next following their date of issue unless sooner revoked by the commissioner of taxation. Individuals, firms, partnerships, corporations or associations employing persons to solicit orders for, or to sell for future delivery, intoxicating liquors within the state, shall send to the commissioner a list of all such persons and notify him at once whenever a salesman or solicitor leaves their employ. Upon leaving such employment, the salesman or solicitor shall immediately send the permit to the commissioner for cancellation.

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

(5) Any person, firm, partnership, corporation or association who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail for not less than 30 days nor more than 6 months, or by both such fine and imprisonment, and shall, in addition thereto, have his or its permit automatically revoked. Any person, firm, partnership, corporation or association having his or its permit so revoked shall not be granted another permit for a period of 2 years following such revocation.

(6) It shall not be required that an individual or any of the members of a firm, partnership or association, or, if a corporation, it or any of its officers, stockholders or directors be citizens or residents of this state in order to secure the permit required by subsection (1) hereof; provided, however, that a permit issued hereunder to any non-resident person, firm, partnership, association or corporation shall give such nonresident authority only to solicit orders for the sale of alcoholic liquor to Wisconsin manufacturers, rectifiers or wholesalers, and to Wisconsin retailers if such orders are solicited for and are to be filled by a Wisconsin manufacturer, rectifier or wholesaler.

When 2 or more are associated in the and its representatives must also obtain business of selling liquor for future delivery, permits. 39 Atty. Gen. 353.
the firm must obtain a permit under (1) See note to 66.054, citing 40 Atty. Gen. 114.

176.705 Sale of alcohol. No person holding a retail license for the sale of intoxicating liquor in this state shall buy or sell alcohol which exceeds 50 per cent by volume, or 100 proof.

176.71 Bonded wreckers. The commissioner of taxation may contract bonded wreckers to destroy any illicit stills seized.

176.72 Nuisances. Any building or place of any kind where intoxicating liquor, fermented malt beverages or alcohol is sold, possessed, stored, brewed, bottled, manufactured or rectified without a lawful permit or license as provided in section 66.054 or in chapter 139 or 176, or where persons are permitted to resort for the purpose of drinking intoxicating liquor, fermented malt beverages or alcohol, in violation of law is declared a public nuisance and may be closed and abated as such.

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

176.90 Revocation of license and injunction against gambling devices. (1) A license or permit issued under the provisions of this chapter or section 66.054 to any person who shall thereafter knowingly suffer or permit any slot machine, roulette wheel, other similar mechanical gambling device, or number jar or other device designed for like form of gambling, to be set up, kept, managed or used upon the licensed premises or in connection therewith upon premises controlled directly or indirectly by such person, shall be revoked by the circuit courts by a special proceeding as hereinafter provided. When a license or permit has been revoked no other license or permit of any character provided for by chapter 176 or section 66.054 shall be issued to the person who held such license or permit, prior to the expiration of one year from the effective date of such revocation. If any appeal shall be taken from such revocation, any period during which the order is stayed shall be added to the one year.

(2) Any sheriff, undersheriff, deputy sheriff, constable or other municipal police officer or any person authorized to enforce the gambling laws under the provisions of

section 73.035 shall within 10 days after acquiring such information report to the district attorney of the county the name and address of any licensee or permittee under chapter 176 or section 66.054 who to his knowledge has knowingly suffered or permitted any device to which reference is made in subsection (1) to be set up, kept, managed or used upon the licensed premises or in connection therewith upon premises controlled directly or indirectly by such licensee or permittee. Such officer or person shall also report to the district attorney his knowledge of the circumstances and the name of the municipality or officer by whom the license or permit has been issued. Any other person may in writing and signed by that person report any such name, address and other information to the district attorney. Within 10 days after any report to him the district attorney shall institute a proceeding as hereinafter provided before the circuit court of his county or shall within such time report to the attorney-general the reasons why such a proceeding has not been instituted. If thereafter the attorney-general shall so direct, the district attorney shall institute such proceeding within such reasonable time as the attorney-general shall direct unless the attorney-general elects to institute the proceeding, in which case he is authorized to do so.

(3) Such proceeding shall be in the name of the state and the issues may be determined by a jury. It shall be instituted by the filing of a petition and service of a notice as herein provided. The petition shall be directed to the circuit court and shall set forth a clear and concise statement of the grounds that are alleged to exist justifying a revocation of the license or permit under the provisions of subsection (1) hereof, and shall request an order revoking such license or permit. It shall also request an injunction restraining the defendant from thereafter knowingly suffering or permitting any such devices to be set up, kept, managed or used upon premises directly or indirectly controlled by him. Upon the filing of such petition the court shall fix a time for hearing not to exceed 30 days from the date of filing at a place within the judicial circuit, and a copy of the petition and a notice of the time and place of hearing shall be served upon the defendant not less than 20 days prior to the date of hearing. Such service shall be made in the same manner as a summons is served in a civil action, except that it may also be made by leaving a copy of said petition and notice with any person charged with the operation of the licensed premises under the provisions of section 176.05 (11). The allegations of the petition shall be deemed controverted and shall be at issue without further pleading by the defendant. No hearing shall be adjourned except for cause. If upon such hearing the court shall find that the allegations of the petition are true, it shall issue a written order revoking the license or permit and shall likewise enjoin the defendant from thereafter knowingly suffering or permitting any gambling devices referred to in subsection (1) to be set up, kept, managed or used upon premises directly or indirectly controlled by him. The district attorney shall forthwith cause a copy of the order to be filed with the issuing authority of the license or permit and shall cause a copy to be served upon the defendant as above provided or his attorney. The revocation and injunction shall become effective upon such service. In cases where a license is issued by a town, city or village, a copy of the order shall also be filed with the commissioner of taxation.

(4) The law enforcement officials referred to in subsection (2) hereof shall also report to the district attorney the names and addresses of persons other than licensees under chapter 176 or section 66.054 who permit devices referred to in subsection (1) to be set up, kept, managed or used upon premises controlled directly or indirectly by such persons. They shall also report their knowledge of the circumstances and the location of such premises. Thereupon the district attorney shall proceed as in the case of licensees or permittees, except that the only request of the petition shall be for the issuance of the injunction referred to in subsection (3) and the other required allegations shall be correspondingly changed. Such proceeding shall be had and such injunctive orders entered and served as are referred to in subsection (3).

(5) Violations of injunctive orders hereunder shall be punishable by the court as criminal contempts in accordance with the provisions of chapter 256.

(6) Appeals may be taken from orders issued by the circuit court hereunder as in the case of special proceedings.

(7) Any proceeding instituted by a district attorney shall not be dismissed with his consent except upon the written approval of the circuit court.

(8) Any officer or employe referred to in subsection (2) or any district attorney who shall without proper excuse neglect or refuse to perform the duties required of him herein within such times as may be specified shall be subject to removal. The governor may remove any such sheriff or district attorney under the provisions of section 17.16 by filing a complaint on his own motion.

(9) A written record shall be kept by every officer and district attorney of reports

made by or to him under subsection (2). On the first day of the third calendar month after the passage of this section the district attorney of each county shall report in writing to the governor the name, address and office, if any, of each person who has reported to him knowledge of gambling devices under the provisions of subsection (2). He shall also set out the disposition of such reports and the status of all cases instituted thereon. Thereafter such a report shall be filed quarterly on the first days of January, April, July and October in each year, and each report shall also set forth the status of cases not shown by any prior report to be finally determined.

History: 1951 c. 261 s. 10.

A pinball machine which does not contain any automatic pay-off is a gambling device under this section when its recorded scores are used to determine the winner of a prize given by the proprietor. 39 Atty. Gen. 435.

Baseball tally card is a device designed for a form of gambling similar to that for which a number jar is used and is within the terms of this section. 39 Atty. Gen. 546.