

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 department of justice and the department of revenue to act as such under s. 66.054 and chs. 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.

(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

employees 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" means 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 6 months prior to the date of filing such application, except that if a club has been in existence for at least 5 years, and immediately prior to the application made under this subsection and s. 176.05 (4a) had been issued a retailer's liquor license by a municipality or otherwise, it is not subject to such 6-months occupation of premises requirement.

(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.

(14) "Primary American source of supply" means the manufacturer, the rectifier, the owner of intoxicating liquor at the time it becomes a marketable product, the bottler or the exclusive agent of any such person who, if the product cannot be secured directly from the manufacturer by American wholesalers, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by American wholesalers, or who, if the product can be secured directly from the manufacturer by American wholesalers, is the manufacturer.

History: 1973 c. 249; 1975 c. 39.

176.03 Retailers to purchase from persons or firms holding permits. (1) No retailer shall purchase or have in his possession intoxicating liquor purchased from other than a Wisconsin manufacturer, rectifier or wholesaler holding a permit to engage in the sale of liquor in Wisconsin under the provisions of ch. 176.

(2) No intoxicating liquor shall be shipped into this state unless the same shall be consigned to individuals, firms, partnerships, corporations, or associations having a permit from the secretary of revenue to engage in the sale of such liquor under ch. 176.

(2a) No intoxicating liquor or wine shall be shipped into this state by any person located outside the state unless such out-of-state person has a permit issued by the secretary of revenue for the location from which such intoxicating liquor or wine is sold or shipped. The secretary may issue such permits to out-of-state shippers, under s. 176.05 (1h), which shall allow the permittee to ship intoxicating liquor or wine to and only to properly licensed Wisconsin manufacturers, rectifiers or wholesalers.

(3) No common carrier or other person shall bring or carry into this state any intoxicating liquor unless the same shall be consigned to individuals, firms, partnerships, and corporations or associations having a permit from the

secretary of revenue to engage in the sale of such liquor under ch. 176.

(4) Any such common carrier transporting any intoxicating liquor into the state of Wisconsin that shall fail to comply with the requirements of ch. 176 shall forfeit and pay to the state of Wisconsin the sum of \$100 for each and every offense.

(5) The provisions of this section shall not apply to any purchases made under any permit issued pursuant to s. 176.404.

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 bona fide 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 secretary of revenue as otherwise provided for in s. 176.404.

(4) Persons who collect ceramic commemorative bottles or other uniquely designed decanters which contain intoxicating liquor and which have unbroken federal tax stamps thereon may sell such containers to other such collectors without a liquor license.

History: 1975 c. 245.

176.041 Expiration of licenses. All licenses or permits issued by secretary of revenue 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, WHOLESALEERS, RECTIFIERS.** No manufacturer, wholesaler or rectifier shall sell, manufacture or rectify any intoxicating liquor within the state without first obtaining a permit from the secretary of revenue. The application for such permit and the permit shall be in such form as the secretary 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 secretary may suspend or revoke such permit for such period of time as he may determine.

(a) No applicant may have any interest directly or indirectly in a retail establishment and no retailer may have any interest directly or indirectly in a wholesale establishment.

(am) Paragraph (a) took effect October 3, 1963. Any licenses or permits issued prior to that date which would, after that date, be in violation of par. (a) shall nevertheless remain valid and the licensing authority shall not fail to issue licenses or permits (renewals) to persons

holding such licenses or permits on that date unless for other cause shown.

(b) No permittee may sell any intoxicating liquor unless prior to the sale the permittee has filed with the department of revenue a statement to the effect that he or she is a distributor of a particular brand in the state of Wisconsin, or portion thereof, and the sales of that particular brand by the permittee and any permittee purchasing from him or her will be limited to that area. If there is any change in the area the department of revenue shall be informed of the change within 7 days of the effective date of the change. Any person violating this section shall be punished as provided in s. 176.41 and so far as applicable ss. 176.62 and 176.70, including the provisions relating to revocation of license, shall apply.

(c) Every retail licensee of intoxicating liquor in the state of Wisconsin must purchase, advertise and sell intoxicating liquor in the name of and under his license only.

(1b) SAME. The restrictions and limitations imposed in subs. (3), (9) and (13) shall apply to manufacturers, wholesalers and rectifiers and the permits issued by the secretary of revenue.

(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. The permit does not authorize the holder of such permit to sell, deal or traffic in the tax-free intoxicating liquor and wines authorized by s. 139.03 (5).

(1d) PUBLIC WAREHOUSE LIQUOR PERMIT. The secretary of revenue shall also issue a "public warehouse liquor permit." The holder of such permit shall be entitled, subject to rules and regulations issued by the secretary, 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 secretary of revenue 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. Any licensee under this subsection may offer to adults on winery premises taste samples of wine he manufactures on the premises. If a "Class A" liquor license has been issued for the premises, taste samples may be offered only in those areas or rooms not included in such license. Taste samples may be offered in an area or room even though it adjoins or is connected to the premises included in the "Class A" liquor license. No taste samples may be offered if a "Class A" liquor license has been issued for the entire premises. A manufacturer, rectifier or wholesaler holding a permit issued under sub. (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.

(1h) PERMITS TO OUT-OF-STATE SHIPPERS.

(a) No person located outside this state shall engage in the sale of, or make any shipment of, intoxicating liquor or wine into this state without first obtaining a permit from the secretary of revenue. A separate permit shall be required for each location from which any intoxicating liquor or wine is sold or shipped into this state, including the location from which the invoices are issued for such sales or shipments. The application for such permit and the permit shall be in such form as the secretary prescribes. Each permit shall expire on December 31 of each year, and the annual fee for each permit is \$50.

(b) Any permittee who is the holder of an out-of-state shipper's permit issued under this subsection may solicit orders for sales or shipments by the same permittee without obtaining the sales solicitation permit required by s. 176.70, but every agent, salesman or other representative who solicits orders for sales or shipments by any such out-of-state shipper shall first obtain a permit for soliciting orders as required by s. 176.70.

(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, and to be consumed off the premises so licensed. 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 as by their governing bodies elect to come under the provisions of par. (b).

(b) In all towns, cities and villages that by ordinance of their governing bodies elect to come under 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 containers, in multiples not to exceed 4 liters 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 s. 176.01 (8), that are operated solely for the playing of curling, golf or tennis, which are commonly known as country clubs, and including yachting clubs, shall be issued by the secretary of revenue without regard to s. 176.38 for an annual fee of \$50 which shall be paid to the treasurer of the town, city or village in which the club is located. Any club for a "similar sport" holding a license during the license year 1950-1951 is 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 sub. (1a) relative to suspending or revoking permits apply to all licenses issued by the secretary under this subsection, and, except as provided in this subsection, all provisions of this chapter relating to "Class A" and "Class B" licenses for the sale of intoxicating liquors apply to licenses issued to country clubs by the secretary.

(4b) **LICENSES TO AIRPORTS OR ARENAS.** Any county which owns an airport or arena which is in actual operation may by resolution of its governing body annually apply to the secretary of revenue on a form to be supplied by the secretary for the issuance of a retail "Class B" intoxicating liquor license for use on such airport or arena premises. An "arena" means any public building with a capacity of 4,000 or more used principally for the conduct of sports events. Such license shall be issued only to a concessionaire designated by said governing body to operate on said airport or arena, and if 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 or arena. Upon receipt of such application and upon payment to such secretary of an annual license fee equivalent to the amount currently set by the governing body of the municipal subdivision wherein such airport or arena is located for like licenses issued by it, the secretary shall issue such license and thereupon transmit the license fee to the municipal subdivision wherein such airport or arena 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 secretary 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.

(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 department of revenue 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 department of revenue 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 department may prescribe a simplified form for renewal applications requiring information pertinent to renewal. The department shall furnish on request such form blanks as are 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 produces and files 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 or she 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 that the surviving husband or wife of the deceased is an American citizen. No license shall be issued to any person in violation 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) SEMIANNUAL 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 made by the department of health and social services governing sanitation in restaurants shall apply to all "Class B" licenses issued under this section but the department shall not restrict the serving of free cheese in individual portions to patrons as permitted by ss. 50.50 (3) and 176.50. No "Class B" license shall be issued unless the premises to be licensed conform to such rules.

(7) NO LICENSE ON RAILROADS OR AIRCRAFT. No license shall be required for the sale of intoxicating liquor upon any dining, buffet or cafe car operated upon any railroad, or upon any aircraft, 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 or aircraft 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 secretary of revenue. 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.

(8a) NO LICENSE VALID UNLESS AFFIDAVIT AFFIXED. 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 department of revenue relating to

such applicant and license has been mailed to the department of revenue at Madison, Wisconsin.

(9) WHERE AND TO WHOM LICENSES NOT GRANTED. No license or permit shall be granted to any person or persons under the age of 18 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, subject to s. 111.32 (5) (a) and (h), 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 Wisconsin state prisons, unless the person so committed has been duly pardoned. This subsection shall not apply to a Wisconsin corporation; it applies, however, to all officers and directors of any such corporation.

NOTE: Sub. (9) is shown as amended by chapter 418, laws of 1977, section 924 (18) (e) 1, effective July 1, 1979.

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

(b) This subsection shall not apply to premises licensed as such on June 30, 1947, nor shall it apply to any premises licensed as such prior to the occupation of real property within 300 feet thereof by any school building, hospital building or church building.

(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" liquor 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 s. 66.054.

(10m) RESTRICTIONS ON PREMISES UNDER RETAIL "CLASS B" LICENSES. (a) If the city council, village board or town board elects by ordinance to issue manager's licenses as provided by s. 66.054 (10m), no person may manage premises operating under a "Class B" license issued by that city, village or town, unless the person is the licensee, an agent of a corporation appointed as required by s. 176.05 (13) or has a manager's license issued under s. 66.054

(10m). A person manages "Class B" premises if the person has responsibility or authority for:

1. Personnel management of all employees, without regard to whether the person is authorized to sign employment contracts;

2. The terms of contracts for the purchase or sale of goods or services, without regard to whether the person is authorized to sign contracts for such goods or services; or

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

(b) The city council, village board or town board may, by ordinance, define factors in addition to those listed in par. (a) which constitute management of a "Class B" premises.

(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, a wholesaler's license under s. 66.054 (6), Class "A" license under s. 66.054 (7) or Class "B" license under s. 66.054 (8) unless the corporation shall first appoint, in the manner the department of revenue prescribes, as agent, a citizen of the United States and vest in the agent by properly authorized and executed written delegation full authority and control of the premises, described in the license of the corporation, and of the conduct of all business on the premises relative

to intoxicating liquors or fermented malt beverages as the licensee itself could in any way have and exercise if it were a natural person resident in the state. The license shall not be issued unless the appointed agent is, with respect to character, record and reputation, satisfactory to the department. A corporation may cancel the appointment of an agent appointed under this subsection and appoint a successor agent, qualified as the one first appointed and to act in the agent's stead, for the remainder of the license year or until another agent is appointed, by giving the licensing authority and the department immediate written notice thereof stating the reason for the cancellation and new appointment. The successor agent shall have all the authority and perform all the functions and be charged with all the duties of the previous agent of the corporation with like force and effect as if the successor agent had been first appointed by approval of the department until the next regular or special meeting of the licensing authority. The license shall cease to be in force prior to the next regular or special meeting upon receipt by the clerk of the licensing authority of notice of disapproval of the successor agent by the department or by the sheriff or other peace officer of the municipality wherein the license was issued. The license of the corporation shall not be in force after the next regular or special meeting unless and until the successor agent or another qualified agent is appointed and approved by the licensing authority and the department. The corporation shall, in each instance, following the approval of the successor agent or another qualified agent by the licensing authority and the department, 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 secretary of revenue 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 cities or villages, as determined under s. 66.013 (2) (b) 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 the number of licenses issued or granted in good faith by the town board, village board or common council under par. (h), 1975 stats., plus 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 subsequent to any decennial federal census enumeration and occurring after January 1, 1960, shall not decrease the quota of the remainder of the town, village or city to less than one license per 500 people or fraction thereof as determined by the last decennial federal census, or less than one license.

(e) Until a different quota has been established under (b), (c) or (d), the quota of a newly incorporated or organized city, village or town (including those previously incorporated or organized since August 27, 1939) is whichever of the following is the largest:

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 pars. (c) and (d) in case of any annexation or detachment at the time of incorporation; or

4. In case of a city or village, one license for each 500 population or fraction thereof at the time of incorporation.

5. The quota of the town of Menominee shall be determined under par. (b) 1.

(f) As of July 1 of each year in which a federal census is taken the department of health and social services shall certify to each municipality concerned and the secretary of revenue the number of persons in charitable, mental and penal institutions in the municipality.

(g) If a town board, village board, or common council has in good faith, prior to July 1, 1960, on the basis of preliminary census figures under an honest mistake of fact regarding the population of the municipality, granted an excessive number of licenses not exceeding one more than its quota, it may continue to license the premises covered by such excess number of licenses and all such licenses shall be valid notwithstanding this subsection. No other premises shall be licensed in such town, village or city until the whole number of such licenses to be issued is again within the quota prescribed by this subsection, except in cases of annexations covered by par. (c).

(i) Notwithstanding this subsection, the governing body of any town, village or city may by a three-fourths vote of its members grant a license limited to the sale of wine for consumption on the premises only to any person engaged in preserving a place of historic significance built during this state's first 5 years of statehood and operating such place as a restaurant. Any such license shall not affect the quota of any town, village or city under this subsection.

(j) Notwithstanding this subsection, the governing body of any town, village or city by a three-fourths vote of its members may grant a "Class B" retail intoxicating liquor license to any restaurant which is in existence on August 7, 1977 with a museum having permanent exhibition space open to the public of at least 3 times the area of the restaurant. Any license issued under this paragraph shall not affect the quota of any town, village or city under this section.

(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, 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 or by reason of P.L. 87-117, unless said licensee surrenders and releases 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 discharge 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.

(23) CREDIT RESTRICTIONS. (a) No retail licensee under this section shall receive, purchase or acquire intoxicating liquors directly or indirectly from any permittee except upon terms of cash or credit for not exceeding 30 days.

(b) No retail licensee shall receive any intoxicating liquors on consignment or on any basis other than a bona fide sale.

(c) No retail licensee shall receive, purchase or acquire intoxicating liquors directly or indirectly from any permittee if at the time of such receipt, purchase or acquisition he is indebted to any permittee for intoxicating liquors received, purchased, acquired or delivered more than 30 days prior thereto.

(d) For the purposes of this subsection, a person holding both a wholesale and retail license is deemed a retailer.

(f) No retailers' license may be issued to any person having any indebtedness for intoxicating liquors to any permittee under this chapter of more than 30 days standing. In each application for a license the applicant shall state whether or not the applicant has any indebtedness for intoxicating liquors to any such permittee which has been outstanding more than 30 days.

(g) Any retail licensee who violates this subsection shall be subject to the suspension or revocation of his retail license under s. 176.121 and the penalties prescribed in s. 176.41, except that he shall not be imprisoned.

(h) The cost of administering this subsection shall be borne by the permittees. The secretary of revenue shall determine such cost and shall establish the procedure and method for apportioning such cost against the permittees, and

provide for the method of its payment to or collection by the secretary.

(24) LICENSE REQUIRED FOR PREMISES PERMITTING CONSUMPTION OF INTOXICATING LIQUOR OR FERMENTED MALT BEVERAGES. (a) No person who is the owner, lessee, or in charge of a public place shall permit the consumption of intoxicating liquor or malt beverages on the premises of such public place unless the owner or lessee or person in charge thereof has a "Class B" license for the sale of intoxicating liquor in the case of intoxicating liquor or a Class "B" license, for the sale of malt beverages in the case of malt beverages on such premises.

(b) This subsection shall not apply to any municipality, any regularly established athletic field or stadium, any building owned by a municipality or county, any school building, any church, premises in any state fair park, or any club as defined in s. 176.01 (8).

History: 1971 c. 213 s. 5; 1971 c. 228; 1973 c. 48, 90, 103, 207; 1975 c. 39 ss. 675t, 732 (2m); 1975 c. 42, 199; 1975 c. 413 s. 18; 1977 c. 11, 76, 77, 125, 147, 184, 203, 321; 1977 c. 418 s. 924 (18) (e); 1977 c. 431.

Violations of (23) are crimes. *State v. Mando Enterprises, Inc.* 56 W (2d) 801, 203 NW (2d) 64.

Although not all police power legislation relating to liquor traffic is ipso facto above constitutional challenge, (21) (h), representing a legislative policy decision to increase the number of available liquor licenses by enabling certain well defined persons to apply for such licenses, constitutes a reasonable police power enactment because of the state's broad authority over the liquor industry. Persons who already hold Class B liquor licenses have no standing to challenge (21) (h) on the ground of denial of equal protection. *Moedern v. McGinnis*, 70 W (2d) 1056, 236 NW (2d) 240.

Outright sale, transfer or assignment of liquor license is illegal and unenforceable except under (5) or (14). *Variance, Inc. v. Losinske*, 71 W (2d) 31, 237 NW (2d) 22.

Transfer of license in contract case discussed. *Sprecher v. Weston's Bar, Inc.* 78 W (2d) 26, 253 NW (2d) 493.

A county may not receive a combination liquor-beer license or operate an alcoholic business on its own at a county-owned golf course. 60 Atty. Gen. 358.

The issuance of a liquor license on the basis of competitive bidding constitutes a violation of (4). 61 Atty. Gen. 180.

Quota of liquor licenses that may be issued by town under (21) is tied to population as determined by decennial federal census. 61 Atty. Gen. 222.

The definition of public school in (9m) (a), does not encompass state universities. 61 Atty. Gen. 294.

See note to 66.054, citing 61 Atty. Gen. 381.

An alderman holding a Class B license is ineligible to vote on the granting, renewal or revocation of such a license. 63 Atty. Gen. 545.

Renewal of liquor licenses may not be denied without giving applicant timely notice of reasons for denial and an opportunity to present, confront and cross-examine witnesses under oath. *Misurelli v. Racine*, 346 F Supp. 43.

Under (1), council could establish dress guidelines for female entertainers by resolution and were not required to do so by ordinance. *Manos v. City of Green Bay*, 372 F Supp. 40.

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 secretary of revenue 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 Wisconsin state prisons 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.

History: 1977 c. 418 s. 924 (18) (e).

NOTE: This section is shown as amended by chapter 418, laws of 1977, section 924 (18) (e) 1, effective July 1, 1979.

176.052 Coin-operated machine distributors.

No person may engage in the business of setting up coin-operated cigarette machines, juke boxes and amusement devices on premises licensed under this chapter or s. 66.054 without first having obtained from the department of revenue a license to carry on the business. The department shall devise forms to be used by applicants under this section and the qualifications set out in s. 139.34 (1) (b) and (c) shall apply to the applicants. Violations under this section shall be punished as provided in s. 176.04. If any person licensed under this section uses force, violence or threats of force or violence to obtain locations for placing the coin-operated machines in premises licensed under this chapter, or if after licensing it appears that the licensee does not meet the qualifications of s. 139.34 (1) (b) and (c), the department may revoke the license after hearing. A denial of a license or an order of revocation, both of which shall be in writing giving the reasons therefor, shall be subject to judicial review under ch. 227. This section does not apply to those persons holding cigarette vending machine operators permits under s. 139.34 (1).

History: 1975 c. 39 s. 732 (2m); 1977 c. 187.

176.053 Loans by operators of coin-operated machines.

(1) No person licensed pursuant to s. 176.052 shall engage in the loan, use or forbearance of money, goods or things in action to any person licensed pursuant to s. 66.054 or 176.05.

(2) Any person who violates sub. (1) shall be fined not more than \$5,000 or imprisoned for not more than one year or both.

(3) Any license issued under s. 176.052 shall be automatically revoked if the holder is convicted for a violation of this section.

176.055 Warehouse receipts salesman's permit.

The secretary of revenue 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 secretary and who is also duly registered by the secretary 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 receipts to any person to whom he could not sell intoxicating liquors under this chapter. Any person who shall sell warehouse receipts for intoxicating liquors without a permit from the secretary or who shall sell such receipts to a person other than a duly licensed manufacturer, rectifier, wholesaler or retailer shall be imprisoned for not less than one year nor more than 3 years or fined not less than \$100 nor more than \$5,000, or both, 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 having a population of less than 500,000, except licenses for premises located in a city of the 1st class which city is located in more than one county, between 1 a.m. and 8 a.m., except during that portion of each year for which the standard of time is advanced under s. 175.095 the closing hours shall be between 2 a.m. and 8 a.m., unless the local governing body issuing such license establishes or has established an earlier closing hour, and on January 1 when the closing hours shall be between 3 a.m. and 8 a.m.

(5) Hotels and restaurants whose principal business is the furnishing of food or lodging to patrons, and bowling alleys and golf courses, 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 sub. (3).

(6) In any county having a population of 500,000 or more, and in other counties if the premises is located in a city of the 1st class which city is located in more than one county, 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, and on any other holiday which under s. 230.35

(4) (a) may fall on a Monday, between 3:30 a.m. and 10 a.m. when such holiday is celebrated on a Monday.

(e) Hotels and restaurants whose principal business is the furnishing of food or drinks or lodging to patrons, and bowling alleys and golf courses, may remain open for the conduct of their regular business but may not sell intoxicating liquors or any malt beverages during the prohibited hours.

History: 1975 c. 29; 1977 c. 203; 1977 c. 272 s. 98.

Sub. (3) requires that premises with a retail class B liquor license close for all purposes at closing time. *State v. Wachsmuth*, 73 W (2d) 318, 243 NW (2d) 410.

Class B liquor licensees must be similarly treated by a municipality as to the hours they may be open for sales of liquor. 63 Atty Gen 597.

176.08 Municipal stores prohibited. No city, village or town may engage in the sale of intoxicating liquor or fermented malt beverages, except as authorized under s. 66.054 (8) (b). This section shall not apply to municipal liquor stores in operation on November 6, 1969. Such stores may engage in the sale of intoxicating liquor or fermented malt beverages or both.

History: 1975 c. 315.

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 the amount, under s. 985.08 that will be required to pay for such publication.

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 the department of revenue. (1) Upon complaint filed by a duly authorized employe of the department of revenue 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 has at any time violated this chapter, or keeps or maintains a disorderly or riotous, indecent or improper house, or that the licensed person 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 department of health and social services, or in whose licensed premises known criminals or prostitutes are permitted to loiter, or that the licensed person 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 the licensed person does not possess the qualifications required by this chapter for licensure, 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 the 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 the person does not appear as required by the summons, the allegations of the complaint shall be taken as true. If the court finds that the allegations are 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 the court to the person whose license is so revoked or suspended. If the person appears and answers 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 the trial the court finds 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 the license shall be notified by the clerk; and if the license is revoked, no other license may be granted to the person or to any person in privity of interest with him or her as owner, lessor, bailor or lender, within 12 months of the date of its revocation, and no other license may be granted to cover the premises covered by any revoked license within 60 days of the date of the revocation of the license; nor may any part of the money paid for any license so revoked be refunded. If any appeal is taken from the 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 the order shall be final unless appeal is taken to the court of appeals.

(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.

(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 s. 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 department of revenue at Madison, Wisconsin, giving the name of the licensee, the address of the licensed premises, and a full detail of the penalty imposed.

History: 1975 c. 39 s. 732 (2m); 1975 c. 199; 1977 c. 187.

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 commercial credits for the products of the industry sold and delivered in compliance with s. 176.05 (23). 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.

(5a) Prices charged by a wholesaler of intoxicating liquors shall be the same for all retailers making purchases in similar quantities from the wholesaler, regardless of whether the retailer is a "Class A" or "Class B" licensee. Any discount offered on intoxicating liquors must be delivered to the retailer in a single transaction and single delivery, and on a single invoice.

(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.

(7) No wholesaler may purchase intoxicating liquor for resale unless he purchases it from the primary American source of supply for the brand of intoxicating liquor sought to be sold or from a wholesaler within this state who is licensed under this chapter. No wholesaler may sell intoxicating liquor purchased by him after June 9, 1974 to any other licensee under this chapter if the intoxicating liquor has not been purchased by the wholesaler from the primary American source of supply or from a wholesaler within this state who is licensed under this chapter.

History: 1973 c. 249; 1977 c. 291

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 4 liters 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 s. 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) (a) 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 secretary of revenue at the following rate for English measure containers:

1. Up to and including 8 ounces, \$0.005
2. More than 8 to and including 16 ounces, \$0.01
3. More than 16 to and including 32 ounces, \$0.02.

(am) Each and every container containing intoxicating liquor having an alcohol content of 21% or more by volume dispensed by the holder of a pharmacist's permit shall bear a state stamp in addition to any other provided for by law to be

furnished by the secretary of revenue at the following rate for metric containers:

1. Up to 200 milliliters, \$0.005.
2. More than 200 to 500 milliliters, \$0.01.
3. More than 500 to 1 liter, \$0.02.
4. More than 1 liter to and including 1.75 liters, \$0.03.

(b) The secretary 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.

History: 1977 c 12.

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 narrowest 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, 18 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 s. 176.22, notice of intention so to do, describing the boundaries of such proposed residence district, shall be published as a class 1 notice, under ch. 985, in the 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 authorities of any such city, village or town authorized to issue licenses for the sale of intoxicating liquors shall publish a class 1 notice, under ch. 985, in the 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 the 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 filing the 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 is perfected within such time, no license shall be issued, or a license may be issued, as the case may be, but if such remonstrance or counter petition is not perfected within such time, the proper authorities may exercise their discretion in respect to the issuing or granting of a license in said territory.

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.

History: 1977 c. 418.

NOTE: Chapter 418, laws of 1977, amends sub. (3), effective January 1, 1981, to read:

"(3) NEAR MENTAL HEALTH INSTITUTES. No person may 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 mental health institute, and any person who sells or gives away any such liquors, shall be fined not less than \$100 nor more than \$250, or imprisoned not more than 6 months or both."

A complaint alleging liability on the basis of negligence per se because of violation of 176.30 (1) and 66.054 (9) (c) was properly dismissed on the ground of public policy against holding the supplier of intoxicants liable in negligence. *Garcia v. Hargrove*, 52 W (2d) 289, 190 NW (2d) 181.

176.31 Minor's misrepresentation to procure intoxicating liquor; penalty. (1) Whoever represents that he is of age for the purpose of asking for, or receiving, any intoxicating liquors from any keeper of any place for the sale of intoxicating liquors, except in cases authorized by law, may be fined not more than \$100 or imprisoned not to exceed 10 days, or both. The court shall also restrict or suspend the motor vehicle operating privilege as provided in s. 343.30 (6).

(2) Any person under the age of 18 who procures, seeks to procure, knowingly possesses or who consumes in public any intoxicating liquor may be fined not more than \$100 or imprisoned not to exceed 10 days or both. The court shall also restrict or suspend the motor vehicle operating privilege as provided in s. 343.30 (6).

History: 1971 c. 213 s. 5.

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 either directly or indirectly suffers or permits any person of either sex under the age of 18 years, unaccompanied by his or her parent, guardian or spouse, of whom one shall be 18 years of age, or suffers or permits 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 18 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, ski chalets, golf clubhouses, 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.

(2m) Subsections (1) and (2) do not prohibit a person under the age of 18 from entering or being on the premises of a place for which a "Class A" retail intoxicating liquor license is issued for the purpose of purchasing edibles or beverages other than intoxicating liquors or fermented malt beverages.

(3) (a) Every retail "Class A" and retail "Class B" licensee shall cause a book to be kept and such licensee or his employe, or both, shall require any person who has shown documentary proof of age, which substantiates his age to allow the legal purchase of intoxicating liquor, to sign such book if the age of such person is in question. The book shall show the date of the purchase, the identification used in making the purchase, the address of the purchaser and his signature.

(b) The establishment of the following facts by a person making a sale of intoxicating liquor to a person not of legal age shall constitute prima facie evidence of innocence and a defense to any prosecution therefor:

1. That the purchaser falsely represented in writing and supported with other documentary proof that he was of legal age to purchase intoxicating liquor.

2. That the appearance of such purchaser was such that an ordinary and prudent person would believe him to be of legal age to purchase intoxicating liquor.

3. That the sale was made in good faith and in reliance upon the written representation and appearance of the purchaser in the belief that the purchaser was of legal age to purchase intoxicating liquor.

History: 1971 c. 213 s. 5; 1977 c. 439.

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.

176.341 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.

176.35 Action for injury by unlawful sale.

Any person who is 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 against any person who has 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 spouse, parents, relatives, guardian or persons having the care or custody of such minor or habitual drunkard, not to sell or give intoxicating liquors to the minor or habitual drunkard, and who, notwithstanding such notice or request, knowingly sells or gives 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 person shall have the same right to bring such suit and to control the same

as a single person, and all damages so recovered shall belong to the person bringing the suit.

History: 1975 c 94.

176.36 Excise laws; enforcement by peace officers; penalty. Every peace officer as defined in s. 939.22 (22) who knows, or is credibly informed, that any unlawful offense has been committed relating to the sale of intoxicating liquors, shall make complaint against the person so offending within their respective jurisdictions to a person authorized to issue a criminal warrant, and for every neglect or refusal to do so, every such officer shall be fined not exceeding \$50 and costs.

176.37 What is a sale; form of complaint.

(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% 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 s. 176.08 [stats. 1967] 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 secretary of revenue, 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 secretary of revenue 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 governed 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 s. 8.15 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 s. 5 64

(2). 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 secretary of revenue of the results of such election.

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 ch. 139 shall not apply to alcohol or wine 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 sub. (1) 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 s. 176.41.

History: 1973 c 90

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 secretary of revenue may prescribe by regulation.

(3) Such permit shall be issued free of charge by the secretary of revenue and shall not be subject to s. 176.041.

176.403 Industrial alcohol permit. (1)

Any person who proves to the secretary of revenue 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 secretary of revenue may prescribe by regulation.

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

176.404 Medicinal permit. (1)

Any person who proves to the secretary of revenue 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 secretary of revenue may prescribe by regulation.

(3) Such permit shall be issued free of charge by the secretary and shall not be subject to s. 176.041.

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 Wisconsin state prisons for not less than one year nor more than 10 years or by both such fine and imprisonment.

NOTE: Sub. (2) is shown as amended by chapter 418, laws of 1977, section 924 (18) (e) 1, effective July 1, 1979.

(3) Whoever 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 imprisoned not more than 10 years.

History: 1977 c. 418 s. 924 (18) (e).

176.406 Wholesale alcohol permit. (1)

The secretary of revenue 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 ss. 176.18, 176.403 and 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 secretary of revenue by regulation.

(3) Holders of wholesale alcohol permits under this section, who do not hold permits issued under s. 176.05, shall be exempted from the provisions of s. 176.70 insofar 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.

176.407 Industrial wine permit. (1) Any person who proves to the department that he uses wine for industrial purposes may be issued an "industrial wine permit" which shall allow such person to purchase and use wine for such purposes only.

(2) Shipments made of such wine shall be conspicuously labeled "for industrial purposes" and shall meet such other requirements as the department may prescribe by rule.

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

History: 1973 c. 90.

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 fined not more than \$500, or imprisoned not more than 90 days, or both, 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 2nd

offense, under this chapter such offender, in addition to the penalties herein provided, shall forthwith forfeit the right to purchase any stamps from the secretary of revenue, 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 ss. 176.11 and 176.12.

A town, being a municipal corporation, is not within the definition of person 61 Atty. Gen. 180.

176.42 Secretary to prescribe standards of containers.

The secretary of revenue may by rule 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, but shall not set the size of containers in which intoxicating liquor, except wine containing not in excess of 21% alcohol by volume, may be sold at a capacity greater than 1.75 liters (59.1752 fluid ounces).

History: 1971 c. 331; 1973 c. 121; 1977 c. 10.

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 secretary of revenue in furtherance of effective control may promulgate rules and regulations consistent with ch. 66 or ch. 139.

(2a) Any person who shall violate any rules and regulations of the secretary of revenue shall be fined not less than \$100 nor more than \$500 or imprisoned for not less than 30 days nor more than 6 months, or both in the discretion of the court.

(2b) Any violation of any section of ch. 139 or 176 of the statutes shall be sufficient grounds

for revocation by the secretary of revenue 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.

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 secretary of revenue.

(4) Every manufacturer, rectifier or blender of intoxicating liquor shall list with the secretary of revenue 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 secretary. The secretary 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 duly authorized employes of the department of justice and the department of revenue 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 ch. 66 or 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 revenue 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 security interest in all or part of said property, and shall make a written report in respect thereto to the department. Upon receipt of such confiscated property, the department shall also exercise reasonable diligence to ascertain the names and addresses of any such owners and security interest holders, and if a motor vehicle is confiscated, the department shall obtain the written advice of the department of transportation as to the ownership of the motor vehicle and shall make reasonable search for perfected security interests in said motor vehicle.

(b) The secretary of revenue shall dispose of such intoxicating liquors and fermented malt beverages by either giving it to state-operated veterans' hospitals in amounts needed for medicinal purposes; or selling it to the highest bidder, if the bidder is a licensee or permittee; or destroying it, at the discretion of the secretary of revenue. If the secretary of revenue elects to sell such intoxicating liquor or fermented malt beverages the secretary shall cause to be published a class 2 notice, under ch. 985, asking for sealed bids from licensees and permittees under ch. 66 or 139. 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 sub. (1) and fit for sale, shall be turned over to the department of revenue for disposition and shall be disposed of by the department of administration 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 department of administration. 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 as a class 2 notice, under ch. 985; the last insertion to be at least 10 days before the sale. The department of revenue shall serve a copy of the notice of sale at least 2 weeks before the date thereof on all persons who are or may be owners or holders of security interests in all or part of the property, according

to information received by the department of revenue. 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 department of administration. 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 motorboat 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 security interest in 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 security interest, but not in excess of the amount due under the security agreement.

(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 revenue 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 security interest in 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) "Lienor" or "lien claimant" as herein used includes the vendor under a conditional sales agreement, the mortgagee under a chattel mortgage and the holder of equivalent security interests under the commercial code.

(5) The provisions of this section relating to confiscation shall not exclude resort to ch. 288, and the duly authorized employes of the department of justice and the department of revenue or the peace officer seizing property may in any case proceed under that chapter.

History: 1971 c. 164 s. 81; 1973 c. 12; 1975 c. 39 s. 732 (2m); 1975 c. 199; 1977 c. 29 ss. 1263, 1654. (7) (b).

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 impersonates an inspector, agent or other accredited employe of the department of revenue or the department of justice is 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 secretary of revenue 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 secretary.

(2) Any individual, firm, partnership, corporation or association desiring the permit required by sub. (1) shall file with the secretary of revenue an application for such permit. Said application shall be in such form as shall be prescribed by the secretary 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 secretary of revenue 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 secretary of revenue. 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 secretary 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 secretary 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 nonresident 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.

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 department of revenue may contract bonded wreckers to destroy any illicit stills seized.

History: 1975 c. 39 s. 732 (2m).

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.