

LEGISLATIVE BILL 224

Approved by the Governor May 23, 1979

Introduced by Miscellaneous Subjects Committee, Newell, 13, Chan.; Simon, 31; Lewis, 45; Fitzgerald, 14; Venditte, 7

AN ACT to amend sections 53-142, 53-164.01, and 53-176, Reissue Revised Statutes of Nebraska, 1943, and sections 53-125, 53-133, and 53-135.01, Revised Statutes Supplement, 1973, relating to alcoholic liquors; to change a disqualification for license; to delete provisions for a license with rights of survivorship; to change provisions for objections to issuance of a license; to change requirements for certain applications; to change provisions relating to renewal of retail liquor licenses; to increase a bond; to authorize suspension of certain licenses; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 53-125, Revised Statutes Supplement, 1973, be amended to read as follows:

53-125. No license of any kind shall be issued to (1) a person who is not a resident of the county in which the premises covered by the license are located, except in case of railroad, airline, or boat licenses, (2) a person who is not of good character and reputation in the community in which he resides, (3) a person who is not a citizen of the United States, (4) a person who has been convicted of or has pleaded guilty to a felony under the laws of the State of Nebraska, any other state, or of the United States, (5) a person who has been convicted of or has pleaded guilty to being the keeper of or is keeping a house of ill fame, (6) a person who has been convicted of or has pleaded guilty to being the proprietor of a gambling house, or of pandering or other crime or misdemeanor opposed to decency and morality, (7) a person whose license issued under this act has been revoked for cause, (8) a person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application, (9) a copartnership, unless one of the copartners is a resident of the county, in which the premises covered by the license is located, and unless all the members of such copartnership shall otherwise be qualified to obtain a license, (10) a corporation, if any officer, manager or director thereof, or any stockholder,

owning in the aggregate more than twenty-five per cent of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than citizenship and residence within the governmental subdivision; provided, this subdivision shall not apply to railroad licenses; and provided further, that where the trustee is the licensee, the beneficiary or beneficiaries of the trust shall comply with the requirements of this section, but nothing in this section shall prohibit any such beneficiary from being a minor or a person who is mentally incompetent, (11) a person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee, (12) a person who does not own the premises for which a license is sought, or does not have a lease thereon for the full period for which the license is to be issued, but if, because of a change in the renewal period provided for in section 53-124, the lease is for less than the full period for which the license is to be issued, the license shall be issued and a new lease covering the remainder of the license period must be filed with the commission prior to expiration of the original lease or the license shall be revoked by the commission on ten days' written notice to the licensee, or (13) except as provided in this subdivision, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Under person shall become eligible for a liquor license only if the commission finds from the evidence that the public interest will not be infringed upon if such license is granted. It shall be prima facie evidence that when a spouse is ineligible to receive a liquor license the applicant is also ineligible to receive a liquor license. Such prima facie evidence shall be overcome if the following is shown to the satisfaction of the commission (a) that the licensed business will be the sole property of the applicant, and (b) it appears from the evidence that such licensed premises will be properly operated, except for persons presently possessing a valid license issued by the commission, to a husband or wife, either as an individual, a partner, or as an officer or stockholder in a corporation if the spouse of such husband or wife is ineligible to secure a license in his or her own name.

Nothing in this section shall preclude issuing a license to a husband and wife with rights of survivorship if both persons make applications and are eligible to secure a license in his or her own name.

Sec. 2. That section 53-133, Revised Statutes Supplement, 1978, be amended to read as follows:

53-133. (1) The commission shall set for hearing before it any application for a retail license relative to which it has received:

(a) Within thirty days from the date of mailing such application to the city, village, or county clerk, a recommendation of denial from the city, village, or county, as the case may be;

(b) Within three days after the receipt of a recommendation from the city, village, or county, as the case may be, or, if no recommendation is received, within thirty days from the date of mailing such application to the city, village, or county clerk, objections in writing by not less than three persons residing within said city, village, or county, as the case may be, protesting the issuance of said license and no objections will be considered by the commission unless submitted in duplicate and accompanied by security for costs in the sum of one hundred dollars in the form of cash, money order, certified check or bank draft. The withdrawal of the protest shall not prohibit the commission from conducting a hearing based upon the protest as originally filed and making an independent finding as to whether the license should or should not be issued; or

(c) Within forty-five days from the date of mailing such application to the city, village, or county clerk, as the case may be, objections by ~~any one of the duly appointed inspectors of the commission~~ the commission or any duly appointed employee of the commission, protesting the issuance of said license.

(2) Hearings upon such applications shall be had in the manner provided in section 53-1,116.

Sec. 3. That section 53-135.01, Revised Statutes Supplement, 1978, be amended to read as follows:

53-135.01. The city or village clerk or the county clerk, as the case may be, shall cause to be published in a legal newspaper in or of general circulation in such city, village, or county, as the case may be, one time between ~~February 29 and March 5~~ January 10 and January 30 of each year, individual notice of the right of automatic renewal of each retail liquor and beer license, except class C licenses which shall be published between the dates of ~~August 29 and September 5~~ July 10 and July 30 of each year, for which provision is made in subdivision (5) of section 53-124, within such city, village or county, as the case may be, in the following form:

NOTICE OF RENEWAL

OF RETAIL LIQUOR LICENSE

Notice is hereby given that pursuant to section 53-135.01 liquor license may be automatically renewed for one year from May 1, 19...., or November 1, 19...., for the following retail liquor licensee, to wit:

(Name of Licensee) (Address of licensed premises)

Notice is hereby given that written protests to the issuance of automatic renewal of license may be filed by any resident of the city (village or county, as the case may be) on or before ~~March 15~~ February 10, 19...., or ~~September 15~~ August 10, 19...., in the office of the city (village or county, as the case may be) clerk; that in the event protests are filed by three or more such persons, hearing will be had to determine whether continuation of said license should be allowed.

(Name)

City (village or county, as the case may be)
Clerk

The city, village or county clerk, as the case may be, shall file or cause to be filed with the Nebraska Liquor Control Commission proof of publication of said notices on or before ~~March 15~~ February 10 or ~~September 15~~ August 10 of each year.

In the event written protests are filed by three or more residents of the city, village or county, as the case may be, against said license, the city, village or county clerk, as the case may be, shall deliver the same to the local governing body who shall ~~thereupon proceed in the manner set forth in section 53-435 to require said licensee to submit an application~~ request the Nebraska Liquor Control Commission to require the licensee to submit an application prior to March 5 of the year that the license currently held by the licensee expires for each retail liquor, wine, or beer license, except class C licenses which shall submit an application prior to September 5 of the year that the class C license expires.

Sec. 4. That section 53-142, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-142. (1) Applications for new licenses shall be submitted upon such forms as the commission may prescribe. Such forms shall contain (a) the name and residence of the applicant and how long he has resided within the State of Nebraska, (b) the particular place for which a license is desired designating the same by street and number if practicable; if not, by such other

apt description as definitely locates it, (c) the name of the owner of the premises upon which the business licensed is to be carried on, (d) a statement that the applicant is a citizen of the United States and not that the applicant and the spouse of the applicant are not less than twenty-one years of age, and that such applicant has never been convicted of or pleaded guilty to a felony or been adjudged guilty of violating the laws governing the sale of alcoholic liquors or the law for the prevention of gambling in the State of Nebraska, except that a manager for a corporation applying for a license under this act shall qualify with all provisions of this subdivision as though the manager were the applicant, except that the provisions of this subdivision shall not apply to the spouse of a manager applicant, (e) that the applicant is not the licensee named in any beer alcoholic liquor license then in force, (f) that the applicant intends to carry on the business authorized by the license for himself and not as the agent of any other persons, and that if licensed he will carry on such business for himself and not as the agent for any other person, (g) that the applicant intends to superintend in person the management of the business licensed, and that if so licensed he will superintend in person the management of the business, and (h) such other information as the commission may from time to time direct.

(2) The application shall be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If any false statement is made in any part of such application, the applicant or applicants shall be deemed guilty of perjury and, upon conviction thereof, the license shall be revoked and the applicant subjected to the penalties provided by law for that crime.

Sec. 5. That section 53-164.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-164.01. Payment of the tax provided for in section 53-160 on alcoholic liquors shall be paid by the manufacturer or distributor as herein provided. All aforesaid manufacturers or distributors, whether within or without this state, shall, on or before the twenty-fifth day of each calendar month commencing on the twenty-fifth day of the calendar month following the month in which the aforesaid shipments are made, make a report under oath to the Nebraska Liquor Control Commission upon forms to be furnished by the Nebraska Liquor Control Commission for the purpose of showing the exact total amount in gallons of alcoholic liquors or

fractional parts thereof shipped by such aforesaid manufacturer or distributor whether within or without the State of Nebraska, during the preceding calendar month. Such report shall also contain a statement of the exact total amount in gallons, or fractional parts thereof, of alcoholic liquors, except beer, shipped to holders of retailer's licenses within this state. All reports submitted by such manufacturer or distributor, as required by the provisions of this section, shall contain such other information as the Nebraska Liquor Control Commission may require. The manufacturer or distributor shall, at the time of the filing of the report, pay to the Nebraska Liquor Control Commission the amount of the tax due on beer shipped to distributors within this state and on alcoholic liquors, except beer, shipped to holders of retailer's licenses within this state at the rate fixed in accordance with the provisions of section 53-160; said tax to be due on the date the aforesaid report is due, less a discount of one per cent of such tax on alcoholic liquors as defined by subdivision (6) of section 53-103, and which discount shall be deducted from the payment of such tax before remittance thereof to the Nebraska Liquor Control Commission, which discount shall be shown in such report to the Nebraska Liquor Control Commission as required in this section, and which discount shall be a commission for the making of such report, for the timely payment of such tax, but if such tax is not paid within the time provided herein, then such discount shall not be allowed and the same shall not be deducted from the payment of such tax.

A penalty of ten per cent of the amount of the tax shall be collected by the Nebraska Liquor Control Commission if the aforesaid report is not filed by the twenty-fifth day of the calendar month or if the tax is not paid to the Nebraska Liquor Control Commission by the twenty-fifth day of the calendar month and in addition thereto, interest on the tax shall be collected at the rate of one per cent per month, or fraction of a month, from the date the tax became due until paid.

No tax shall be levied or collected on alcoholic liquors manufactured within the State of Nebraska and shipped or transported outside the State of Nebraska for sale and consumption outside the State of Nebraska.

In order to insure the payment of all state taxes imposed by law on alcoholic liquors together with all interest and penalties thereon, all persons required to make reports and payment of such tax shall first enter into a surety bond with corporate surety, both such bond form and surety to be approved by the Nebraska Liquor Control Commission. In lieu of such corporate surety

bond, there may be filed a personal bond in such form as the commission may prescribe and secured by the pledge of property having a net value over and above any encumbrance or encumbrances thereon at least double the amount of the bond required. Subject to the limitations hereinafter specified, the amount of such bond required of any taxpayer shall be fixed by the Nebraska Liquor Control Commission and may be increased or reduced by it at any time; provided, that in fixing the amount, the Nebraska Liquor Control Commission shall require a bond in a total amount equal to the amount of the taxpayer's estimated maximum monthly excise tax, ascertained in such manner as the Nebraska Liquor Control Commission may deem proper; and provided further, nothing contained in this section shall be construed to prevent or prohibit the commission from accepting and approving bonds which run for a term longer than the license period. In any event, the amount of such bond required of any one taxpayer shall not be less than one thousand dollars nor more than one three hundred thousand dollars. These bonds shall be filed with the Nebraska Liquor Control Commission.

No person shall order or receive alcoholic liquors in this state which have been shipped directly to him from outside this state by any person other than a holder of a permit for a license year issued by the Nebraska Liquor Control Commission. The Nebraska Liquor Control Commission may issue such permits to manufacturers which shall allow the permittee to ship alcoholic liquors to and only to holders of a distributor's license issued under the provisions of this section. A fee of one hundred dollars shall be charged by the Nebraska Liquor Control Commission for each permit issued. The application for such permit and the permit shall be in such form as the Nebraska Liquor Control Commission shall prescribe. The application shall contain all such provisions as the Nebraska Liquor Control Commission shall deem proper and necessary to effectuate the purpose of this section and shall include, but without limitation by reason of this special mention, a provision that the permittee in consideration of the issuance of a permit, agrees:

(1) To comply with and be bound by the provisions of this section pertaining to the making and filing of a bond and the making and filing of returns, the payment of taxes, penalties, interest, and the keeping of records;

(2) That he will permit and be subject to all of the powers granted by the provisions of this section to the Nebraska Liquor Control Commission or its duly authorized employees or agents for inspection and examination of his premises and his records; and to pay

his actual expenses excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the Nebraska Liquor Control Commission, if within the United States; and

(3) If any such permittee violates any of the provisions of his application or of the provisions of this section, or the rules of the Nebraska Liquor Control Commission, the Nebraska Liquor Control Commission may revoke or suspend such permit for such period of time as it may determine.

Where a manufacturer or distributor shall sell and deliver beer upon which the tax has been paid to any instrumentality of the armed forces of the United States engaged in resale activities as provided in section 53-160.01, the manufacturer or distributor shall be entitled to a credit in the amount of the tax paid upon such beer sold and delivered to such person or persons in the event no tax is due on said beer as provided in section 53-160.01, and the amount of said credit, if any, shall be deducted from the tax due on the following monthly report, as provided by the provisions of this section to be filed, or shall be allowed as a credit on subsequent reports until liquidated.

Sec. 6. That section 53-176, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-176. No manufacturer, distributor or wholesaler shall sell or deliver any package containing alcoholic liquor manufactured or distributed by him for resale, unless the person to whom such package is sold or delivered is authorized to receive such package in accordance with the provisions of this act. The commission shall suspend or revoke the license of any manufacturer, distributor or wholesaler who violates the provisions of this section.

Sec. 7. That original sections 53-142, 53-164.01, and 53-176, Reissue Revised Statutes of Nebraska, 1943, and sections 53-125, 53-133, and 53-135.01, Revised Statutes Supplement, 1978, are repealed.

Sec. 9. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.