

## LEGISLATIVE BILL 1292

Approved by the Governor April 18, 1994

Introduced by Hartnett, 45; Elmer, 38; Landis, 46

AN ACT relating to alcoholic liquor; to amend section 53-194.03, Reissue Revised Statutes of Nebraska, 1943, sections 53-123.14, 53-124.11, 53-124.12, and 53-164.01, Revised Statutes Supplement, 1992, and sections 53-101, 53-125, and 53-129, Revised Statutes Supplement, 1993; to require purchase of alcoholic liquor from certain suppliers as prescribed; to change provisions relating to brewpub licenses; to change eligibility provisions for liquor licensees; to change provisions relating to a report; to change provisions relating to the amount of liquor a person may import for personal use; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 53-101, Revised Statutes Supplement, 1993, be amended to read as follows:

53-101. Sections 53-101 to 53-1,121 and section 2 of this act shall be known and may be cited as the Nebraska Liquor Control Act.

Sec. 2. A holder of an alcoholic liquor wholesale license shall purchase and import all alcoholic liquor from a primary American source of supply. For purposes of this section, primary American source of supply shall mean the manufacturer, the owner of alcoholic liquor at the time it becomes a marketable product, or the manufacturer's or owner's agent, who, if such liquor cannot be secured directly from such manufacturer or owner by American wholesalers, is the source closest to such manufacturer or owner in the channel of commerce from which the product can be secured by American wholesalers.

Sec. 3. That section 53-123.14, Revised Statutes Supplement, 1992, be amended to read as follows:

53-123.14. Any person who operates a brewpub shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a brewpub shall permit the holder to produce on the brewpub premises a maximum of five thousand barrels of beer per year for sale on draught for consumption on the premises. The holder of a brewpub license may also sell not more than ten fifty percent of his or her annual production for consumption off the premises. The license holder shall serve food on the premises and shall otherwise be a restaurant. A brewpub license issued pursuant to this section shall be the only license required for the manufacture and retail sale of beer for consumption on or off the licensed premises, except that the sale of any beer other than beer manufactured by the brewpub licensee, wine, or alcoholic liquor by the drink for consumption on the brewpub premises shall require the appropriate retail license. Any license held by the operator of a brewpub shall be subject to the act. A holder of a brewpub license may obtain an annual catering license pursuant to section 53-124.12 or a special designated license pursuant to section 53-124.11.

Sec. 4. That section 53-124.11, Revised Statutes Supplement, 1992, be amended to read as follows:

53-124.11. (1) The commission may issue a special designated license for sale or consumption of alcoholic liquor at a designated location to a retail licensee, brewpub licensee, a municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, a political organization which has been exempted from the payment of federal income taxes, or any other nonprofit corporation the purpose of which is fraternal, charitable, or public service and which has been exempted from the payment of federal income taxes, under conditions specified in this section. The applicant shall demonstrate meeting the requirements of this subsection.

(2) No retail licensee, brewpub licensee, organization, or corporation enumerated in subsection (1) of this section may be issued a special designated license under this section for more than six calendar days in any one calendar year. Only one special designated license shall be required for any application for two or more consecutive days. This subsection shall not apply to any holder of a catering license.

(3) Except for any special designated license issued to a holder of a catering license, there shall be a fee of twenty-five dollars for each day identified in the special designated license. Such fee shall be submitted with the application for the special designated license, collected by the

commission, and remitted to the State Treasurer for credit to the General Fund. The applicant shall be exempt from the provisions of the Nebraska Liquor Control Act requiring a registration fee and the provisions of the act requiring the expiration of forty-five days from the time the application is received by the commission prior to the issuance of a license, if granted by the commission. The retail licensees, brewpub licensees, municipal corporations, organizations, and nonprofit corporations enumerated in subsection (1) of this section seeking a special designated license shall file an application on such forms as the commission may prescribe. Such forms shall contain, along with other information as required by the commission, (a) the name of the applicant, (b) the premises for which a special designated license is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (c) the name of the owner or lessee of the premises for which the special designated license is requested, (d) sufficient evidence that the holder of the special designated license, if issued, will carry on the activities and business authorized by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (e) a statement of the type of activity to be carried on during the time period for which a special designated license is requested, and (f) sufficient evidence that the activity will be supervised by persons or managers who are agents of and directly responsible to the holder of the special designated license.

(4) No special designated license provided for by this section shall be issued by the commission without the approval of the local governing body. The local governing body may establish criteria for approving or denying a special designated license. The local governing body may designate an agent to determine whether a special designated license is to be approved or denied. Such agent shall follow criteria established by the local governing body in making his or her determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body. For purposes of this section, the local governing body shall be the city or village within which the premises for which the special designated license is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be the county within which the premises for which the special designated license is requested are located.

(5) If the applicant meets the requirements of this section, a special designated license shall be granted and issued by the commission for use by the holder of the special designated license. All statutory provisions and rules and regulations of the commission that apply to a retail licensee shall apply to the holder of a special designated license with the exception of such statutory provisions and rules and regulations of the commission so designated by the commission and stated upon the issued special designated license, except that the commission may not designate exemption of sections 53-180 to 53-180.07. The decision of the commission shall be final. If the applicant does not qualify for a special designated license, the application shall be denied by the commission.

(6) A special designated license issued by the commission shall be mailed or delivered to the city, village, or county clerk who shall deliver such license to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

Sec. 5. That section 53-124.12, Revised Statutes Supplement, 1992, be amended to read as follows:

53-124.12. (1) The holder of a Class C, Class D, or Class I license issued under subdivision (5) of section 53-124 or a brewpub license may obtain an annual catering license as prescribed in this section. The catering license shall be issued for the same period and may be renewed in the same manner as the Class C, Class D, or Class I license or brewpub license.

(2) Any person desiring to obtain a catering license shall file with the commission:

(a) An application in triplicate original upon such forms as the commission prescribes; and

(b) A license fee of seventy-five dollars payable to the commission, which fee shall be returned to the applicant if the application is denied.

(3) When an application for a catering license is filed, the commission shall notify, by registered or certified mail, return receipt requested with postage prepaid, the clerk of the city or incorporated village in which such applicant is located or, if the applicant is not located within a city or incorporated village, the county clerk of the county in which such applicant is located of the receipt of the application. The commission shall

enclose with such notice one copy of the application. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

(4) The local governing body with respect to catering licensees within its corporate limits may cancel a catering license for cause for the remainder of the period for which such license is issued. Any person whose catering license is canceled may appeal to the district court of the county in which the local governing body is located.

(5) For purposes of this section, local governing body shall mean the governing body of the city or village in which the catering licensee is located or, if such licensee is not located within a city or village, the governing body of the county in which such licensee is located.

(6) The city, village, or county in which the catering licensee is located may impose an occupation tax on the business of any person, firm, or corporation receiving a catering license pursuant to this section and doing business within such city, village, or county. Such tax may not exceed double the license fee to be paid under this section.

Sec. 6. That section 53-125, Revised Statutes Supplement, 1993, 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 Nebraska, 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 or she 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 this state, any other state, or the United States, (5) a person who has been convicted of or has pleaded guilty to any Class I misdemeanor pursuant to Chapter 28, article 3, 4, 7, 8, 10, 11, or 12, or any similar offense under a prior criminal statute or in another state, except that any additional requirements imposed by this subdivision on May 18, 1983, shall not prevent any person holding a license on such date from retaining or renewing such license if the conviction or plea occurred prior to May 18, 1983, (6) a person whose license issued under the Nebraska Liquor Control Act has been revoked for cause, (7) a person who at the time of application for renewal of any license issued under the act would not be eligible for such license upon initial application, (8) a partnership, unless one of the partners is a resident of the county in which the premises covered by the license are located Nebraska and unless all the members of such partnership are otherwise qualified to obtain a license, (9) a limited liability company, unless one of the members is a resident of the county in which the premises covered by the license are located Nebraska and unless all the members of such company are otherwise qualified to obtain a license, (10) a corporation, if any officer, manager, or director of the corporation or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, except that this a manager of a corporate licensee shall be a resident of Nebraska. This subdivision shall not apply to railroad licenses, (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 or combination of leases on such premises for the full period for which the license is to be issued, (13) except as provided in this subdivision, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such applicant 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 it is shown to the satisfaction of the commission (a) that the licensed business will be the sole property of the applicant and (b) that such licensed premises will be properly operated, (14) a person seeking a license for premises which do not meet standards for fire safety as established by the State Fire Marshal, (15) a law enforcement officer, except that this subdivision shall not prohibit a law enforcement officer from holding membership in any nonprofit organization holding a liquor license or from participating in any manner in the management or administration of a nonprofit organization, or (16) a person less than twenty-one years of age.

When a 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.

Sec. 7. That section 53-129, Revised Statutes Supplement, 1993, be amended to read as follows:

53-129. Retail and bottle club licenses issued under the Nebraska Liquor Control Act shall apply only to that part of the premises described in the application and in the license issued thereon, and only one location shall be so described in each license. After such license has been granted for particular premises, the local governing body may endorse upon the license permission to add to, delete from, or abandon the premises described in such license and, if applicable, to ~~move~~ ~~remove~~ from the premises to other premises approved by ~~it~~ the local governing body, but in order to obtain such approval the retail or bottle club licensee shall file with the local governing body a request in writing and a statement under oath which ~~shall show~~ shows that the premises as added to or deleted from, or to which ~~removal~~ such move is to be made, comply in all respects with the requirements of the act. No such addition, deletion, or ~~removal~~ move shall be made by any such licensee until his or her license has been endorsed to that effect in writing by the local governing body and the licensee furnishes proof of payment of the state registration fee prescribed in section 53-131.

Sec. 8. That section 53-164.01, Revised Statutes Supplement, 1992, be amended to read as follows:

53-164.01. Payment of the tax provided for in section 53-160 on alcoholic liquor shall be paid by the manufacturer or wholesaler as follows:

(1)(a) All manufacturers or wholesalers, except farm winery producers, whether inside or outside this state shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report under oath or affirmation to the commission upon forms furnished by the commission showing the total amount of alcoholic liquor in gallons or fractional parts thereof shipped by such manufacturer or wholesaler, whether inside or outside this state, during the preceding calendar month;

(b) All beer wholesalers shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report under oath or affirmation to the commission upon forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof shipped by all manufacturers, whether inside or outside this state, during the preceding calendar month to such wholesaler;

(c) Farm winery producers shall, on or before the twenty-fifth day of each calendar month following the month in which wine was packaged or bottled for sale, submit a report under oath or affirmation to the commission upon forms furnished by the commission showing the total amount of wine in gallons or fractional parts thereof packaged or bottled by such producer during the preceding calendar month; and

(d) A brewpub shall, on or before the twenty-fifth day of each calendar month following the month in which the beer was produced for sale, submit a report under oath or affirmation to the commission on forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof produced for sale by the brewpub during the preceding calendar month; and

(e) Reports submitted pursuant to subdivision (a), (b), or (c) of this subdivision shall also contain a statement of the total amount of alcoholic liquor, except beer, in gallons or fractional parts thereof shipped to licensed retailers inside this state and such other information as the commission may require;

(2) The wholesaler or farm winery producer shall at the time of the filing of the report pay to the commission the tax due on alcoholic liquor, except beer, shipped to licensed retailers inside this state at the rate fixed in accordance with section 53-160. The tax due on beer shall be paid by the wholesaler on beer shipped from all manufacturers;

(3) The tax imposed pursuant to section 53-160 shall be due on the date the report is due less a discount of one percent of the tax on alcoholic liquor for submitting the report and paying the tax in a timely manner. The discount shall be deducted from the payment of the tax before remittance to the commission and shall be shown in the report to the commission as required in this section. If the tax is not paid within the time provided in this section, the discount shall not be allowed and shall not be deducted from the tax;

(4) If the report is not submitted by the twenty-fifth day of the calendar month or if the tax is not paid to the commission by the twenty-fifth day of the calendar month, the following penalties shall be assessed on the amount of the tax: One to five days late, three percent; six to ten days late, six percent; and over ten days late, ten percent. In addition, interest

on the tax shall be collected at the rate of one percent per month, or fraction of a month, from the date the tax became due until paid;

(5) No tax shall be levied or collected on alcoholic liquor manufactured inside this state and shipped or transported outside this state for sale and consumption outside this state;

(6) In order to insure the payment of all state taxes on alcoholic liquor, together with interest and penalties, persons required to submit reports and payment of the tax shall, at the time of application for a license under section 53-124, enter into a surety bond with corporate surety, both the bond form and surety to be approved by the commission. Subject to the limitations specified in this subdivision, the amount of the bond required of any taxpayer shall be fixed by the commission and may be increased or decreased by the commission at any time. In fixing the amount of the bond, the commission shall require a bond equal to the amount of the taxpayer's estimated maximum monthly excise tax ascertained in a manner as determined by the commission. Nothing in this section shall prevent or prohibit the commission from accepting and approving bonds which run for a term longer than the license period. The amount of a bond required of any one taxpayer shall not be less than one thousand dollars. The bonds required by this section shall be filed with the commission; and

(7) When a manufacturer or wholesaler sells and delivers alcoholic liquor 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 wholesaler shall be entitled to a credit in the amount of the tax paid in the event no tax is due on such alcoholic liquor as provided in such section. The amount of the credit, if any, shall be deducted from the tax due on the following monthly report and subsequent reports until liquidated.

Sec. 9. That section 53-194.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-194.03. (1) It shall be unlawful for any person to transport, import, bring, ship, or cause to be transported, imported, brought, or shipped into the State of Nebraska for the personal use of the possessor, his or her family, or guests a quantity of alcoholic liquor in excess of ~~one gallon at any one time or in excess of two gallons nine liters~~ in any one calendar month.

(2) Alcoholic liquor transported, imported, brought, or shipped into the State of Nebraska in violation of this section shall be seized by the commission and disposed of in the manner provided for contraband. Any person violating this section shall be guilty of a Class IV misdemeanor.

Sec. 10. That original section 53-194.03, Reissue Revised Statutes of Nebraska, 1943, sections 53-123.14, 53-124.11, 53-124.12, and 53-164.01, Revised Statutes Supplement, 1992, and sections 53-101, 53-125, and 53-129, Revised Statutes Supplement, 1993, are repealed.