

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 605

Introduced by Howard, 9.

Read first time January 21, 2009

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 sections 53-131.01, 53-135, and 53-149, Reissue Revised
3 Statutes of Nebraska, and sections 53-101 and 53-132,
4 Revised Statutes Cumulative Supplement, 2008; to change
5 provisions relating to license application and renewal
6 requirements, denial of license applications, transfer of
7 licenses, and storage of alcoholic liquor; to harmonize
8 provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 53-101, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 53-101 Sections 53-101 to 53-1,122 and section 6 of this
4 act shall be known and may be cited as the Nebraska Liquor Control
5 Act.

6 Sec. 2. Section 53-131.01, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 53-131.01 (1) The application for a new license shall be
9 submitted upon such forms as the commission may prescribe. Such
10 forms shall contain (a) the name and residence of the applicant and
11 how long he or she has resided within the State of Nebraska, (b)
12 the particular premises for which a license is desired designating
13 the same by street and number if practicable or, if not, by such
14 other description as definitely locates the premises, (c) the name
15 of the owner of the premises upon which the business licensed is
16 to be carried on, (d) a statement that the applicant is a citizen
17 of the United States, that the applicant and the spouse of the
18 applicant are not less than twenty-one years of age, and that such
19 applicant has never been convicted of or pleaded guilty to a felony
20 or been adjudged guilty of violating the laws governing the sale
21 of alcoholic liquor or the law for the prevention of gambling in
22 the State of Nebraska, except that a manager for a corporation
23 applying for a license shall qualify with all provisions of this
24 subdivision as though the manager were the applicant, except that
25 the provisions of this subdivision shall not apply to the spouse

1 of a manager-applicant, (e) a statement that the applicant intends
2 to carry on the business authorized by the license for himself
3 or herself and not as the agent of any other persons and that
4 if licensed he or she will carry on such business for himself or
5 herself and not as the agent for any other person, (f) a statement
6 that the applicant intends to superintend in person the management
7 of the business licensed and that if so licensed he or she will
8 superintend in person the management of the business, and (g)
9 certified copies of documents demonstrating that the applicant is
10 current on all obligations relating to federal, state, and local
11 taxes and all contributions required under the Nebraska Workers'
12 Compensation Act and the Employment Security Law, and (h) such
13 other information as the commission may from time to time direct.
14 The applicant shall also submit two legible sets of fingerprints
15 to be furnished to the Federal Bureau of Investigation through the
16 Nebraska State Patrol for a national criminal history record check
17 and the fee for such record check payable to the patrol.

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

25 Sec. 3. Section 53-132, Revised Statutes Cumulative

1 Supplement, 2008, is amended to read:

2 53-132 (1) If no hearing is required pursuant to
3 subdivision (1)(a) or (b) of section 53-133 and the commission
4 has no objections pursuant to subdivision (1)(c) of such section,
5 the commission may waive the forty-five-day objection period and,
6 if not otherwise prohibited by law, cause a retail license, craft
7 brewery license, or microdistillery license to be signed by its
8 chairperson, attested by its executive director over the seal of
9 the commission, and issued in the manner provided in subsection (4)
10 of this section as a matter of course.

11 (2) A retail license, craft brewery license, or
12 microdistillery license may be issued to any qualified applicant
13 if the commission finds that (a) the applicant is fit, willing,
14 and able to properly provide the service proposed within the city,
15 village, or county where the premises described in the application
16 are located, (b) the applicant can conform to all provisions and
17 requirements of and rules and regulations adopted pursuant to the
18 Nebraska Liquor Control Act, (c) the applicant has demonstrated
19 that the type of management and control to be exercised over
20 the premises described in the application will be sufficient to
21 insure that the licensed business can conform to all provisions and
22 requirements of and rules and regulations adopted pursuant to the
23 act, and (d) the issuance of the license is or will be required by
24 the present or future public convenience and necessity.

25 (3) In making its determination pursuant to subsection

1 (2) of this section the commission shall consider:

2 (a) The recommendation of the local governing body;

3 (b) The existence of a citizens' protest made in

4 accordance with section 53-133;

5 (c) The existing population of the city, village, or

6 county and its projected growth;

7 (d) The nature of the neighborhood or community of the

8 location of the proposed licensed premises;

9 (e) The existence or absence of other retail licenses,

10 craft brewery licenses, or microdistillery licenses with similar

11 privileges within the neighborhood or community of the location

12 of the proposed licensed premises and whether, as evidenced by

13 substantive, corroborative documentation, the issuance of such

14 license would result in or add to an undue concentration of

15 licenses with similar privileges and, as a result, require the use

16 of additional law enforcement resources;

17 (f) The existing motor vehicle and pedestrian traffic

18 flow in the vicinity of the proposed licensed premises;

19 (g) The adequacy of existing law enforcement;

20 (h) Zoning restrictions;

21 (i) The sanitation or sanitary conditions on or about the

22 proposed licensed premises; and

23 (j) Whether the type of business or activity proposed to

24 be operated in conjunction with the proposed license is and will be

25 consistent with the public interest; and.

1 (k) The opposition or support of residents or businesses
2 within five hundred feet of the proposed licensed premises or of
3 registered neighborhood associations within one hundred feet of the
4 proposed licensed premises. The commission may deny the application
5 based solely upon the opposition of such residents, businesses, or
6 neighborhood associations pursuant to this subdivision.

7 (4) Retail licenses, craft brewery licenses, or
8 microdistillery licenses issued or renewed by the commission shall
9 be mailed or delivered to the clerk of the city, village, or county
10 who shall deliver the same to the licensee upon receipt from the
11 licensee of proof of payment of (a) the license fee if by the
12 terms of subdivision (5) of section 53-124 the fee is payable to
13 the treasurer of such city, village, or county, (b) any fee for
14 publication of notice of hearing before the local governing body
15 upon the application for the license, (c) the fee for publication
16 of notice of renewal as provided in section 53-135.01, and (d)
17 occupation taxes, if any, imposed by such city, village, or county.
18 Notwithstanding any ordinance or charter power to the contrary,
19 no city, village, or county shall impose an occupation tax on the
20 business of any person, firm, or corporation licensed under the
21 act and doing business within the corporate limits of such city or
22 village or within the boundaries of such county in any sum which
23 exceeds two times the amount of the license fee required to be paid
24 under the act to obtain such license.

25 (5) Each license shall designate the name of the

1 licensee, the place of business licensed, and the type of license
2 issued.

3 Sec. 4. Section 53-135, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 53-135 A retail license issued by the commission and
6 outstanding may be automatically renewed by the commission without
7 formal application upon payment of the state registration fee and
8 license fee if payable to the commission. The payment shall be an
9 affirmative representation and certification by the licensee that
10 all answers contained in an application, if submitted, would be
11 the same in all material respects as the answers contained in the
12 last previous application. The commission may require documentation
13 that the licensee is not delinquent in any of the obligations
14 described in subdivision (1)(g) of section 53-131.01 as of the date
15 of the renewal application. The commission may at any time require
16 a licensee to submit an application, and the commission shall at
17 any time require a licensee to submit an application if requested
18 in writing to do so by the local governing body.

19 If a licensee files an application form in triplicate
20 original upon seeking renewal of his or her license, the
21 application shall be processed as set forth in section 53-131.

22 Any licensed retail premises located in an area which
23 is annexed to any governmental subdivision shall file a formal
24 application for a license, and while such application is pending,
25 the licensee may continue all license privileges until the original

1 license expires or is canceled or revoked. If such license expires
2 within sixty days following the annexation date of such area, the
3 license may be renewed by order of the commission for not more than
4 one year.

5 Sec. 5. Section 53-149, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 53-149 (1) A license shall be purely a personal
8 privilege, good for not to exceed one year after issuance unless
9 sooner revoked as provided in the Nebraska Liquor Control Act,
10 and shall not constitute property, nor shall it be subject to
11 attachment, garnishment, or execution, nor shall it be alienable
12 or transferable, voluntarily or involuntarily, or subject to being
13 encumbered or hypothecated.

14 (2) A license issued under the act terminates immediately
15 upon the sale of the licensed premises named in such license. The
16 purchaser or transferee may submit an application for a license
17 under the act prior to closing such sale or transfer, but such
18 purchaser shall not manufacture, store, or sell alcoholic liquor on
19 the purchased premises until the purchaser has obtained a license
20 in the purchaser's own name.

21 Such (3) A license shall not descend by the laws of
22 testate or intestate devolution, but it shall cease upon the death
23 of the licensee, except that (1) (a) executors or administrators
24 of the estate of any deceased licensee, when such estate consists
25 in part of alcoholic liquor, or a partnership or limited liability

1 company upon the death of one or more of the partners or members,
2 may continue the business of the sale or manufacture of alcoholic
3 liquor under order of the appropriate court and may exercise the
4 privileges of the deceased or deceased partner or member after
5 the death of such decedent until the expiration of such license,
6 but if such license would have expired within two months following
7 the death of the licensee, the license may be renewed by the
8 administrators or executors with the approval of the appropriate
9 court for a period not to exceed one additional year; or ~~(2)~~ (b)
10 when a license is issued to a husband and wife, as colicensees with
11 rights of survivorship, upon the death of one spouse the survivor
12 may exercise all rights and privileges under such license in his or
13 her own name. The trustee of any insolvent or bankrupt licensee,
14 when such estate consists in part of alcoholic liquor, may continue
15 the business of the sale or manufacture of alcoholic liquor under
16 order of the appropriate court and may exercise the privileges of
17 the insolvent or bankrupt licensee until the expiration of such
18 license.

19 Sec. 6. No retail business shall store alcoholic liquor
20 on its premises unless such business holds a license issued under
21 the Nebraska Liquor Control Act.

22 Sec. 7. Original sections 53-131.01, 53-135, and 53-149,
23 Reissue Revised Statutes of Nebraska, and sections 53-101 and
24 53-132, Revised Statutes Cumulative Supplement, 2008, are repealed.