

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 834

Introduced by Howard, 9.

Read first time January 08, 2010

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 sections 53-135 and 53-1,104, Reissue Revised Statutes of
3 Nebraska, and section 53-132, Revised Statutes Cumulative
4 Supplement, 2008; to change provisions relating to
5 issuance and renewal of licenses and to penalties;
6 to harmonize provisions; and to repeal the original
7 sections.

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

1 Section 1. Section 53-132, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

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

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

1 of proof with respect to whether the applicant can conform to all
2 the requirements of the Nebraska Liquor Control Act and the rules
3 and regulations adopted pursuant to the act is on the applicant.

4 (3) In making its determination pursuant to subsection
5 (2) of this section the commission shall consider:

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

7 (b) The existence of a citizens' protest made in
8 accordance with section 53-133;

9 (c) The existing population of the city, village, or
10 county and its projected growth;

11 (d) The nature of the neighborhood or community of the
12 location of the proposed licensed premises;

13 (e) The existence or absence of other retail licenses,
14 craft brewery licenses, or microdistillery licenses with similar
15 privileges within the neighborhood or community of the location
16 of the proposed licensed premises and whether, as evidenced by
17 substantive, corroborative documentation, the issuance of such
18 license would result in or add to an undue concentration of
19 licenses with similar privileges and, as a result, require the use
20 of additional law enforcement resources;

21 (f) The existing motor vehicle and pedestrian traffic
22 flow in the vicinity of the proposed licensed premises;

23 (g) The adequacy of existing law enforcement;

24 (h) Zoning restrictions;

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

1 proposed licensed premises; and

2 (j) Whether the type of business or activity proposed to
3 be operated in conjunction with the proposed license is and will be
4 consistent with the public interest.

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

23 (5) Each license shall designate the name of the
24 licensee, the place of business licensed, and the type of license
25 issued.

1 Sec. 2. Section 53-135, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 53-135 A Except as otherwise provided in this section,
4 a retail license issued by the commission and outstanding may be
5 automatically renewed by the commission without formal application
6 upon payment of the state registration fee and license fee if
7 payable to the commission. The payment shall be an affirmative
8 representation and certification by the licensee that all answers
9 contained in an application, if submitted, would be the same in
10 all material respects as the answers contained in the last previous
11 application. The commission may at any time require a licensee to
12 submit an application, and the commission shall at any time require
13 a licensee to submit an application if requested in writing to do
14 so by the local governing body.

15 A licensee applying for renewal who has been found guilty
16 of or pleaded guilty to any violation of the Nebraska Liquor
17 Control Act or has been found guilty of any misdemeanor or felony
18 during the previous license year shall file a formal application
19 for renewal, and a formal hearing before the local governing body
20 and the Nebraska Liquor Control Commission shall be held before a
21 license is renewed.

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

25 Any licensed retail premises located in an area which

1 is annexed to any governmental subdivision shall file a formal
2 application for a license, and while such application is pending,
3 the licensee may continue all license privileges until the original
4 license expires or is canceled or revoked. If such license expires
5 within sixty days following the annexation date of such area, the
6 license may be renewed by order of the commission for not more than
7 one year.

8 Sec. 3. Section 53-1,104, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 53-1,104 (1) Any licensee which sells or permits the
11 sale of any alcoholic liquor not authorized under the terms of
12 such license on the licensed premises or in connection with such
13 licensee's business or otherwise shall be subject to suspension,
14 cancellation, or revocation of such license by the commission.

15 (2) When an order suspending a license to sell alcoholic
16 liquor becomes final, the licensee may elect to pay a cash penalty
17 to the commission in lieu of suspending sales of alcoholic liquor
18 for the designated period if such election is not prohibited
19 by order of the commission. Except as otherwise provided in
20 subsection (3) of this section, for the first such suspension for
21 any licensee, the penalty shall be two hundred fifty dollars per
22 day, and for a second or any subsequent suspension, the penalty
23 shall be ~~one~~ three hundred dollars per day.

24 (3)(a) For a second suspension for violation of section
25 53-180 or 53-180.02 occurring within four years after the date of

1 the first suspension, the commission, in its discretion, may order
2 that the licensee be required to suspend sales of alcoholic liquor
3 for a period of time not to exceed forty-eight hours and that the
4 licensee may not elect to pay a cash penalty. The commission may
5 use the required suspension of sales of alcoholic liquor penalty
6 either alone or in conjunction with suspension periods for which
7 the licensee may elect to pay a cash penalty. For purposes of this
8 subsection, second suspension for violation of section 53-180 shall
9 include suspension for a violation of section 53-180.02 following
10 suspension for a violation of section 53-180 and second suspension
11 for violation of section 53-180.02 shall include suspension for a
12 violation of section 53-180 following suspension for a violation of
13 section 53-180.02;

14 (b) For a third or subsequent suspension for violation
15 of section 53-180 or 53-180.02 occurring within ~~four~~ ten years
16 after the date of the first suspension, the commission, ~~in its~~
17 ~~discretion,~~ may shall order that the licensee be required to
18 suspend sales of alcoholic liquor for a period of time not to
19 exceed fifteen days and that the licensee may not elect to pay a
20 cash penalty. The commission may use the required suspension of
21 sales of alcoholic liquor penalty either alone or in conjunction
22 with suspension periods for which the licensee may elect to pay a
23 cash penalty. For purposes of this subsection, third or subsequent
24 suspension for violation of section 53-180 shall include suspension
25 for a violation of section 53-180.02 following suspension for a

1 violation of section 53-180 and third or subsequent suspension
2 for violation of section 53-180.02 shall include suspension for a
3 violation of section 53-180 following suspension for a violation of
4 section 53-180.02; and

5 (c) For a first suspension based upon a finding that a
6 licensee or an employee or agent of the licensee has been convicted
7 of possession of a gambling device on a licensee's premises in
8 violation of sections 28-1107 to 28-1111, the commission, in its
9 discretion, may order that the licensee be required to suspend
10 sales of alcoholic liquor for thirty days and that the licensee
11 may not elect to pay a cash penalty. For a second or subsequent
12 suspension for such a violation of sections 28-1107 to 28-1111
13 occurring within four years after the date of the first suspension,
14 the commission shall order that the license be canceled.

15 (4) For any licensee which has no violation for a period
16 of four years consecutively, any suspension shall be treated as a
17 new first suspension.

18 (5) The election provided for in subsection (2) of
19 this section shall be filed with the commission in writing one
20 week before the suspension is ordered to commence and shall be
21 accompanied by payment in full of the sum required by this section.
22 If such election has not been received by the commission by the
23 close of business one week before the day such suspension is
24 ordered to commence, it shall be conclusively presumed that the
25 licensee has elected to close for the period of the suspension

1 and any election received later shall be absolutely void and the
2 payment made shall be returned to the licensee. The election shall
3 be made on a form prescribed by the commission. All funds received
4 under this section shall be remitted to the State Treasurer for
5 credit to the temporary school fund.

6 Sec. 4. Original sections 53-135 and 53-1,104, Reissue
7 Revised Statutes of Nebraska, and section 53-132, Revised Statutes
8 Cumulative Supplement, 2008, are repealed.