

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 407

Final Reading

Introduced by Karpisek, 32.

Read first time January 13, 2011

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 sections 53-101, 53-110, 53-123.12, 53-124.12, 53-131,
3 53-133, and 53-177, Reissue Revised Statutes of Nebraska;
4 to authorize employment by staff of the Nebraska Liquor
5 Control Commission as prescribed; to provide for mailing
6 and electronic delivery of certain notices as prescribed;
7 to provide for a waiver of restrictions on sales of
8 alcoholic liquor near a campus of a college or
9 university; to harmonize provisions; and to repeal the
10 original sections.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 53-101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 53-101 Sections 53-101 to 53-1,122 and section 8 of this
4 act shall be known and may be cited as the Nebraska Liquor Control
5 Act.

6 Sec. 2. Section 53-110, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 53-110 (1) No person shall be appointed as a
9 commissioner, the executive director of the commission, or an
10 employee of the commission who is not a citizen of the United States
11 and who has not resided within the State of Nebraska successively for
12 two years next preceding the date of his or her appointment.

13 (2) No person ~~(1)-(a)~~ convicted of or who has pleaded
14 guilty to a felony or any violation of any federal or state law
15 concerning the manufacture or sale of alcoholic liquor prior or
16 subsequent to the passage of the Nebraska Liquor Control Act, ~~(2)-(b)~~
17 who has paid a fine or penalty in settlement of any prosecution
18 against him or her for any violation of such laws, or ~~(3)-(c)~~ who has
19 forfeited his or her bond to appear in court to answer charges for
20 any such violation shall be appointed commissioner.

21 (3)(a) Except as otherwise provided in subdivision (b) of
22 this subsection, no ~~No~~ commissioner or employee of the commission
23 may, directly or indirectly, individually, as a member of a
24 partnership, as a member of a limited liability company, or as a
25 shareholder of a corporation, have any interest whatsoever in the

1 manufacture, sale, or distribution of alcoholic liquor, receive any
2 compensation or profit from such manufacture, sale, or distribution,
3 or have any interest whatsoever in the purchases or sales made by the
4 persons authorized by the act to purchase or to sell alcoholic
5 liquor.

6 (b) With the written approval of the executive director,
7 an employee of the commission, other than the executive director or a
8 division manager, may accept part-time or seasonal employment with a
9 person licensed or regulated by the commission. No such employment
10 shall be approved if the licensee receives more than fifty percent of
11 the licensee's gross revenue from the sale or dispensing of alcoholic
12 liquor.

13 (4) This section shall not prevent any commissioner, the
14 executive director, or any employee from purchasing and keeping in
15 his or her possession for the use of himself, herself, or members of
16 his or her family or guests any alcoholic liquor which may be
17 purchased or kept by any person pursuant to the act.

18 Sec. 3. Section 53-123.12, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 53-123.12 (1) Any person desiring to obtain a new license
21 to operate a farm winery shall:

22 (a) File an application with the commission in triplicate
23 original upon such forms as the commission from time to time
24 prescribes;

25 (b) Pay the license fee to the commission under sections

1 53-124 and 53-124.01, which fee shall be returned to the applicant if
2 the application is denied; and

3 (c) Pay the nonrefundable application fee to the
4 commission in the sum of four hundred dollars.

5 (2) To renew a farm winery license, a farm winery
6 licensee shall file an application with the commission, pay the
7 license fee under sections 53-124 and 53-124.01, and pay the renewal
8 fee of forty-five dollars.

9 (3) License fees, application fees, and renewal fees may
10 be paid to the commission by certified or cashier's check of a bank
11 within this state, personal or business check, United States post
12 office money order, or cash in the full amount of such fees.

13 (4) For a new license, the commission shall then notify,
14 ~~by registered or certified mail marked return receipt requested with~~
15 ~~postage prepaid,~~ the municipal clerk of the city or incorporated
16 village where such license is sought or, if the license is not sought
17 within a city or incorporated village, the county clerk of the county
18 where such license is sought of the receipt of the application and
19 shall ~~enclose~~include with such notice one copy of the application.
20 No such license shall then be issued by the commission until the
21 expiration of at least forty-five days from the date of ~~mailing~~
22 receipt by mail or electronic delivery of such application ~~by~~from
23 the commission. Within thirty-five days from the date of receipt of
24 such application from the commission, the local governing bodies of
25 nearby cities or villages or the county may make and submit to the

1 commission recommendations relative to the granting of or refusal to
2 grant such license to the applicant.

3 Sec. 4. Section 53-124.12, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 53-124.12 (1) The holder of a license to sell alcoholic
6 liquor at retail issued under subsection (6) of section 53-124, a
7 craft brewery license, a microdistillery license, or a farm winery
8 license may obtain an annual catering license as prescribed in this
9 section. The catering license shall be issued for the same period and
10 may be renewed in the same manner as the retail license, craft
11 brewery license, microdistillery license, or farm winery license.

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

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

16 (b) A license fee of one hundred dollars payable to the
17 commission, which fee shall be returned to the applicant if the
18 application is denied.

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

1 with such notice one copy of the application by mail or electronic
2 delivery. The local governing body and the commission shall process
3 the application in the same manner as provided in section 53-132.

4 (4) The local governing body with respect to catering
5 licensees within its liquor license jurisdiction as provided in
6 subsection (5) of this section may cancel a catering license for
7 cause for the remainder of the period for which such catering license
8 is issued. Any person whose catering license is canceled may appeal
9 to the district court of the county in which the local governing body
10 is located.

11 (5) For purposes of this section, local governing body
12 means (a) the governing body of the city or village in which the
13 catering licensee is located or (b) if such licensee is not located
14 within a city or village, the governing body of the county in which
15 such licensee is located.

16 (6) The local governing body may impose an occupation tax
17 on the business of a catering licensee doing business within the
18 liquor license jurisdiction of the local governing body as provided
19 in subsection (5) of this section. Such tax may not exceed double the
20 license fee to be paid under this section.

21 Sec. 5. Section 53-131, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 53-131 (1) Any person desiring to obtain a new license to
24 sell alcoholic liquor at retail, a craft brewery license, or a
25 microdistillery license shall file with the commission:

1 (a) An application in triplicate original upon forms the
2 commission prescribes, including the information required by
3 subsection (3) of this section for an application to operate a cigar
4 bar;

5 (b) The license fee if under sections 53-124 and
6 53-124.01 such fee is payable to the commission, which fee shall be
7 returned to the applicant if the application is denied; and

8 (c) The nonrefundable application fee in the sum of four
9 hundred dollars, except that the nonrefundable application fee for an
10 application for a cigar bar shall be one thousand dollars.

11 (2) The commission shall notify, ~~by registered or~~
12 ~~certified mail, return receipt requested with postage prepaid, (a)~~
13 the clerk of the city or village in which such license is sought or,
14 ~~(b)~~ if the license sought is not sought within a city or village, the
15 county clerk of the county in which such license is sought, of the
16 receipt of the application and shall ~~enclose~~ include one copy of the
17 application with the notice. No such license shall be issued or
18 denied by the commission until the expiration of the time allowed for
19 the receipt of a recommendation of denial or an objection requiring a
20 hearing under subdivision (1)(a) or (b) of section 53-133. During the
21 period of forty-five days after the date of ~~receiving receipt by mail~~
22 or electronic delivery of such application from the commission, the
23 local governing body of such city, village, or county may make and
24 submit to the commission recommendations relative to the granting or
25 refusal to grant such license to the applicant.

1 (3) For an application to operate a cigar bar, the
2 application shall include proof of the cigar bar's annual gross
3 revenue as requested by the commission and such other information as
4 requested by the commission to establish the intent to operate as a
5 cigar bar. The commission may adopt and promulgate rules and
6 regulations to regulate cigar bars.

7 (4) For renewal of a license under this section, a
8 licensee shall file with the commission an application, the license
9 fee as provided in subdivision (1)(b) of this section, and a renewal
10 fee of forty-five dollars.

11 Sec. 6. Section 53-133, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 53-133 (1) The commission shall set for hearing before it
14 any application for a retail license, craft brewery license, or
15 microdistillery license relative to which it has received:

16 (a) Within forty-five days after the date of receipt of
17 such application by the city, village, or county clerk, a
18 recommendation of denial from the city, village, or county;

19 (b) Within ten days after the receipt of a recommendation
20 from the city, village, or county, or, if no recommendation is
21 received, within forty-five days after the date of receipt of such
22 application by the city, village, or county clerk, objections in
23 writing by not less than three persons residing within such city,
24 village, or county, protesting the issuance of the license.
25 Withdrawal of the protest does not prohibit the commission from

1 conducting a hearing based upon the protest as originally filed and
2 making an independent finding as to whether the license should or
3 should not be issued;

4 (c) Within forty-five days after the date of receipt of
5 such application by the city, village, or county clerk, objections by
6 the commission or any duly appointed employee of the commission,
7 protesting the issuance of the license; or

8 (d) An indication on the application that the location of
9 a proposed retail establishment is within one hundred fifty feet of a
10 church as described in subsection (2) of section 53-177.

11 (2) Hearings upon such applications shall be in the
12 following manner: Notice indicating the time and place of such
13 hearing shall be mailed or electronically delivered to the applicant,
14 the local governing body, each individual protesting a license
15 pursuant to subdivision (1)(b) of this section, and any church
16 affected as described in subdivision (1)(d) of this section, ~~by~~
17 ~~certified mail, return receipt requested,~~ at least fifteen days prior
18 to such hearing. The notice shall state that the commission will
19 receive evidence for the purpose of determining whether to approve or
20 deny the application. Mailing or electronic delivery to the attorney
21 of record of a party shall be deemed to fulfill the purposes of this
22 section. The commission may receive evidence, including testimony and
23 documentary evidence, and may hear and question witnesses concerning
24 the application. The commission shall not use electronic delivery
25 with respect to an applicant, a protestor, or a church under this

1 section without the consent of the recipient to electronic delivery.

2 Sec. 7. Section 53-177, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 53-177 (1) Except as otherwise provided in subsection (2)
5 of this section, no license shall be issued for the sale at retail of
6 any alcoholic liquor within one hundred fifty feet of any church,
7 school, hospital, or home for aged or indigent persons or for
8 veterans, their wives or children. This prohibition does not apply
9 (a) to any location within such distance of one hundred fifty feet
10 for which a license to sell alcoholic liquor at retail has been
11 granted by the ~~Nebraska Liquor Control Commission~~ commission for two
12 years continuously prior to making of application for license, ~~and~~
13 (b) to hotels offering restaurant service, to regularly organized
14 clubs, or to restaurants, food shops, or other places where sale of
15 alcoholic liquor is not the principal business carried on, if such
16 place of business so exempted was established for such purposes prior
17 to May 24, 1935, or (c) to a college or university in the state which
18 is subject to section 8 of this act.

19 (2) If a proposed location for the sale at retail of any
20 alcoholic liquor is within one hundred fifty feet of any church, a
21 license may be issued if the commission gives notice to the affected
22 church and holds a hearing as prescribed in section 53-133.

23 ~~(3) No alcoholic liquor, other than beer, shall be sold~~
24 ~~for consumption on the premises within three hundred feet from the~~
25 ~~campus of any college or university in the state, except that this~~

1 section:

2 ~~(a) Does not prohibit a nonpublic college or university~~
3 ~~from contracting with an individual or corporation holding a license~~
4 ~~to sell alcoholic liquor at retail for the purpose of selling~~
5 ~~alcoholic liquor at retail on the campus of such college or~~
6 ~~university at events sanctioned by such college or university but~~
7 ~~does prohibit the sale of alcoholic liquor at retail by such licensee~~
8 ~~on the campus of such nonpublic college or university at student~~
9 ~~activities or events; and~~

10 ~~(b) Does not prohibit sales of alcoholic liquor by a~~
11 ~~community college culinary education program pursuant to section~~
12 ~~53-124.15.~~

13 Sec. 8. (1) No alcoholic liquor shall be sold for
14 consumption on the premises within three hundred feet from the campus
15 of any college or university in the state, except that this section:

16 (a) Does not prohibit a nonpublic college or university
17 from contracting with an individual or corporation holding a license
18 to sell alcoholic liquor at retail for the purpose of selling
19 alcoholic liquor at retail on the campus of such college or
20 university at events sanctioned by such college or university but
21 does prohibit the sale of alcoholic liquor at retail by such licensee
22 on the campus of such nonpublic college or university at student
23 activities or events; and

24 (b) Does not prohibit sales of alcoholic liquor by a
25 community college culinary education program pursuant to section

1 53-124.15.

2 (2) Except as otherwise provided in subsection (4) of
3 this section, the commission may waive the three-hundred-foot
4 restriction in subsection (1) of this section taking into
5 consideration one or more of the following:

6 (a) The impact of retail sales of alcoholic liquor for
7 consumption on the premises on the academic mission of the college or
8 university;

9 (b) The impact on students and prospective students if
10 such sales were permitted on or near campus;

11 (c) The impact on economic development opportunities
12 located within or in proximity to the campus; and

13 (d) The waiver would likely reduce the number of
14 applications for special designated licenses requested by the college
15 or university or its designee.

16 (3) To apply for a waiver under this section, the
17 applicant shall submit a written application to the commission. The
18 commission shall notify the governing body of the affected college or
19 university when the commission receives an application for a waiver.
20 The application shall include:

21 (a) The address of the location for which the waiver is
22 requested;

23 (b) The name and type of business for which the waiver is
24 requested; and

25 (c) A description of the justification for the waiver

1 explaining how the proposed location complies with the findings
2 prescribed in subsection (2) of this section.

3 (4) The commission shall not waive the three-hundred-foot
4 restriction in subsection (1) of this section without written
5 approval from the governing body of the college or university or its
6 designee if the physical location of the property which is the
7 subject of the requested waiver is (a) surrounded by property owned
8 by the college or university including any public or private
9 easement, street, or right-of-way adjacent to the property owned by
10 the college or university or (b) adjacent to property on two or more
11 sides owned by the college or university including any public or
12 private easement, street, or right-of-way adjacent to the property
13 owned by the college or university.

14 Sec. 9. Original sections 53-101, 53-110, 53-123.12,
15 53-124.12, 53-131, 53-133, and 53-177, Reissue Revised Statutes of
16 Nebraska, are repealed.