

LEGISLATIVE BILL 1130

Approved by the Governor April 5, 2012

Introduced by Coash, 27; Avery, 28; Council, 11; Fulton, 29; Lathrop, 12; McGill, 26; Nordquist, 7; Campbell, 25; Haar, 21; Lambert, 2; Mello, 5; Smith, 14.

FOR AN ACT relating to the Nebraska Liquor Control Act; to amend sections 53-123, 53-123.04, 53-123.14, and 53-123.16, Reissue Revised Statutes of Nebraska, and sections 53-101 and 53-134, Revised Statutes Supplement, 2011; to define terms; to provide for an entertainment district license; to provide for a fee; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 53-101, Revised Statutes Supplement, 2011, is amended to read:

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

Sec. 2. Section 53-123, Reissue Revised Statutes of Nebraska, is amended to read:

53-123 Licenses issued by the commission shall be of the following types: (1) Manufacturer's license; (2) alcoholic liquor wholesale license, except beer; (3) beer wholesale license; (4) retail license; (5) railroad license; (6) airline license; (7) boat license; (8) nonbeverage user's license; (9) farm winery license; (10) craft brewery license; (11) shipping license; (12) special designated license; (13) catering license; and (14) microdistillery license; and (15) entertainment district license.

Sec. 3. Section 53-123.04, Reissue Revised Statutes of Nebraska, is amended to read:

53-123.04 (1) A retail license shall allow the licensee to sell and offer for sale at retail either in the original package or otherwise, as prescribed in the retail license, on the premises specified in the retail license or the entertainment district license or on the premises where catering is occurring, alcoholic liquor or beer for use or consumption but not for resale in any form except as provided in section 53-175.

(2) Nothing in the Nebraska Liquor Control Act shall prohibit a holder of a Class D license from allowing the sampling of tax-paid wine for consumption on the premises by such licensee or his or her employees in cooperation with a licensed wholesaler in the manner prescribed by the commission.

(3)(a) A restaurant holding a license to sell alcoholic liquor at retail for consumption on the licensed premises may permit a customer to remove one unsealed bottle of wine for consumption off the premises if the customer has purchased a full-course meal and consumed a portion of the bottle of wine with such full-course meal on the licensed premises. The licensee or his or her agent shall (i) securely reseal such bottle and place the bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been opened or tampered with and (ii) provide a dated receipt to the customer and attach to such bag a copy of the dated receipt for the resealed bottle of wine and the full-course meal.

(b) If the resealed bottle of wine is transported in a motor vehicle, it must be placed in the trunk of the motor vehicle or the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(c) For purposes of this subsection, full-course meal means a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking.

Sec. 4. Section 53-123.14, Reissue Revised Statutes of Nebraska, is amended to read:

53-123.14 Any person who operates a craft brewery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a craft brewery shall permit a brewpub or microbrewery to produce on the craft brewery premises a maximum of ten thousand barrels of beer per year. A craft brewery may also sell to beer wholesalers for sale and distribution to licensed retailers. A craft brewery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act 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 craft brewery licensee, wine, or alcoholic liquor by the drink for consumption

on the craft brewery premises shall require the appropriate retail license. Any license held by the operator of a craft brewery shall be subject to the act. A holder of a craft brewery license may obtain an annual catering license pursuant to section 53-124.12, ~~or~~ a special designated license pursuant to section 53-124.11, or an entertainment district license pursuant to section 6 of this act.

Sec. 5. Section 53-123.16, Reissue Revised Statutes of Nebraska, is amended to read:

53-123.16 Any person who operates a microdistillery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a microdistillery shall permit the licensee to produce on the premises a maximum of ten thousand gallons of liquor per year. A microdistillery may also sell to licensed wholesalers for sale and distribution to licensed retailers. A microdistillery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of microdistilled product for consumption on or off the licensed premises, except that the sale of any beer, wine, or alcoholic liquor, other than microdistilled product manufactured by the microdistillery licensee, by the drink for consumption on the microdistillery premises shall require the appropriate retail license. Any license held by the operator of a microdistillery shall be subject to the act. A holder of a microdistillery license may obtain an annual catering license pursuant to section 53-124.12, ~~or~~ a special designated license pursuant to section 53-124.11, or an entertainment district license pursuant to section 6 of this act. The commission may, upon the conditions it determines, grant to any microdistillery licensed under this section a special license authorizing the microdistillery to purchase and to import, from such persons as are entitled to sell the same, wines or spirits to be used solely as ingredients and for the sole purpose of blending with and flavoring microdistillery products as a part of the microdistillation process.

Sec. 6. (1) A local governing body may designate an entertainment district in which a commons area may be used by retail, craft brewery, and microdistillery licensees which obtain an entertainment district license. The local governing body may, at any time, revoke such designation if it finds that the commons area threatens the health, safety, or welfare of the public or has become a common nuisance. The local governing body shall file the designation or the revocation of the designation with the commission.

(2) An entertainment district license allows the sale of alcoholic liquor for consumption on the premises within the confines of a commons area. The consumption of alcoholic liquor in the commons area shall only occur during the hours authorized for sale of alcoholic liquor for consumption on the premises under section 53-179 and while food service is available in the commons area. Only the holder of an entertainment district license or employees of such licensee may sell or dispense alcoholic liquor in the commons area.

(3) An entertainment district licensee shall serve alcoholic liquor to be consumed in the commons area in containers that prominently displays the licensee's trade name or logo or some other mark that is unique to the licensee under the licensee's retail license, craft brewery license, or microdistillery license. An entertainment district licensee may allow alcohol sold by another entertainment district licensee to enter the licensed premises of either licensee. No entertainment district licensee shall allow alcoholic liquor to leave the commons area or the premises licensed under its retail license, craft brewery license, or microdistillery license.

(4) If the licensed premises of the holder of a license to sell alcoholic liquor at retail issued under subsection (6) of section 53-124, a craft brewery license, or a microdistillery license is adjacent to a commons area in an entertainment district designated by a local governing body pursuant to this section, the holder of the license may obtain an annual entertainment district license as prescribed in this section. The entertainment district license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, or microdistillery license.

(5) In order to obtain an entertainment district license, a person eligible under subsection (4) of this section shall:

(a) File an application with the commission upon such forms as the commission prescribes; and

(b) Pay an additional license fee of three hundred dollars for the privilege of serving alcohol in the entertainment district payable to the clerk of the local governing body in the same manner as license fees under subdivision (4) of section 53-134.

(6) When an application for an entertainment district license is

filed, the commission shall notify the clerk of the local governing body. The commission shall include with such notice one copy of the application by mail or electronic delivery. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

(7) The local governing body may impose an occupation tax on the business of an entertainment district licensee doing business within the liquor license jurisdiction of the local governing body as provided in subdivision (11) (b) of this section in accordance with section 53-132.

(8) The local governing body with respect to entertainment district licensees within its liquor license jurisdiction as provided in subdivision (11) (b) of this section may cancel an entertainment district license for cause for the remainder of the period for which such entertainment district license is issued. Any person whose entertainment district license is canceled may appeal to the commission in accordance with section 53-134.

(9) A local governing body may regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, any area it designates as an entertainment district.

(10) Violation of any provision of this section or any rules or regulations adopted and promulgated pursuant to this section by an entertainment district licensee may be cause to revoke, cancel, or suspend the retail license issued under subsection (6) of section 53-124, craft brewery license, or microdistillery license held by such licensee.

(11) For purposes of this section:

(a) Commons area means an area:

(i) Within an entertainment district designated by a local governing body;

(ii) Shared by authorized licensees with entertainment district licenses;

(iii) Abutting the licensed premises of such licensees;

(iv) Having limited pedestrian accessibility by use of a physical barrier, either on a permanent or temporary basis; and

(v) Closed to vehicular traffic when used as a commons area.

Commons area may include any area of a public or private right-of-way if the area otherwise meets the requirements of this section; and

(b) Local governing body means the governing body of the city or village in which the entertainment district licensee is located.

Sec. 7. Section 53-134, Revised Statutes Supplement, 2011, is amended to read:

53-134 The local governing body of any city or village with respect to licenses within its corporate limits and the local governing body of any county with respect to licenses not within the corporate limits of any city or village but within the county shall have the following powers, functions, and duties with respect to retail, craft brewery, ~~and~~ microdistillery, ~~and~~ entertainment district licenses:

(1) To cancel or revoke for cause retail, craft brewery, ~~or~~ microdistillery, or entertainment district licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the commission;

(2) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated and at such time examine the premises of such licensee in connection with such determination. Any law enforcement officer who determines that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated shall report such violation in writing to the executive director of the commission (a) within thirty days after determining that such violation has occurred, (b) within thirty days after the conclusion of an ongoing police investigation, or (c) within thirty days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later;

(3) To receive a signed complaint from any citizen within its jurisdiction that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the act;

(4) To receive retail license fees, craft brewery license fees, and microdistillery license fees as provided in sections 53-124 and 53-124.01 and

entertainment district license fees as provided in section 6 of this act and pay the same, after the license has been delivered to the applicant, to the city, village, or county treasurer;

(5) To examine or cause to be examined any applicant or any retail licensee, craft brewery licensee, ~~or~~ microdistillery licensee, or entertainment district licensee upon whom notice of cancellation or revocation has been served as provided in the act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the local governing body may authorize its agent or attorney to act on its behalf;

(6) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in section 53-134.04, it determines that the licensee has violated any of the provisions of the act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the commission within thirty days after the date of the order by filing a notice of appeal with the commission. The commission shall handle the appeal in the manner provided for hearing on an application in section 53-133; and

(7) Upon receipt from the commission of the notice and copy of application as provided in section 53-131, to fix a time and place for a hearing at which the local governing body shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in such city, village, or county one time not less than seven and not more than fourteen days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the local governing body in support of or in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than forty-five days after the date of receipt of the notice from the commission, and after such hearing the local governing body shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The clerk of such city, village, or county shall mail to the commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the commission. If the commission refuses to issue such a license, the cost of publication of notice shall be paid by the commission from the security for costs.

Sec. 8. Original sections 53-123, 53-123.04, 53-123.14, and 53-123.16, Reissue Revised Statutes of Nebraska, and sections 53-101 and 53-134, Revised Statutes Supplement, 2011, are repealed.