

LEGISLATIVE BILL 734

Approved by the Governor February 19, 2020

Introduced by Hunt, 8; Briese, 41; Wayne, 13.

A BILL FOR AN ACT relating to the Nebraska Liquor Control Act; to amend sections 53-101, 53-116.01, 53-117, 53-117.07, 53-123, 53-124, 53-124.01, 53-125, and 53-130, Revised Statutes Cumulative Supplement, 2018; to provide for the regulation of charter bus services and the licensure of special party buses; to provide for procedures and fees; 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 Cumulative Supplement, 2018, 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 53-116.01, Revised Statutes Cumulative Supplement, 2018, is amended to read:

53-116.01 (1) The commission and local governing bodies shall cause frequent inspection to be made on the premises of all retail licensees and bottle club licensees, and if it is found that any such licensee is violating any provision of the Nebraska Liquor Control Act or the rules and regulations of the commission adopted and promulgated under the act or is failing to observe in good faith the purposes of the act, the license may be suspended, canceled, or revoked after the licensee is given an opportunity to be heard in his or her defense.

(2) The commission and local governing bodies may inspect a charter bus providing service under a certificate of public convenience and necessity granted by the Public Service Commission when the owner or operator of the charter allows the consumption of alcoholic liquor in the charter bus by an individual who is twenty-one years of age or older so long as the inspection is performed when the bus has stopped for the purpose of allowing passengers to embark or disembark.

Sec. 3. Section 53-117, Revised Statutes Cumulative Supplement, 2018, is amended to read:

53-117 The commission has the following powers, functions, and duties:

(1) To receive applications for and to issue licenses to and suspend, cancel, and revoke licenses of manufacturers, wholesalers, nonbeverage users, retailers, railroads including owners and lessees of sleeping, dining, and cafe cars, airlines, boats, bottle clubs, special party buses, and pedal-pub vehicles in accordance with the Nebraska Liquor Control Act;

(2) To fix by rules and regulations the standards of manufacture of alcoholic liquor not inconsistent with federal laws in order to insure the use of proper ingredients and methods in the manufacture and distribution thereof and to adopt and promulgate rules and regulations not inconsistent with federal laws for the proper labeling of containers, barrels, casks, or other bulk containers or of bottles of alcoholic liquor manufactured or sold in this state. The Legislature intends, by the grant of power to adopt and promulgate rules and regulations, that the commission have broad discretionary powers to govern the traffic in alcoholic liquor and to enforce strictly all provisions of the act in the interest of sanitation, purity of products, truthful representations, and honest dealings in a manner that generally will promote the public health and welfare. All such rules and regulations shall be absolutely binding upon all licensees and enforceable by the commission through the power of suspension or cancellation of licenses, except that all rules and regulations of the commission affecting a club possessing any form of retail license or bottle club license shall have equal application to all such licenses or shall be void;

(3) To call upon other administrative departments of the state, county and municipal governments, county sheriffs, city police departments, village marshals, peace officers, and prosecuting officers for such information and assistance as the commission deems necessary in the performance of its duties. The commission shall enter into an agreement with the Nebraska State Patrol in which the Nebraska State Patrol shall hire six new patrol officers and, from the entire Nebraska State Patrol, shall designate a minimum of six patrol officers who will spend a majority of their time in administration and enforcement of the Nebraska Liquor Control Act;

(4) To recommend to local governing bodies rules and regulations not inconsistent with law for the distribution and sale of alcoholic liquor throughout the state;

(5) To inspect or cause to be inspected any premises where alcoholic liquor is manufactured, distributed, or sold and, when sold on unlicensed premises or on any premises in violation of law, to bring an action to enjoin the use of the property for such purpose;

(6) To hear and determine appeals from orders of a local governing body in accordance with the act;

(7) To conduct or cause to be conducted an audit to inspect any licensee's

records and books;

(8) In the conduct of any hearing or audit authorized to be held by the commission (a) to examine or cause to be examined, under oath, any licensee and to examine or cause to be examined the books and records of such licensee, (b) to hear testimony and take proof material for its information in the discharge of its duties under the act, and (c) to administer or cause to be administered oaths;

(9) To investigate the administration of laws in relation to alcoholic liquor in this and other states and to recommend to the Governor and through him or her to the Legislature amendments to the act; and

(10) To receive, account for, and remit to the State Treasurer state license fees and taxes provided for in the act.

Sec. 4. Section 53-117.07, Revised Statutes Cumulative Supplement, 2018, is amended to read:

53-117.07 All proceedings for the suspension, cancellation, or revocation of licenses of manufacturers, wholesalers, nonbeverage users, craft breweries, microdistilleries, railroads, airlines, shippers, boats, special party buses, and pedal-pub vehicles shall be before the commission, and the proceedings shall be in accordance with rules and regulations adopted and promulgated by it not inconsistent with law. No such license shall be so suspended, canceled, or revoked except after a hearing by the commission with reasonable notice to the licensee and opportunity to appear and defend.

Sec. 5. Section 53-123, Revised Statutes Cumulative Supplement, 2018, 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; (14) microdistillery license; (15) entertainment district license; (16) pedal-pub vehicle license; and (17) bottle club license; and (18) special party bus license.

Sec. 6. (1) The commission may issue a license to any person providing special party bus service under a certificate of public convenience and necessity granted by the Public Service Commission when the person allows the consumption of alcoholic liquor in its special party bus by an individual who is twenty-one years of age or older. Each licensee shall keep a duplicate of such license in each special party bus where such alcoholic liquor is consumed.

(2) Each license shall expire on April 30 of each year. Each license shall be good throughout this state as a state license. Only one license shall be required for all special party buses operated in this state by the same owner. No further license shall be required or tax levied by any county, city, or village for the privilege of allowing consumption of alcoholic liquor in such buses.

Sec. 7. Section 53-124, Revised Statutes Cumulative Supplement, 2018, is amended to read:

53-124 (1) At the time application is made to the commission for a license of any type, the applicant shall pay the fee provided in section 53-124.01 and, if the applicant is an individual, provide the applicant's social security number. The commission shall issue the types of licenses described in this section.

(2) There shall be an airline license, a boat license, a special party bus license, a pedal-pub vehicle license, and a railroad license. The commission shall charge one dollar for each duplicate of an airline license, a special party bus license, a pedal-pub vehicle license, or a railroad license.

(3)(a) There shall be a manufacturer's license for alcohol and spirits, for beer, and for wine. The annual fee for a manufacturer's license for beer shall be based on the barrel daily capacity as follows:

- (i) 1 to 100 barrel daily capacity, or any part thereof, tier one;
- (ii) 100 to 150 barrel daily capacity, tier two;
- (iii) 150 to 200 barrel daily capacity, tier three;
- (iv) 200 to 300 barrel daily capacity, tier four;
- (v) 300 to 400 barrel daily capacity, tier five;
- (vi) 400 to 500 barrel daily capacity, tier six;
- (vii) 500 barrel daily capacity, or more, tier seven.

(b) For purposes of this subsection, daily capacity means the average daily barrel production for the previous twelve months of manufacturing operation. If no such basis for comparison exists, the manufacturing licensee shall pay in advance for the first year's operation a fee of five hundred dollars.

(4) There shall be five classes of nonbeverage users' licenses: Class 1, Class 2, Class 3, Class 4, and Class 5.

(5) In lieu of a manufacturer's, a retailer's, or a wholesaler's license, there shall be a license to operate issued for a craft brewery, a farm winery, or a microdistillery.

(6)(a) There shall be six classes of retail licenses:

(i) Class A: Beer only, for consumption on the premises;

(ii) Class B: Beer only, for consumption off the premises, sales in the original packages only;

(iii) Class C: Alcoholic liquor, for consumption on the premises and off the premises, sales in original packages only. If a Class C license is held by a nonprofit corporation, it shall be restricted to consumption on the premises only. A Class C license may have a sampling designation restricting consumption

on the premises to sampling, but such designation shall not affect sales for consumption off the premises under such license;

(iv) Class D: Alcoholic liquor, including beer, for consumption off the premises, sales in the original packages only, except as provided in subdivision (6)(a)(vi) of this section and subsection (2) of section 53-123.04;

(v) Class I: Alcoholic liquor, for consumption on the premises; and

(vi) Class J: Alcoholic liquor, including beer, for consumption off the premises, sales in the original packages only, for a retail licensee whose annual gross revenue from the sale of alcohol does not exceed twenty percent of the licensee's total annual gross revenue from all retail sales.

(b) All applicable license fees shall be paid by the applicant or licensee directly to the city or village treasurer in the case of premises located inside the corporate limits of a city or village and directly to the county treasurer in the case of premises located outside the corporate limits of a city or village.

(7) There shall be four types of shipping licenses as described in section 53-123.15: Manufacturers, vintage wines, manufacture direct sales, and retail direct sales.

(8) There shall be two types of wholesale licenses: Alcoholic liquor and beer only. The annual fee shall be paid for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling the same product.

(9) There shall be a bottle club license. All applicable license fees shall be paid by the applicant or licensee directly to the city or village treasurer in the case of premises located inside the corporate limits of a city or village and directly to the county treasurer in the case of premises located outside the corporate limits of a city or village.

(10) The license year, unless otherwise provided in the Nebraska Liquor Control Act, shall commence on May 1 of each year and shall end on the following April 30, except that the license year for a Class C license shall commence on November 1 of each year and shall end on the following October 31. During the license year, no license shall be issued for a sum less than the amount of the annual license fee as fixed in section 53-124.01, regardless of the time when the application for such license has been made, except that (a) when there is a purchase of an existing licensed business and a new license of the same class is issued or (b) upon the issuance of a new license for a location which has not been previously licensed, the license fee and occupation taxes shall be prorated on a quarterly basis as of the date of issuance.

Sec. 8. Section 53-124.01, Revised Statutes Cumulative Supplement, 2018, is amended to read:

53-124.01 (1) The fees for annual licenses finally issued by the commission shall be as provided in this section and section 53-124.

- (2) Airline license ... \$100
- (3) Boat license ... \$50
- (4) Bottle club license ... \$300
- (5) Special party bus license ... \$75
- (6) (5) Manufacturer's license:

| Class | Fee - In Dollars |
|---------------------|------------------|
| Alcohol and spirits | 1,000 |
| Beer - tier one | 100 |
| Beer - tier two | 200 |
| Beer - tier three | 350 |
| Beer - tier four | 500 |
| Beer - tier five | 650 |
| Beer - tier six | 700 |
| Beer - tier seven | 800 |
| Wine | 250 |

(7) (6) Nonbeverage user's license:

| Class | Fee - In Dollars |
|---------|------------------|
| Class 1 | 5 |
| Class 2 | 25 |
| Class 3 | 50 |
| Class 4 | 100 |
| Class 5 | 250 |

(8) (7) Operator's license:

| Class | Fee - In Dollars |
|--|------------------|
| Craft brewery | 250 |
| Farm winery | 250 |
| Microdistillery | 250 |
| (9) (8) Pedal-pub vehicle license ... | \$50 |
| (10) (9) Railroad license ... | \$100 |
| (11) (10) Retail license: | |

| Class | Fee - In Dollars |
|--|------------------|
| Class A | 100 |
| Class B | 100 |
| Class C | 300 |
| Class D | 200 |
| Class I | 250 |
| Class J | 50 |
| (12) (11) Shipping license: | |

| Class | Fee - In Dollars |
|---|------------------|
| Manufacturer | 1,000 |
| Vintage wines | 1,000 |
| Manufacture direct sales | 500 |
| Retail direct sales | 500 |
| (13) (12) Wholesale license: | |

| Class | Fee - In Dollars |
|------------------|------------------|
| Alcoholic liquor | 750 |
| Beer | 500 |

Sec. 9. Section 53-125, Revised Statutes Cumulative Supplement, 2018, is amended to read:

53-125 No license of any kind shall be issued to (1) a person who is not a resident of Nebraska, except in case of railroad, airline, ~~or boat,~~ or special party bus 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 Nebraska resident and legally able to work in Nebraska, (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 Nebraska and unless all the members of such partnership are otherwise qualified to obtain a license, (9) a limited liability company, if any officer or director of the limited liability company or any member having an ownership interest in the aggregate of more than twenty-five percent of such company 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, or if a manager of a limited liability company licensee would be ineligible to receive a license under this section for any reason, (10) a corporation, if any officer 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, or if a manager of a corporate licensee would be ineligible to receive a license under this section for any reason. 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. 10. Section 53-130, Revised Statutes Cumulative Supplement, 2018, is amended to read:

53-130 (1) New licenses to manufacturers, wholesalers, railroads, airlines, boats, special party buses, pedal-pub vehicles, and nonbeverage users of alcoholic liquor may be issued by the commission upon (a) written application in duplicate filed in the manner and on such forms as the commission prescribes and in which the applicant for a beer wholesale license sets forth the sales territory in Nebraska in which it is authorized by a manufacturer or manufacturers to sell their brand or brands and the name of such brand or brands, (b) receipt of bond, (c) payment in advance of the nonrefundable application fee of forty-five dollars and the license fee, and (d) such notice and hearing as the commission fixes by its own order.

(2) A notice of such application shall be served upon the manufacturer or manufacturers listed in any application for a beer wholesale license and upon any existing wholesaler licensed to sell the brand or brands in the described sales territory.

(3) A license so issued may be renewed without formal application upon payment of license fees and a renewal fee of forty-five dollars prior to or within thirty days after the expiration of the license. The payment of such fees shall be an affirmative representation and certification by the licensee that all answers contained in an application, if submitted, would be the same in all material respects as the answers contained in the last previous application. The commission may at any time require a licensee to submit an application.

Sec. 11. The Public Service Commission shall, in consultation with the Nebraska Liquor Control Commission, adopt and promulgate rules and regulations for signs or other indicia distinguishing between buses providing special party services and buses providing charter services.

Sec. 12. Original sections 53-101, 53-116.01, 53-117, 53-117.07, 53-123, 53-124, 53-124.01, 53-125, and 53-130, Revised Statutes Cumulative Supplement, 2018, are repealed.