

LEGISLATIVE BILL 973

Approved by the Governor April 10, 2000

Introduced by General Affairs Committee: Janssen, 15, Chairperson;
Connealy, 16; Cudaback, 36; Hartnett, 45; Schrock, 38;

AN ACT relating to the Nebraska Liquor Control Act; to amend sections 53-101, 53-123.12, 53-124.11, 53-130, 53-138.01, and 53-192, Reissue Revised Statutes of Nebraska, and sections 53-131 and 53-1,104, Revised Statutes Supplement, 1999; to provide for the taxation of alcoholic liquor transported into this state as prescribed; to change state registration fees and special designated license provisions; to change provisions relating to the transportation of alcoholic liquor into this state; to provide penalties as prescribed; to provide powers and duties; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

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

53-101. Sections 53-101 to 53-1,121 and section 2 of this act shall be known and may be cited as the Nebraska Liquor Control Act.

Sec. 2. For the purpose of raising revenue, a tax is imposed upon individuals who have received alcoholic liquor by transport pursuant to section 53-192 and for which the required taxes in the state of purchase or this state have not been paid. The tax, if due, shall be paid by the purchaser of the alcoholic liquor. The amount of the tax shall be imposed as provided in section 53-160. The tax shall be collected by the Department of Revenue in the same manner as sales and use taxes under the Nebraska Revenue Act of 1967, except that the tax shall not be due until December 31 of the year in which the purchase was made. The tax shall be delinquent if unpaid within twenty-five days after December 31. The revenue from the tax shall be credited to the General Fund. The department and the commission shall adopt and promulgate rules and regulations to carry out this section.

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

53-123.12. Any person desiring to obtain a new license to operate a farm winery shall:

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

(2) Pay the license fee to the commission under subdivision (2) of section 53-124, which fee shall be returned to the applicant if the application is denied; and

(3) Pay the state registration fee to the commission in the sum of ~~thirty~~ thirty-fourty-five dollars.

License fees and registration fees may be paid to the commission by certified or cashier's check of a bank within this state, personal or business check, United States post office money order, or cash in the full amount of such fees. The commission shall then notify, by registered or certified mail marked return receipt requested with postage prepaid, the municipal clerk of the city or incorporated village where such license is sought or, if the license is not sought within a city or incorporated village, the county clerk of the county where such license is sought of the receipt of the application and shall enclose with such notice one copy of the application. No such license shall then be issued by the commission until the expiration of at least forty-five days from the date of mailing such application by the commission. Within thirty-five days from the date of receipt of such application from the commission, the local governing bodies of nearby cities or villages or the county may make and submit to the commission recommendations relative to the granting of or refusal to grant such license to the applicant.

Sec. 4. Section 53-124.11, Reissue Revised Statutes of Nebraska, is amended to read:

53-124.11. (1) The commission may issue a special designated license for sale or consumption of alcoholic liquor at a designated location to a retail licensee, a craft brewery licensee, a municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, a political organization which has been exempted from the payment of federal income taxes, or any other nonprofit corporation the

purpose of which is fraternal, charitable, or public service and which has been exempted from the payment of federal income taxes, under conditions specified in this section. The applicant shall demonstrate meeting the requirements of this subsection.

(2) No retail licensee, craft brewery licensee, organization, or corporation enumerated in subsection (1) of this section may be issued a special designated license under this section for more than six calendar days in any one calendar year. Only one special designated license shall be required for any application for two or more consecutive days. This subsection shall not apply to any holder of a catering license.

(3) Except for any special designated license issued to a holder of a catering license, there shall be a fee of ~~twenty-five~~ forty dollars for each day identified in the special designated license. Such fee shall be submitted with the application for the special designated license, collected by the commission, and remitted to the State Treasurer for credit to the General Fund. The applicant shall be exempt from the provisions of the Nebraska Liquor Control Act requiring a registration fee and the provisions of the act requiring the expiration of forty-five days from the time the application is received by the commission prior to the issuance of a license, if granted by the commission. The retail licensees, craft brewery licensees, municipal corporations, organizations, and nonprofit corporations enumerated in subsection (1) of this section seeking a special designated license shall file an application on such forms as the commission may prescribe. Such forms shall contain, along with other information as required by the commission, (a) the name of the applicant, (b) the premises for which a special designated license is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (c) the name of the owner or lessee of the premises for which the special designated license is requested, (d) sufficient evidence that the holder of the special designated license, if issued, will carry on the activities and business authorized by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (e) a statement of the type of activity to be carried on during the time period for which a special designated license is requested, and (f) sufficient evidence that the activity will be supervised by persons or managers who are agents of and directly responsible to the holder of the special designated license.

(4) No special designated license provided for by this section shall be issued by the commission without the approval of the local governing body. The local governing body may establish criteria for approving or denying a special designated license. The local governing body may designate an agent to determine whether a special designated license is to be approved or denied. Such agent shall follow criteria established by the local governing body in making his or her determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body. For purposes of this section, the local governing body shall be the city or village within which the premises for which the special designated license is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be the county within which the premises for which the special designated license is requested are located.

(5) If the applicant meets the requirements of this section, a special designated license shall be granted and issued by the commission for use by the holder of the special designated license. All statutory provisions and rules and regulations of the commission that apply to a retail licensee shall apply to the holder of a special designated license with the exception of such statutory provisions and rules and regulations of the commission so designated by the commission and stated upon the issued special designated license, except that the commission may not designate exemption of sections 53-180 to 53-180.07. The decision of the commission shall be final. If the applicant does not qualify for a special designated license, the application shall be denied by the commission.

(6) A special designated license issued by the commission shall be mailed or delivered to the city, village, or county clerk who shall deliver such license to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

Sec. 5. Section 53-130, Reissue Revised Statutes of Nebraska, is amended to read:

53-130. New licenses to manufacturers, wholesalers, railroads, airlines, boats, and nonbeverage users of alcoholic liquor may be issued by the commission upon (1) 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, (2) receipt of bond, (3) payment in advance of the state registration fee of ~~thirty~~ forty-five dollars and the license fee, and (4) such notice and hearing as the commission fixes by its own order. 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. A license so issued may be renewed without formal application upon payment of license and registration fees. 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. 6. Section 53-131, Revised Statutes Supplement, 1999, is amended to read:

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

(a) An application in triplicate original upon forms the commission prescribes;

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

(c) The state registration fee in the sum of ~~thirty~~ forty-five dollars.

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

Sec. 7. Section 53-138.01, Reissue Revised Statutes of Nebraska, is amended to read:

53-138.01. The State Treasurer shall credit ~~twenty-five~~ forty dollars of each state registration fee to the General Fund and the remaining five dollars to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund to be used for providing licensees with materials pursuant to section 53-117.05. All retail license fees received by the city or village treasurer, as the case may be, shall inure to the school fund of the district lying wholly or partially within the corporate limits of such city or village. The State Treasurer shall credit all license fees received by the commission for licenses issued pertaining to alcoholic liquor, including beer, to the temporary school fund to be used for the support of the common schools as provided in Article VII, section 5, of the Constitution of Nebraska. All retail license fees received by the county treasurer, as provided in section 53-124, shall be credited to the school fund of the county.

Sec. 8. Section 53-192, Reissue Revised Statutes of Nebraska, is amended to read:

53-192. ~~No~~ A person or common carrier shall not haul or transport alcoholic liquor, ~~except beer,~~ whether by boat, airplane, automobile, truck, ~~wagon,~~ or other conveyance, in or into this state, for sale, or for storage and sale in this state, upon which the required labeling or gauging fee, tax, duty, or license has not been paid. A person or common carrier shall not haul or transport alcoholic liquor, whether by boat, airplane, automobile, truck, or other conveyance, in or into this state, for personal use, unless the required labeling or gauging fee, tax, duty, or license has been paid, either in this state or the state where such alcoholic liquor was purchased.

Sec. 9. Section 53-1,104, Revised Statutes Supplement, 1999, is amended to read:

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

the commission.

(2) When an order suspending a retail license to sell alcoholic liquor becomes final, the licensee may elect to pay a cash penalty to the commission in lieu of suspending sales of alcoholic liquor for the designated period if such election is not prohibited by order of the commission. ~~For~~ Except as otherwise provided in subsection (3) of this section, for the first such suspension for any licensee, the penalty shall be fifty dollars per day, and for ~~For~~ a second or any subsequent suspension, the penalty shall be one hundred dollars per day. ~~7 except that:~~

(3)(a) For a second suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed forty-eight hours and that the licensee may not elect to pay a cash penalty. The commission may use the required suspension of sales of alcoholic liquor penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, second suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and second suspension for violation of section 53-180.02 shall include suspension for a violation of section 53-180 following suspension for a violation of section 53-180.02; ~~and~~

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

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

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

(5) The election provided for in ~~this~~ subsection (2) of this section shall be filed with the commission in writing one week before the suspension is ordered to commence and shall be accompanied by payment in full of the sum required by this section. If such election has not been received by the commission by the close of business one week before the day such suspension is ordered to commence, it shall be conclusively presumed that the licensee has elected to close for the period of the suspension and any election received later shall be absolutely void and the payment made shall be returned to the licensee. The election shall be made on a form prescribed by the commission. All funds received under this section shall be remitted to the State Treasurer for credit to the temporary school fund.

Sec. 10. This act becomes operative on August 1, 2000.

Sec. 11. Original sections 53-101, 53-123.12, 53-124.11, 53-130, 53-138.01, and 53-192, Reissue Revised Statutes of Nebraska, and sections 53-131 and 53-1,104, Revised Statutes Supplement, 1999, are repealed.