

LEGISLATIVE BILL 947

Approved by the Governor February 24, 1984

Introduced by Miscellaneous Subjects Committee, Hefner, 19, Chairperson; Hannibal, 4; Von Minden, 17; Barrett, 39; Fenger, 45; Lundy, 36; Newell, 13

AN ACT relating to liquor; to amend section 53-132, Revised Statutes Supplement, 1982, and sections 53-124, 53-131, 53-134, and 53-1,116, Revised Statutes Supplement, 1983; to change provisions relating to certain types of licenses; to change provisions relating to when a license may be issued; to eliminate a requirement that certain evidence be given under oath; to change provisions relating to the appeal of certain decisions; and to repeal the original sections.

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

Section 1. That section 53-124, Revised Statutes Supplement, 1983, be amended to read as follows:

53-124. At the time application is made to the commission for a license of any class, the applicant shall pay the fee hereinafter provided. The fees for annual licenses finally issued by the commission shall be as follows:

- (1) For a license to manufacture alcohol and spirits \$1,000.00;
- (2) For a license to manufacture beer and wine:
 - A. Beer, regardless of alcoholic content:
 - (a) 1 to 100 barrel daily capacity, or any part thereof \$100.00
 - (b) 100 to 150 barrel daily capacity 200.00
 - (c) 150 to 200 barrel daily capacity 350.00
 - (d) 200 to 300 barrel daily capacity 500.00
 - (e) 300 to 400 barrel daily capacity 650.00
 - (f) 400 to 500 barrel daily capacity 700.00
 - (g) 500 barrel daily capacity, or more 800.00;
 - B. Wines..... \$250.00.

The words daily capacity, as used herein, shall mean 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;

(3) Alcoholic liquor distributor's license, for the first and each additional wholesale distributing place of business operated in this state by the same licensee and wholesaling or jobbing alcoholic liquors, except beer \$500.00;

(4) Beer distributor's license, for the first and each additional wholesale distributing place of business operated in this state by the same licensee and wholesaling or jobbing beer only \$250.00;

(5) For a retailer's license:

A. Beer only, within the corporate limits of cities and villages, for consumption on the premises, regardless of alcoholic content, the sum of ten dollars in villages of five hundred population or less; twenty-five dollars in villages or cities, as the case may be, having a population of more than five hundred inhabitants and not more than twenty-five hundred inhabitants; fifty dollars in cities having a population of more than twenty-five hundred inhabitants and less than ten thousand inhabitants; and one hundred dollars in cities having a population of ten thousand inhabitants or more;

B. Beer only, for consumption off the premises, regardless of alcoholic content, sales in the original packages only, the sum of twenty-five dollars;

C. Alcoholic liquors within the corporate limits of cities and villages, for consumption on the premises and off the premises, sales in original packages only, and for entering and dispensing alcoholic liquor on premises away from the licensed premises, the sum of two hundred fifty dollars. If this license is held by a nonprofit corporation it shall be restricted to consumption on the premises only;

D. Alcoholic liquors, including beer, regardless of alcoholic content, within the corporate limits of cities and villages, for consumption off the premises, sales in the original packages only, and for entering and dispensing alcoholic liquor on premises away from the licensed premises, the sum of one hundred fifty dollars;

E. Alcoholic liquors without the corporate limits of cities and villages, in counties mentioned in section 53-127, for consumption off the premises, sales in the original packages only, not less than one hundred fifty dollars for each license;

F. Beer only, regardless of alcoholic content, without the corporate limits of cities and villages, for consumption on the premises, not less than twenty-five dollars for each license, the precise amount in each case to be such sum as shall equal the amount of license fee herein fixed plus the occupation tax fixed by ordinance, if any, in the nearest incorporated city or village in the

same county;

G. Alcoholic liquors without the corporate limits of cities or villages in existing privately owned recreation areas, on which are located hotels or motels to be licensed in which twenty-five or more rooms are used for the sleeping accommodations of guests and having one or more public dining rooms where meals are served and which are of sufficient size to serve at least one hundred patrons, which recreational areas shall have, after licensing, a principal business purpose or purposes other than the sale of alcoholic liquors and have at least one hundred sixty acres of real estate of the area under contiguous single ownership or lease, for consumption on the premises and off the premises, sales in original packages only, the sum of two hundred fifty dollars. The commission shall first find that the proposed licensed premises are a part of an existing recreational area of substantial size and operation and that such area does, in fact, have a recreational purpose; subsequent to this finding the commission shall then determine that the issuance of the proposed license would be in the public interest;

H. Alcoholic liquors, including beer, issued to a nonprofit corporation, for consumption on the premises, which license shall not be issued to any corporation authorized by law to receive a license under the provisions of subdivision (5) C. of this section, except that this provision shall not apply when the nonprofit corporation shall be open for sale of alcoholic liquors, including beer, for consumption on the premises not more than two days in any week:

(a) Within the corporate limits of cities and villages, for consumption on the premises, regardless of alcoholic content, the sum of twenty dollars in villages of five hundred population or less; fifty dollars in villages or cities, as the case may be, having a population of more than five hundred inhabitants and not more than twenty-five hundred inhabitants; one hundred dollars in cities having a population of more than twenty-five hundred inhabitants and less than ten thousand inhabitants; and two hundred dollars in cities having a population of ten thousand inhabitants or more; and

(b) Without the corporate limits of cities and villages, for consumption on the premises, not less than two hundred fifty dollars for each license, the precise amount in each case to be such sum as shall equal the amount of license fee herein fixed plus the occupation tax fixed by ordinance, if any, in the nearest incorporated city or village in the same county. If the incorporated city or village does not have an occupation tax for nonprofit corporation licenses, then the licensee shall pay an amount equal to a class C license occupation tax for such city or village. The applicable fee shall be paid by the

applicant or licensee, as the case may be, directly to the city or village treasurer in the case of class A, C, and H (a) licenses; directly to the city or village treasurer in the case of class B, I, and J licenses within the corporate limits of cities and villages; directly to the county treasurer in the case of class B and H (b) licenses outside of the corporate limits of cities and villages; directly to the commission in the case of class D and E licenses; and directly to the county treasurer in the case of class F and G licenses;

I. Alcoholic liquors, within the corporate limits of cities and villages, for consumption on the premises, the sum of two hundred dollars;

J. Beer and wine only, within the corporate limits of cities and villages, for consumption on the premises of restaurants only, regardless of alcoholic content, the sum of fifty dollars in villages of five hundred population or less; seventy-five dollars in villages or cities, as the case may be, having a population of more than five hundred inhabitants and not more than twenty-five hundred inhabitants; one hundred twenty-five dollars in cities having a population of more than twenty-five hundred inhabitants and less than ten thousand inhabitants; and two hundred twenty-five dollars in cities having a population of ten thousand inhabitants or more;

(6) For a railroad license \$100.00 and \$1.00 for each duplicate;

(7) For a boating license \$50.00;

(8) For a nonbeverage user's license:

Class 1	\$5.00
Class 2	25.00
Class 3	50.00
Class 4	100.00
Class 5	250.00;

(9) Bottle club license \$250.00 in any county having a population of less than five thousand five hundred inhabitants, and five hundred dollars in any county having a population of five thousand five hundred inhabitants or more. No such license shall be issued within the corporate limits of any city or village when a license as provided in subdivision (5) C. of this section has been issued in such city or village. The applicable fee shall be paid, by the applicant or licensee, directly to the city or village treasurer in the case of a bottle club license within the corporate limits of a city or village, and directly to the county treasurer in the case of a bottle club license outside the limits of any city or village; and

(10) For an airline license \$100.00 and \$1.00 for each duplicate.

The license year, unless otherwise provided in this act, shall commence on May 1 of each year and shall end on the following April 30, except for class C licenses

which 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 this section, regardless of the time when the application for such license shall have been made, except that when a class C license is renewed only for the period of May 1 to October 31 to adjust the expiration date, only one half of the annual license fee shall be paid to the state and only one half of the local occupation tax shall be paid.

Sec. 2. That section 53-131, Revised Statutes Supplement, 1983, be amended to read as follows:

53-131. Any person, desiring to obtain a new license to sell alcoholic liquors at retail, shall file with the commission:

(1) An application in triplicate original upon such forms as the commission shall from time to time prescribe;

(2) The license fee if, under the provisions of subdivision (5) of section 53-124, such fee is payable to the commission, which fee shall be returned to the applicant if the application is denied;

(3) The state registration fee in the sum of twenty-five dollars;

(4) The bond as set forth in section 53-138.02; and

(5) Security for costs in the amount of one hundred dollars.

License fees, registration fees, and security for costs shall be paid to the commission by certified or cashier's check of a bank within this state, United States post office money order, or cash in the full amount thereof. The commission shall forthwith notify, by registered or certified mail marked return receipt requested with postage prepaid, the municipal clerk of the city or incorporated village wherein such license is sought, or, if the license is not sought within a city or incorporated village, the county clerk of the county wherein such license is sought, of the receipt of the application and shall enclose with ~~said~~ the notice one copy of ~~said~~ 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 the time allowed for the receipt of an objection requiring a hearing under subdivision (1)(a) or (1)(b) of section 53-133. During the period of thirty days from 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. 3. That section 53-132, Revised Statutes Supplement, 1982, be amended to read as follows:

53-132. (1) Except as provided in subsection (1) of section 53-133, upon the expiration of forty-five days from the date of mailing notice, as provided in section 53-131. If no hearing is required pursuant to subdivision (1)(a) or (1)(b) of section 53-133 and either (a) no hearing is required pursuant to subdivision (1)(c) of such section or (b) the commission has no objections pursuant to such subdivision, in which case the commission may waive the forty-five day objection period, the commission may, if not otherwise prohibited by law, cause a retail license or bottle club license to be signed by its chairperson, attested by its secretary over the seal of the commission, and issued in the manner provided in subsection (4) of this section as a matter of course.

(2) A retail license or bottle club license shall be issued to any qualified applicant if it is found by the commission that (a) the applicant is fit, willing, and able to properly provide the service proposed within the city, village, or county where the premises described in the application are located, (b) the applicant can conform to all provisions, requirements, rules, and regulations provided for in the Nebraska Liquor Control Act, (c) the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to insure that the licensed business can conform to all provisions, requirements, rules, and regulations provided for in the Nebraska Liquor Control Act, and (d) the issuance of the license is or will be required by the present or future public convenience and necessity.

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

(a) The recommendation of the local governing body;

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

(c) The existing population of the city, village, or county, as the case may be, and ~~their~~ its projected growth;

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

(e) The existence or absence of other retail licenses or bottle club licenses with similar privileges within the neighborhood or community of the location of the proposed licensed premises;

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

(g) The adequacy of existing law enforcement;

(h) Zoning restrictions;

(i) The sanitation or sanitary conditions on or about the proposed licensed premises; and

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

(4) Retail licenses or bottle club licenses issued or renewed by the commission shall be mailed or delivered to the city, village, or county clerk, as the case may be, who shall deliver the same to the licensee upon receipt from the licensee of proof of payment of (a) the license fee if by the terms of subdivision (5) of section 53-124 the same is payable to the treasurer of such city, village, or county, (b) any fee for publication of notice of hearing before the board or council of such city, village, or county upon the application for license, (c) his or her fee for publication of notice of renewal as provided in section 53-135.01, and (d) occupation taxes, if any, imposed by such city, village, or county.

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

Sec. 4. That section 53-134, Revised Statutes Supplement, 1983, be amended to read as follows:

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, shall have the following powers, functions, and duties with respect to retail and bottle club licenses: (1) To cancel or revoke for cause retail or bottle club licenses to sell or dispense alcoholic liquors 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 hereunder to determine whether any of the provisions of this act or any rules or regulations adopted by it or by the commission have been or are being violated, and at such time to examine the premises of such licensee in connection therewith; (3) to receive a signed complaint from any citizen within its jurisdiction that any of the provisions of this act, or any rules or regulations adopted pursuant thereto, have been or are being violated and to act upon such complaints in the manner hereinafter provided; (4) to receive retail or bottle club license fees as provided in subdivision (5) or (9) of section 53-124, and pay the same forthwith, after applicant has been delivered his or her retail or bottle club license, to the city or village, or county treasurer, as the case may be; (5) to examine, or cause to be examined, ~~under oath,~~ any applicant or any retail or bottle club licensee upon whom notice of cancellation or revocation has been served in the manner hereinafter provided, and to examine or cause to be examined, the books and records of any such applicant or licensee; to hear testimony and to take proof for its

information in the performance of its duties. For the purpose 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 53-1,114, it determines that the licensee has violated any of the provisions of this act or any valid and subsisting ordinance or regulation duly enacted relating to alcoholic liquors. Such order of cancellation or revocation shall be subject to appeal to the commission as other orders or actions of the local governing body, as hereinafter provided in section 53-1,114; and (7) upon receipt from the commission of the notice and copy of application as provided in section 53-131, the local governing body shall fix a time and place at which a hearing will be had and at which such local governing body shall receive evidence, ~~under oath,~~ either orally or by affidavit, from the applicant and any other person, bearing upon the propriety of the issuance of such 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, as the case may be, one time not less than seven nor 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 protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than twenty-one days after the date of receipt of the notice from the commission and, after such hearing, the local governing body shall cause to be spread at large in the minute record of their proceedings a resolution recommending either issuance or refusal of ~~said~~ such license. The clerk of such city, village, or county shall thereupon 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 herewith shall not render void any license issued by the commission. In the event the commission refuses to issue such a license, the cost of publication of notice as herein required shall be paid by the commission from the security for costs.

Sec. 5. That section 53-1,116, Revised Statutes Supplement, 1983, be amended to read as follows:

53-1,116. (1) A copy of the rule, regulation, order, or decision of the commission, in any proceeding before it, certified under the seal of the commission, shall be served upon each party of record to the proceeding before the commission. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the commission shall enter his or her appearance and indicate to the commission

his or her address for the service of a copy of any rule, regulation, order, decision, or notice. The mailing of a copy of any rule, regulation, ~~or~~ order, or decision of the commission or of any notice by the commission, in the proceeding, to such party at such address shall be deemed to be service thereof upon such party.

(2) At the time of making an appearance before the commission, as referred to in subsection (1) of this section, each party, except the local governing body, shall deposit in cash or furnish a sufficient security for costs in such sum as the commission shall deem adequate to cover all costs liable to accrue, including (a) reporting the testimony to be adduced, (b) making up a complete transcript thereof, and (c) extending reporter's original notes in typewriting.

(3) Within twenty days after the service of any rule, regulation, order, or decision of the commission upon any party to the proceeding, as provided for by subsection (1) of this section, such party may apply for a rehearing in respect to any matters determined by the commission. The commission shall receive and consider such application for a rehearing within twenty days from the filing thereof with the secretary of the commission. In case such application for rehearing is granted, the commission shall proceed as promptly as possible to consider the matters presented by such application. No appeal shall be allowed from any decision of the commission, except as is provided for in subsection (5) of this section.

(4) Upon the final disposition of any proceeding, costs shall be paid by the party or parties against whom a final decision is rendered. Costs may be taxed or retaxed to local governing bodies as well as individuals. Only one rehearing, referred to in subsection (3) of this section, shall be granted by the commission on application of any one party.

(5) Any decision of the commission granting or refusing to grant or suspending, canceling, ~~or~~ revoking, or renewing or refusing to suspend, cancel, revoke, or renew a license, special designated permit, or permit for the sale of alcoholic liquors, including beer, may be reversed, vacated, or modified by the district court of Lancaster County on appeal by any party to the hearing or rehearing before the commission. The procedure to obtain such a reversal, vacation, or modification shall be by the filing with the commission of a notice of intention to appeal, followed by the filing of a petition in the district court setting forth the contention upon which such party relies for reversal, vacation, or modification. Such notice of intention to appeal shall be filed with the commission within twenty days following the mailing of a copy of the final decision of the commission to each party of record, as required by subsection (1) of this section.

The petition shall be filed in the district court within thirty days after such mailing of a copy of the decision. In the event that a motion for rehearing has been filed with the commission as provided in this section, the time for filing a notice of intention to appeal and the petition shall begin with the date of the mailing of the notice of the overruling of the motion for rehearing to each party to the record.

(6) It shall be unnecessary to issue or serve a summons upon the filing of the petition referred to in subsection (5) of this section. It shall be deemed to be sufficient notice of the filing of such petition if a copy thereof is filed with the commission and served on the adverse party or parties to the record or on his, her, its, or their attorney or attorneys of record. Service of such copy of the petition may be waived by such party or parties or his, her, its, or their attorney or attorneys of record. The time for answering or otherwise pleading to such petition shall be as in other cases in the district court.

(7) Upon the filing of a notice of intention to appeal with the commission, as provided for in subsection (5) of this section, the secretary of the commission shall prepare and deliver to the appellant on request a transcript of the proceedings and a transcript of the testimony and evidence before the commission, which transcript of the proceedings shall contain (a) a copy of the application granting or refusing a license or permit or a copy of the license or permit revoked or denied, as the case may be, and (b) a copy of the decision sought to be reversed, vacated, or modified. Such transcripts shall be filed in the district court of the proper county, as designated in subsection (5) of this section, with the petition if received by the appellant within the time permitted for the filing of the petition, if not, as soon thereafter as the same may be received from the secretary of the commission. The jurisdiction of the district court of the appeal shall attach when the petition on appeal has been filed and shall not depend upon the filing of the transcripts.

(8) The appeal, provided for or referred to in subsections (5), (6), and (7) of this section, shall be heard and tried ~~de novo in~~ by the district court in the manner provided for the trial of suits in equity. Additional testimony may be introduced at the hearing on appeal without a jury on the record of the commission.

(9) The appellant shall deposit with the secretary of the commission the costs of the transcript of the proceedings and the transcript of the testimony and evidence before the commission when requesting the same as provided for in subsection (7) of this section.

Sec. 6. That original section 53-132, Revised Statutes Supplement, 1982, and sections 53-124, 53-131, 53-134, and 53-1,116, Revised Statutes Supplement, 1983,

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are repealed.