

LEGISLATIVE BILL 1089

Approved by the Governor April 8, 1988

Introduced by Hannibal, 4

AN ACT relating to the Nebraska Liquor Control Act; to amend sections 53-101, 53-114, 53-115, 53-117, 53-122, 53-123.04, 53-129, 53-135, 53-138.01, 53-138.02, 53-140, 53-144, 53-159, 53-174, 53-175, and 53-188, Reissue Revised Statutes of Nebraska, 1943, sections 53-123, 53-123.12, 53-124, 53-132, 53-160, 53-164.01, 53-169, 53-171, and 53-1,116, Revised Statutes Supplement, 1986, section 53-103, Revised Statutes Supplement, 1987, section 53-131, Revised Statutes Supplement, 1986, as amended by section 1, Legislative Bill 550, Ninetieth Legislature, Second Session, 1988, and section 53-134, Revised Statutes Supplement, 1986, as amended by section 3, Legislative Bill 550, Ninetieth Legislature, Second Session, 1988; to define and redefine terms; to require operators of brewpubs to be licensed as prescribed; to provide fees; to change provisions relating to the Nebraska Liquor Control Commission; to change how often an election may be held; to eliminate certain bond and security requirements; to change the time for making certain recommendations; to change certain licensing and appeal procedures; to require reports; to change provisions relating to the payment of certain taxes and the holding of certain licenses; to eliminate provisions relating to alcoholic content; to harmonize provisions; to provide operative dates; and to repeal the original sections.

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

Section 1. That section 53-101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-101. This act Sections 53-101 to 53-1,121 and section 3 of this act shall be known and may be cited as the Nebraska Liquor Control Act.

Sec. 2. That section 53-103, Revised Statutes Supplement, 1987, be amended to read as follows:

53-103. Unless the context otherwise requires, the definitions given in this section shall apply in all cases when any one of the defined terms appears in sections 53-101 to 53-118 the Nebraska Liquor Control Act.

(1) This act shall be construed as referring exclusively to such sections act.

(2) Alcohol shall mean the product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, and shall include synthetic ethyl alcohol. It shall not include denatured alcohol or wood alcohol.

(3) Spirits shall mean any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and shall include brandy, rum, whiskey, gin, or other spirituous liquors; and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances. Spirits shall not include any beverage with less than five-tenths of one percent of alcohol by volume.

(4) Wine shall mean any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits. Wine shall not include any beverage with less than five-tenths of one percent of alcohol by volume. 7 as above defined-

(5) Beer shall mean a beverage obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt, and hops in water; and shall include, among other things, beer, ale, stout, lager beer, near beer, porter, and the like. Beer shall not include any beverage with less than five-tenths of one percent of alcohol by volume.

(6) Alcoholic liquor shall include the four varieties of liquor above defined; alcohol, spirits, wine, and beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer; and capable of being consumed as a beverage by a human being. The provisions of this The act shall not apply to (a) alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations promulgated thereunder, (b) flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but the act shall not be construed to exclude or not apply to alcoholic liquor used in the manufacture, preparation, or compounding of such products, or (c) wine intended for use and used by

any church or religious organization for sacramental purposes, or (d) any beverage with less than five-tenths of one percent of alcohol by volume.

(7) Original package shall mean any bottle, flask, jug, can, cask, barrel, keg, hogshead, or other receptacle or container whatsoever, used, corked or capped, sealed, and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor.

(8) Manufacturer shall mean every brewer, fermenter, distiller, rectifier, winemaker, blender, processor, bottler, or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying, or bottling alcoholic liquors, as above defined, including a wholly owned affiliate or duly authorized agent for a manufacturer.

(9) Nonbeverage user shall mean every manufacturer of any of the products set forth and described in section 53-160, when the same such product contains alcoholic liquor, and all laboratories, hospitals, and sanatoria using alcoholic liquor for nonbeverage purposes.

(10) Manufacture shall mean to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor, and shall include blending, but shall not include the mixing or other preparation of drinks for serving by those persons authorized and permitted in this the act to serve drinks for consumption on the premises where sold.

(11) Distributor, distributorship, wholesaler, or jobber shall mean the person importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquors for sale or resale to retailers licensed under this the act, whether the business of the distributor, distributorship, wholesaler, or jobber is conducted under the terms of a franchise or any other form of an agreement with a manufacturer or manufacturers, or who has caused alcoholic liquors to be imported into the state or purchased in the state from a manufacturer or manufacturers and was licensed to conduct such a business by the commission on May 1, 1970, or has been so licensed since that date.

(12) Person shall mean any natural person, trustee, corporation, or partnership.

(13) Retailer shall mean a person who sells, or offers for sale, alcoholic liquors for use and

consumption and not for resale in any form.

(14) Sell at retail and sale at retail shall refer to and mean sales for use or consumption and not for resale in any form.

(15) Commission shall mean the Nebraska Liquor Control Commission.

(16) Sale shall mean any transfer, exchange, or barter in any manner or by any means whatsoever for a consideration; and shall include all sales made by any person, whether principal, proprietor, agent, servant, or employee.

(17) To sell shall mean to solicit or receive an order for, to keep or expose for sale, or to keep with intent to sell.

(18) Restaurant shall mean any public place kept, used, maintained, advertised, and held out to the public as a place where meals are served, and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and capacity and having employed therein in such place a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests.

(19) Club shall mean a corporation which is organized under the laws of this state, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquors, which is kept, used, and maintained by its members through the payment of annual dues, and owning, hiring, or leasing which owns, hires, or leases a building or space in a building, of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests; and provided with suitable and adequate kitchen and dining room space and equipment and maintaining a sufficient number of servants and employees for cooking, preparing, and serving food and meals for its members and their guests. Such club shall file with the local governing body at the time of its application for a license under this the act two copies of a list of names and residences of its members; and similarly shall file within ten days of the election of any additional member his or her name and address. The affairs and management of such club shall be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting, and no member or any officer, agent, or employee of the club shall be paid, or shall directly or indirectly receive, in the form of salary or other compensation, any profits

from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members other than the amount of such salary as may be fixed and voted at any annual meeting by the members or by its board of directors or other governing body out of the general revenue of the club.

(20) Hotel shall mean every building or other structure kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, in which twenty-five or more rooms are used for the sleeping accommodations of such guests and having one or more public dining rooms where meals are served to such guests, such sleeping accommodations and dining rooms being conducted in the same buildings in connection therewith and such building or buildings, or structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity.

(21) Nonprofit corporation shall mean a corporation, whether located within any incorporated city or village or not, organized under the laws of this state, not for profit, and which has been exempted from the payment of federal income taxes.

(22) Bottle club shall mean an operation, whether formally organized as a club having a regular membership list, dues, officers, and meetings or not, keeping and maintaining premises where persons who have made their own purchases of alcoholic liquors congregate for the express purpose of consuming such alcoholic liquors upon the payment of a fee or other consideration, including among other services the sale of foods, ice, mixes, or other fluids for alcoholic drinks and the maintenance of space for the storage of alcoholic liquors belonging to such persons and facilities for the dispensing of such liquors through a locker system, card system, or pool system, which shall not be deemed or considered a sale of alcoholic liquor. Such operation may be conducted by a club as defined in ~~subdivision (19) of this section~~ or an individual, partnership, or corporation. An accurate and current membership list shall be maintained upon the premises which contains the names and residences of its members. Nothing in this section shall be deemed to make unlawful the sale of alcoholic liquors for consumption on the premises to any person who is not a current member of such bottle club.

(23) Minor shall mean any person, male or

female, under twenty-one years of age, regardless of marital status, except that any person who was twenty years of age or older on January 17, 1985, shall not be deemed to be a minor.

(24) Brand shall mean alcoholic liquors which are identified as the product of a specific manufacturer.

(25) Franchise or agreement, when used with reference to the relationship between a manufacturer and distributor, shall include one or more of the following: (a) A commercial relationship of a definite duration or continuing indefinite duration which is not required to be in writing; (b) the relationship by which whereby the franchisee is granted the right to offer and sell the franchisor's brands thereof by the franchisor; (c) the relationship by which whereby the franchisee, as an independent business, constitutes a component of the franchisor's distribution system; (d) the operation of the franchisee's business is substantially associated with the franchisor's brand, advertising, or other commercial symbol designating the franchisor; and (e) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of beer.

(26) Franchisor shall have the same meaning as the term manufacturer, as defined in subdivision (8) of this section.

(27) Franchisee shall have the same meaning as the terms distributor, distributorship, wholesaler, or jobber, as defined in subdivision (11) of this section.

(28) Territory or sales territory shall mean the franchisee's or distributor's area of sales responsibility for the brand or brands of the manufacturer.

(29) Suspend shall mean to cause a temporary interruption of all rights and privileges of a license.

(30) Cancel shall mean to discontinue all rights and privileges of a license.

(31) Revoke shall mean to permanently void and recall all rights and privileges of a license.

(32) Generic label shall mean a label, which is not protected by a registered trademark, either in whole or in part, nor to which any person has acquired a right therein either pursuant to state or federal statutory or common law.

(33) Private label shall mean a label which the purchasing distributor, wholesaler, retailer, or bottle club licensee has protected, in whole or in part, by a trademark registration or which the purchasing

distributor, wholesaler, retailer, or bottle club licensee has otherwise protected pursuant to state or federal statutory or common law.

(34) Farm winery shall mean any farm enterprise which produces and sells wines produced from grapes, other fruit, or other suitable agricultural products and of which at least seventy-five percent of such grapes, other fruit, or other suitable agricultural products are grown in this state.

(35) Campus, as it pertains to the southern boundary of the main campus of the University of Nebraska at Lincoln, shall mean the south right-of-way line of R Street and abandoned R Street from 10th to 17th streets.

(36) Brewpub shall mean any restaurant or hotel which produces on its premises a maximum of five thousand barrels of beer per year for sale at retail for consumption on the licensed premises and which sells not more than ten percent of its annual production for consumption off the premises.

Sec. 3. Any person who operates a brewpub shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a brewpub shall permit the holder to produce on the brewpub premises a maximum of five thousand barrels of beer per year for sale on draught for consumption on the premises. The holder of a brewpub license may also sell not more than ten percent of his or her annual production for consumption off the premises. The license holder shall serve food on the premises and shall otherwise be qualified as a restaurant. The brewpub license issued pursuant to this section shall be in lieu of any other license or licenses which may be required for the manufacture or retail sale of beer for consumption on or off the licensed premises, including, but not limited to, a manufacturer's license and a retailer's license, except that the sale of any beer other than beer manufactured by the brewpub licensee, wine, or alcoholic liquor by the drink for consumption on the brewpub premises shall require the appropriate retailer's license. Any license held by the operator of a brewpub shall be subject to the Nebraska Liquor Control Act.

Sec. 4. That section 53-114, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-114. The office of the commission shall be in Lincoln, but the commission may, with the approval of the Governor, establish and maintain branch offices at places other than the seat of government. The

commission shall hold regular meetings at least once a month ~~at its office,~~ and may hold such special meetings as it may deem necessary at any time and at any place within the state. The commission may, for authentication of its records, process, and proceedings, adopt, keep, and use a common seal, of which seal judicial notice shall be taken in all of the courts of the state. ~~Any ; and any~~ process, notice, or other paper which the commission may be authorized by law to issue, shall be deemed sufficient if signed by the ~~chairman~~ chairperson and secretary of the commission and authenticated by such seal. ~~All ; and all~~ acts, orders, proceedings, rules, regulations, entries, minutes, and other records of the commission, and all reports and documents filed with the commission may be proved in any court of this state by copy thereof certified to by the secretary of the commission attached.

Sec. 5. That section 53-115, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-115. The Attorney General of Nebraska shall designate an assistant attorney general or assistant attorneys general, when requested by the commission and directed by the Governor, and the services of such assistant attorney general or assistant attorneys general shall be available to the commission whenever demanded. The compensation of such assistant attorney general or assistant attorneys general as are assigned to the commission shall be paid by the ~~commission as other employees of the commission office~~ of the Attorney General.

Sec. 6. That section 53-117, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-117. The commission shall have the following powers, functions, and duties:

(1) To receive applications for and to issue, suspend, cancel, and revoke licenses to manufacturers, distributors, nonbeverage users, retailers, railroads, including owners and lessees of sleeping, dining, and cafe cars, airlines, and boats, in accordance with the provisions of this act Nebraska Liquor Control Act;

(2) ~~to~~ To fix by rules and regulations the standards of manufacture of alcoholic liquors not inconsistent with federal laws in order to insure the use of proper ingredients and methods in the manufacture and distribution thereof, and to ~~establish~~ adopt and promulgate rules and regulations, not inconsistent with federal laws, for the proper labeling of containers or

barrels, casks, or other bulk containers or bottles of alcoholic liquor manufactured or sold in this state. It ~~is~~ ~~it~~ is intended by ~~this~~ ~~the~~ grant of ~~the~~ power to adopt and promulgate rules and regulations, that the commission shall be clothed with broad discretionary powers to govern the traffic in alcoholic liquors, and to enforce strictly all the provisions of ~~this~~ ~~the~~ act in the interest of sanitation, purity of products, truthful representations, and honest dealings in such manner as generally will promote the public health and welfare. All ~~and~~ ~~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 Class H license, a Class 9 license, or a club possessing any form of retail license shall have equal application to all such licenses or shall be void;

(3) ~~to~~ To call upon other administrative departments of the state, county, and municipal governments, county sheriffs, city police departments, village marshals, peace officers, and upon prosecuting officers for such information and assistance as it may deem necessary in the performance of its duties;

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

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

(6) ~~to~~ To hear and determine appeals from orders of a local governing body in accordance with the provisions of this act, ~~and~~ ~~as~~ ~~hereinafter~~ ~~set~~ ~~forth~~;

(7) ~~to~~ To conduct, or cause to be conducted, an audit to inspect any license holder's records and books;

(8) ~~in~~ 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~~ to hear testimony and take proof material for its information in the discharge of its duties hereunder, ~~and~~ (c) to administer or cause to be administered oaths;

(9) ~~to~~ To investigate the administration of

laws in relation to alcoholic liquors in this and other states, and to recommend from time to time to the Governor and through him or her to the Legislature of this state, amendments to ~~this the~~ the act; and

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

All persons appointed by the commission to the office of inspector, as hereafter provided, shall be appointed deputy state sheriffs by the Governor, and upon qualifying for such office, shall possess all the powers which attach to such office, except that their powers and duties shall be restricted to the enforcement of this act. For any duties as deputy state sheriffs they shall not receive any additional compensation.

Sec. 7. That section 53-122, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-122. The commission may issue licenses for the sale of alcoholic liquors, except beer, by the drink, subject to all the terms and conditions of ~~this act, the Nebraska Liquor Control Act~~ the Nebraska Liquor Control Act in all cities and villages in this state and outside of cities and villages as provided in subdivision (5)G. of ~~sections section~~ section 53-124 and section 53-127, except in those cases where when it shall affirmatively appear that the issuance thereof will render null and void prior conveyances of land thereto for public uses and purposes by purchase, gift, or devise under the conditions and in the manner ~~hereinafter provided in this section.~~

If a sufficient petition ~~shall be is~~ signed by the electors of any such city or village of such number as ~~shall equal equals~~ twenty percent of the votes cast at the last general election held ~~therein, in such city or village~~ which ~~shall request requests~~ that the question of licensing the sale of alcoholic liquors, except beer, ~~therein~~ by the drink be submitted to the electors ~~thereof, of such city or village~~ at a special election to be called for that purpose, ~~as hereinafter provided, and such petition shall be is~~ presented to the municipal clerk ~~thereof, the of such city or village,~~ the municipal clerk shall cause to be published one time in a legal newspaper published in or of general circulation in such city or village a notice of a special election to be held not less than ten days nor more than twenty days from the date of such publication. The notice shall state ~~therein~~ the proposition to be submitted to the electors at such special election.

The question of licensing the sale of such

alcoholic liquors either by the drink or in the original package, or both by the drink and in the original package, as the case may be, may also be submitted at any general municipal election, except as otherwise provided in section 53-121, in any city or village in this state subject to the following conditions or procedure: Upon the filing with the municipal clerk of such city or village of a petition signed by electors of such city or village of such number as shall equal equals twenty percent of the votes cast at the last general election held ~~therein~~ in such city or village, such proposition or propositions shall be submitted. Each sheet of each petition shall contain not more than thirty signatures of electors with their personal signatures, addresses, and the date of such signatures, all in their own handwriting. The Each signature shall be the same as it appears upon the registration records. At the top of each sheet shall be stated the proposition or propositions to be submitted and the date of the general municipal election at which it is proposed to be submitted. No signature on such petition shall be valid unless appended to the petition within the last ninety days prior to the date of filing the petition with the municipal clerk of the city or village. At the bottom of each sheet of such petition shall be the affidavit of the person who circulated the same, stating that the signatures to the petition were made in his or her presence, that he or she has reasonable cause to believe that they are qualified electors of the particular city or village, and that they are the persons they represent themselves to be. Such petition shall be filed thirty days prior to the day of the general municipal election at which the proposition is to be submitted, and during such thirty-day period no signature shall be withdrawn and no signature shall be added.

~~Whoever~~ Any person who signs any proposal or petition contemplated under this section, knowing that he or she is not a qualified elector in the place where such proposal or petition is made, ~~or~~ who aids or abets any other person in doing any of the acts mentioned, or ~~whoever who~~ bribes, gives, or pays any money or thing of value to any person directly or indirectly, to induce him or her to sign such proposal or petition, shall be guilty of a Class III misdemeanor.

Upon the ballot either at the special election ~~hereinbefore~~ provided or at any general municipal election, the proposition or propositions shall be stated as follows:

Shall the sale of alcoholic liquors except

beer by the drink be licensed in (here insert the name of the city or village)?

.... For license to sell by drink.

.... Against license to sell by drink.

Shall the sale of alcoholic liquors except beer by the package be licensed in (here insert the name of the city or village)?

.... For license to sell by the package.

.... Against license to sell by the package.

The provisions of the statutes of this state relating to election officers, voting places, election apparatus and blanks, preparation and form of ballots, information to voters, delivery of ballots, calling of elections, conduct of elections, manner of voting, counting of votes, records and certificates of elections, and recounts of votes, so far as applicable, shall apply to voting on the proposition or propositions under the provisions of this act; the Nebraska Liquor Control Act, and a majority vote of those voting on the question shall be mandatory upon the commission.

An election may not be held in the same city or village under the provisions of this section more often than once each two years twenty-three months.

The provisions of subdivision (5)H. or (9) of section 53-124, shall not be subject to the provisions of this section.

If the question is to be submitted at a statewide primary or general election, such petitions shall be filed with the municipal clerk not less than sixty days prior to the election. The provisions for the required number of signers and the form of petition shall be the same as for a special election. The city clerk shall verify the signatures on the petitions with the voters' registration in the office of the county clerk or election commissioner. During the ten-day period while the petitions are being checked, no signatures shall be withdrawn and no signatures shall be added.

If the city clerk finds the petitions to be valid, he or she shall, not less than fifty days prior to the statewide primary or general election, give notice in writing to the county clerk or election commissioner that the question is to be submitted at the time of the statewide primary or general election. The election notices, issuing of the official ballots on election day, issuing of the official absentee ballots, and the counting and canvassing of the same shall be conducted by the county clerk or election commissioner as provided in Chapter 32, and the official results

certified to the city clerk.

Sec. 8. That section 53-123, Revised Statutes Supplement, 1986, be amended to read as follows:

53-123. Licenses issued by the Nebraska Liquor Control Commission shall be of the following classes: (1) Manufacturer's license; (2) alcoholic liquor distributor's license (except beer); (3) beer distributor's license; (4) retailer's license; (5) railroad license; (6) airline license; (7) boat license; (8) nonbeverage user's license; (9) bottle club license; and (10) farm winery license; and (11) brewpub license.

Sec. 9. That section 53-123.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-123.04. A retailer's license shall allow the licensee to sell and offer for sale at retail either in the original package or otherwise, as ~~therein~~ prescribed in such license, in the premises specified in such license, or in the premises where catering is occurring, alcoholic liquors or beer regardless of alcoholic content for use or consumption but not for resale in any form, except; PROVIDED, that in all counties a holder of a bottle club license shall be authorized to sell alcoholic liquors for consumption on the premises, without complying with that part of subdivision (22) of section 53-103 pertaining to membership and maintaining membership lists.

Sec. 10. That section 53-123.12, Revised Statutes Supplement, 1986, be amended to read as follows:

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 shall from time to time prescribe;

(2) Pay the license fee to the commission under the provisions of 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 twenty-five dollars, and

(4) Post the bond with the commission as set forth in section 53-138-02-

License fees, and registration fees, and security for costs shall 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 thereof. 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 wherein where such license is sought or, if the license is not sought within a city or incorporated village, the county clerk of the county wherein 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 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. 11. That section 53-124, Revised Statutes Supplement, 1986, 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 in this section. 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 or to operate a farm winery or brewpub:
 - A. Beer, regardless of alcoholic content excluding beer produced by a brewpub:
 - (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. Operation of a brewpub \$250.00;
 - C. Wines \$250.00;
 - D. Operation of a farm winery \$250.00.
 - B- Wines ~~\$250.00~~;

E. Operation of a farm winery ----- \$250-00-

The words daily capacity, as used herein in subdivision (2)A. of this section, 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 and wines produced from farm wineries..... \$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 except for brewpubs, 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 except for brewpubs, 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, the sum of two hundred fifty dollars, except for farm winery or brewpub sales outlets. 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, the sum of one hundred fifty dollars, except for farm winery or brewpub sales outlets;

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, except for farm winery or brewpub sales outlets;

F. Beer only except for brewpubs, 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 in this section 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, except for farm winery or brewpub sales outlets;

J. Beer and wine only except for brewpubs, 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 the Nebraska Liquor Control 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. 12. That section 53-129, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-129. Retail and bottle club licenses issued ~~hereunder~~ under the Nebraska Liquor Control Act apply only to that part of the premises described in the application approved by the commission; and in the license issued thereon, and only one location shall be so described in each license. After such license has been granted for particular premises, ~~the commission;~~ with the approval of the local governing body; and upon proper showing; may endorse upon the license permission

to add to, delete from, or abandon the premises ~~therein~~ described, in such license and, if applicable, remove ~~therefrom from the premises~~ to other premises approved by it, but in order to obtain such approval the retail or bottle club licensee shall file with the local governing body a request in writing, and a statement under oath which shall show that the premises as added to or deleted from, or to which removal is to be made, comply in all respects with the requirements of ~~this~~ the act. No such addition, deletion, or removal shall be made by any such licensee until his or her ~~said~~ license has been endorsed to that effect in writing ~~both~~ by the local governing body and by the commission.

Sec. 13. That section 53-131, Revised Statutes Supplement, 1986, as amended by section 1, Legislative Bill 550, Ninetieth Legislature, Second Session, 1988, be amended to read as follows:

53-131. Any person desiring to obtain a new license to sell alcoholic liquors at retail or a brewpub license 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 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; and

(3) The state registration fee in the sum of twenty-five dollars. 7

(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, and registration fees, and security for costs shall 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, and costs. 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 in which such license is sought or, if the license is not sought within a city or incorporated village, the county clerk of the county in which such license is sought of the receipt of the application and shall enclose with the notice one copy of the application. No such license shall then be issued by the commission until the expiration of the time allowed for the receipt of an

objection requiring a hearing under subdivision (1)(a) of section 53-133. During the period of forty-five 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. If the local governing body recommends approving or denying the issuance of a license, the recommendation shall be binding on the commission, except that no license shall be issued if the commission determines that the issuance of a license would be a violation of section 53-125 or 53-126.

Sec. 14. That section 53-132, Revised Statutes Supplement, 1986, be amended to read as follows:

53-132. (1) If no hearing is required pursuant to subdivision (1)(a) of section 53-133, and the commission has no objections pursuant to subdivision (1)(b) of section 53-133, in which case the commission may waive the sixty-day objection period, the commission may and, 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 may be issued to any qualified applicant if it is found by the commission that the applicant meets the criteria enumerated in subsection (3) of this section and any licensing standards enacted by the local governing body pursuant to section 53-134.01. A retail license or bottle club license may be denied if any one or more of such criteria are not met. If the local governing body of any county, city, or village, after complying with the requirements of section 53-134, makes a recommendation, such recommendation shall be binding on the commission, except that no license shall be issued if the commission determines that the issuance would be a violation of section 53-125 or 53-126. Any hearing held before the commission after April 19, 1986, shall be subject to the statutory provisions in existence on the date of such hearing. If prior to April 19, 1986, the local governing body has held a hearing and made its recommendation but no hearing has been held before the commission on any application for a retail liquor license, within ten days of April 19, 1986, the application or applications shall be returned by the commission to the local governing body for a further

hearing and recommendation. The application shall be reviewed and acted upon by the local governing body as provided in subdivision (7) of section 53-134.

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

(a) The recommendation of the local governing body and shall recognize any licensing standards enacted by the local governing body which are not in conflict with the Nebraska Liquor Control Act;

(b) The existence of a citizens' protest made in accordance with section 53-133 and any other evidence in support of or opposition to the application, presented at the hearing before the local governing body;

(c) The existing population of the city, village, or county, as the case may be, its projected growth, the existence of licenses in such city, village, or county, and the class of such licenses;

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

(e) If 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;

(f) If the applicant can conform to all provisions, requirements, rules, and regulations provided for in the Nebraska Liquor Control Act;

(g) The adequacy of existing law enforcement and the recommendation of law enforcement agencies in the area; and

(h) If the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to insure that the licensee can conform to all provisions, requirements, rules, and regulations provided for in the Nebraska Liquor Control Act.

(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. 15. That section 53-134, Revised Statutes Supplement, 1986, as amended by section 3, Legislative Bill 550, Ninetieth Legislature, Second Session, 1988, 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 as provided in section 53-1.116;~~

(2) ~~to~~ 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 of the provisions of the act or any rules or regulations adopted and promulgated 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~~ To receive a signed complaint from any citizen within its jurisdiction that any of the provisions of the act or any rules or regulations adopted and promulgated pursuant thereto have been or are being violated and to act upon such complaints in the manner provided in this section;

(4) ~~to~~ 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 the 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~~ To examine or cause to be examined any applicant or any retail or bottle club licensee upon whom notice of cancellation or revocation has been served in the manner provided in this section, to examine or cause to be examined the books and records of any such applicant or licensee, and 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~~ To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in section 53-1,116, it determines that the licensee has violated any of the provisions of the 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 provided in section 53-1,116; and

(7) ~~upon~~ 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 will receive evidence, 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 thirty-five days after the date of receipt of the notice from the commission. At the hearing, the considerations of the local governing body shall include, but not be limited to, (a) the adequacy of existing law enforcement and the recommendation of law enforcement agencies in the area, (b) existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises, (c) zoning restrictions, (d) the sanitation or sanitary conditions on or about the proposed licensed premises, (e) the existence of a citizens' protest and any other evidence in support of or opposition to the application, (f) the existing population of the city, village, or county, as the case may be, its projected growth, the existence of licenses in such city, village, or county, and the class of such licenses, (g) the nature of the neighborhood or community where the proposed licensed premises are located, (h) 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, and (i) any licensing standards enacted by such local governing body pursuant to section 53-134.01. After such hearing, the local governing body shall cause to be spread at large in the minute record of its proceedings a resolution recommending either issuance or refusal of 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. 16. That section 53-135, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-135. A retail or bottle club license issued by the commission and outstanding may be automatically renewed by the commission without formal application if the commission has on file a bond as required by section 53-138-02; upon payment of the state registration fee; and license fee if payable to the commission. The registration fee and license fee for license renewals may be paid by a personal or business check. The payment thereof 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 and the commission shall at any time require a licensee to submit an application if requested in writing to do so by the local governing body.

If a licensee files an application form in triplicate original upon seeking renewal of his or her license, the application shall be processed as set forth in section 53-131, and the security for costs as required by that section shall be submitted to the commission.

Any licensed retail or bottle club establishment located in an area which is annexed to any governmental subdivision shall file a formal application for a license, and while such application is pending, the licensee shall be authorized to continue all license privileges pursuant to section 53-124 until the original license expires or is canceled or revoked. If such license expires within sixty days following the

annexation date of such area, the license may be renewed by order of the commission for not more than one year.

Sec. 17. That section 53-138.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-138.01. All state registration fees shall be credited by the State Treasurer to the state General Fund. 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. All license fees received by the commission for licenses issued pertaining to alcoholic liquors, including beer, ~~regardless of its alcoholic content,~~ shall be credited by the State Treasurer to the school fund as provided in Article VII, section 5, 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. 18. That section 53-138.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-138.02. ~~Except in the case of nonbeverage users' licenses for hospitals, no No alcoholic liquor or beer distributor's or manufacturer's license may be issued under this act the Nebraska Liquor Control Act unless or until the applicant for such license shall have on file with the commission a joint and several bond on such form as may be determined by the commission and executed by a good and sufficient corporate surety licensed to do business within the State of Nebraska. Such bond shall be conditioned upon the true and faithful compliance of the licensee with all applicable provisions of this the act and shall run to the commission in the appropriate penal sum; as determined by the following schedule: Manufacturer's license, ten thousand dollars; distributor's license, five thousand dollars; and brewpub license, five thousand dollars. retailer's license, two thousand dollars; railroad license, one thousand dollars; airline license, one thousand dollars; boat license, one thousand dollars; and bottle club license, two thousand dollars. For nonbeverage users' licenses, the respective bond amounts shall be as follows: Class 1, two hundred dollars; class 2, five hundred dollars; class 3, one thousand dollars; class 4, five thousand dollars; and class 5, ten thousand dollars. When more than one bottle club or retailer's license is issued to a licensee for the same location or premises, only one bond in the amount~~

provided for one bottle club or retailer's license shall be required to be posted. Nothing contained in this section shall be construed to prevent or prohibit the commission from accepting and approving bonds which run for a term longer than the license period.

Sec. 19. That section 53-140, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-140. All proceedings for the suspension, cancellation, or revocation of licenses of manufacturers, distributors, nonbeverage users, brewpubs, railroads, airlines, and boats shall be before the commission, and the proceedings shall be in accordance with rules and regulations established 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. 20. That section 53-144, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-144. Retail Except as provided in section 3 of this act, retail beer licenses shall be of two kinds: (1) On-sale licenses which shall permit the licensee to sell beer for consumption on the premises only; and (2) off-sale licenses which shall permit the licensee to sell beer in original packages for consumption off the premises only.

Sec. 21. That section 53-159, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-159. Every manufacturer or importer of beer shall, before commencing or continuing business, file with the commission a notice in writing, stating the name of the person, company, corporation, or firm, the names of the members of any such company or firm, the place of residence of such persons, a legal description of the premises on which the office of the manufacturer or distributor is situated, and of his, her, or their title thereto to such premises, and the name of the owner thereof. Every such manufacturer or distributor of beer on filing such notice, as aforesaid, of his or her intention to commence or continue business shall execute a bond to the State of Nebraska to be approved by the commission in a sum equal to three times the amount of the tax which, in the opinion of the commission, such manufacturer or distributor will be liable to pay during any one month, and in no event less

than five thousand dollars, and conditioned (1) that he or she will pay, or cause to be paid, as herein provided pursuant to this section, the taxes or duties required to be paid the State of Nebraska on all beer made or brewed by or for him or her, or distributed by or for him or her, before the same is sold or removed for consumption or sale from the premises owned or controlled by him or her in such manner and at such time as the commission, by rule and regulation, shall prescribe, (2) ; and that he or she will keep, or cause to be kept, books and records and make reports in the manner and for the purposes hereinafter specified by rules and regulations of the commission, which books, records, and reports shall be open to inspection by the proper officers of the commission, (3) ; that he or she will in all respects faithfully comply with all of the requirements of the laws of the State of Nebraska and the rules and regulations of its the commission, relating to the manufacture and distribution to licensed retail beer dealers in the State of Nebraska, ; and (4) that he or she will execute a new bond once in four years, or whenever required to do so by the commission in the amount above named, and conditioned as above provided, which bonds shall be in lieu of any former bond or bonds of such manufacturer or distributor in respect to all liability accruing after its approval by the commission. Except as provided in section 3 of this act, the The commission may require by rule, and regulation adopted and promulgated as provided in this act, the Nebraska Liquor Control Act that beer be kept, received, and withdrawn from bonded warehouses, as other alcoholic liquors are kept, received, and withdrawn, as hereinbefore provided, whenever it deems that the public interest demands. No beer, regardless of alcoholic content, manufactured or distributed within this state, shall be sold under the provisions of this act until the manufacturers or distributors of such beer furnish satisfactory evidence to the commission that such beers are brewed from alcoholic fermentation of an infusion of pure hops and sixty percent of pure barley malt, malt, and corn in pure water.

Sec. 22. That section 53-160, Revised Statutes Supplement, 1986, be amended to read as follows:

53-160. For the purpose of raising revenue, a tax is imposed upon the privilege of engaging in business as a manufacturer or a distributor at wholesale at a rate of twenty cents per gallon beginning October 1, 1985, and twenty-three cents per gallon beginning

October 1, 1987, on all beer, regardless of alcoholic content, seventy-five cents per gallon for wine containing not more than fourteen percent but not less than five-tenths of one percent or less of alcohol by volume and one dollar and thirty-five cents per gallon for wines and other dilute alcoholic beverages containing more than fourteen percent of alcohol by volume, except for wines produced in farm wineries; five cents per gallon for wine produced in farm wineries; and beginning October 1, 1985, two dollars and ninety cents per gallon and beginning October 1, 1987, three dollars per gallon on alcohol and spirits manufactured and sold by such manufacturer or imported for sale in this state by such distributor at wholesale in the course of such business. The tax imposed by this section shall be imposed only on alcoholic liquor upon which a federal excise tax is imposed. Manufacturers or distributors at wholesale of alcoholic liquors shall be exempt from the payment of such gallonage tax imposed on such liquors, upon satisfactory proof, including bills of lading furnished to the commission by affidavit or otherwise as the commission may require, that such liquors were manufactured in this state but were shipped out of the state for sale and consumption outside the State of Nebraska. Dry wines or fortified wines manufactured or imported solely and exclusively for sacramental purposes and uses shall not be subject to the tax provided in this section. This tax shall not be imposed upon any alcoholic liquor, whether manufactured in or imported into this state, when sold to a nonbeverage user, as defined in section 53-103, licensed by the state for use in the manufacture of any of the following when they are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic, and toilet preparations; flavoring extracts, syrups, and food products; scientific, industrial, and chemical products, excepting denatured alcohol; or for scientific, chemical, experimental, or mechanical purposes. The tax shall not be imposed upon the privilege of engaging in any business in interstate commerce or otherwise, which business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this state. The tax herein imposed in this section shall be in addition to all other occupation or privilege taxes imposed by the State of Nebraska or by any municipal corporation or political subdivision thereof. Notwithstanding any ordinance or charter power to the contrary, no city or village shall impose an occupation tax on the business of any person, firm, or

corporation licensed under this act the Nebraska Liquor Control Act and doing business within the boundaries of such city or village in any sum which exceeds double the amount of the license fee required to be paid under this the act to obtain such license. The commission is hereby directed and authorized to collect the taxes herein imposed in this section and to account for and turn over to the State Treasurer at least once each week all money collected as herein provided pursuant to this section. If any alcoholic liquor manufactured in or imported into this state is sold to a licensed manufacturer or distributor of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon such manufacturer or distributor shall be reduced by the amount of the taxes which have been paid as to such alcoholic liquor so used under this the act. The net proceeds of all revenue arising hereunder under this section shall inure to the state General Fund.

Sec. 23. That section 53-164.01, Revised Statutes Supplement, 1986, be amended to read as follows:

53-164.01. Payment of the tax provided for in section 53-160 on alcoholic liquors shall be paid by the manufacturer or distributor as herein provided in this section. All such manufacturers or distributors, except for farm winery producers, whether within or without this state, shall, on or before the twenty-fifth day of each calendar month commencing on the twenty-fifth day of the calendar month following the month in which the shipments are made, make a report under oath to the ~~Nebraska Liquor Control Commission~~ commission upon forms to be furnished by the commission for the purpose of showing the exact total amount in gallons of alcoholic liquors, or fractional parts thereof, shipped by such manufacturer or distributor, whether within or without the State of Nebraska, during the preceding calendar month. All beer distributors shall, on or before the twenty-fifth day of each calendar month following the month in which the shipments are made, make a report under oath to the commission upon forms furnished by the commission for the purpose of showing the exact total amount in gallons of beer, or fractional parts thereof, shipped by all manufacturers, whether within or without the State of Nebraska, during the preceding calendar month to such distributor. Farm winery producers shall, on or before the twenty-fifth day of each calendar month commencing on the twenty-fifth day of the calendar month following the month in which the wine is packaged or

bottled for sale, make a report under oath to the ~~Nebraska Liquor Control Commission~~ commission upon forms furnished by the commission for the purpose of showing the exact total amount in gallons of wine, or fractional parts thereof, packaged or bottled by such producer during the preceding calendar month. Such report shall also contain a statement of the exact total amount in gallons, or fractional parts thereof, of alcoholic liquors, except beer, shipped to holders of retailers' licenses within this state. All reports submitted by each manufacturer, distributor, or farm winery producer, as required by this section, shall contain such other information as the commission may require.

The ~~manufacturer, distributor, or farm winery~~ producer shall, at the time of the filing of the report, pay to the commission the amount of the tax due ~~on beer shipped to distributors within this state and on~~ alcoholic liquors, except beer, shipped to holders of retailers' licenses within this state at the rate fixed in accordance with section 53-160. The tax due on beer shall be paid by the distributor on beer shipped from all manufacturers. Such tax shall be due on the date the report is due, less a discount of one percent of such tax on alcoholic liquors, as defined by subdivision (6) of section 53-103. Such discount shall be deducted from the payment of such tax before remittance ~~thereof of the tax~~ to the commission, shall be shown in such report to the commission as required in this section, and shall be a commission for the making of such report and for the timely payment of such tax, but if such tax is not paid within the time provided herein in this section, then such discount shall not be allowed and the same discount shall not be deducted from the payment of such tax.

A penalty of ten percent of the amount of the tax shall be collected by the commission if the report is not filed by the twenty-fifth day of the calendar month or if the tax is not paid to the commission by the twenty-fifth day of the calendar month, and in addition thereto interest on the tax shall be collected at the rate, of one percent per month, or fraction of a month, from the date the tax became due until paid.

No tax shall be levied or collected on alcoholic liquors manufactured within the State of Nebraska and shipped or transported outside the State of Nebraska for sale and consumption outside the State of Nebraska.

In order to insure the payment of all state taxes imposed by law on alcoholic liquors together with

all interest and penalties thereon, all persons required to make reports and payment of such tax shall first enter into a surety bond with corporate surety, both such bond form and surety to be approved by the commission. In lieu of such corporate surety bond, there may be filed a personal bond in such form as the commission may prescribe and secured by the pledge of property having a net value over and above any encumbrance or encumbrances thereon at least double the amount of the bond required. Subject to the limitations ~~hereinafter~~ specified in this section, the amount of such bond required of any taxpayer shall be fixed by the commission and may be increased or reduced by it at any time. In fixing the amount, the commission shall require a bond in a total amount equal to the amount of the taxpayer's estimated maximum monthly excise tax, ascertained in such manner as the commission may deem proper. Nothing contained in this section shall be construed to prevent or prohibit the commission from accepting and approving bonds which run for a term longer than the license period. In any event, the amount of such bond required of any one taxpayer shall not be less than one thousand dollars. These bonds shall be filed with the commission.

No person shall order or receive alcoholic liquors in this state which have been shipped directly to him or her from outside this state by any person other than a holder of a permit for a license year issued by the commission. The commission may issue such permits to manufacturers which shall allow the permittee to ship alcoholic liquors to and only to holders of a distributor's license issued under this section. A fee of two hundred dollars shall be charged by the commission for each permit issued. The application for such permit and the permit shall be in such form as the commission shall prescribe. The application shall contain all such provisions as the commission shall deem proper and necessary to effectuate the purpose of any section of the Nebraska Liquor Control Act and the rules and regulations of the commission that apply to manufacturers and shall include, but without limitation by reason of this special mention, a provision that the permittee, in consideration of the issuance of a permit, agrees:

(1) To comply with and be bound by this section in the making and filing of a bond, the making and filing of returns, the payment of taxes, penalties, and interest, and the keeping of records;

(2) That he or she will permit and be subject

to all of the powers granted by this section to the commission or its duly authorized employees or agents for inspection and examination of his or her premises and records and will pay his or her actual expenses, excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the commission; if within the United States; and

(3) That if any such permittee violates any of the provisions of his or her application, ~~or of any~~ section of the Nebraska Liquor Control Act, or the rules and regulations of the commission that apply to manufacturers, the commission may revoke or suspend such permit for such period of time as it may determine.

When a manufacturer or distributor shall sell and deliver alcoholic liquor upon which the tax has been paid to any instrumentality of the armed forces of the United States engaged in resale activities as provided in section 53-160.01, the manufacturer or distributor shall be entitled to a credit in the amount of the tax paid upon such alcoholic liquor sold and delivered to such person or persons in the event no tax is due on such alcoholic liquor as provided in section 53-160.01, and the amount of the credit, if any, shall be deducted from the tax due on the following monthly report, as provided by this section to be filed, or shall be allowed as a credit on subsequent reports until liquidated.

Sec. 24. That section 53-169, Revised Statutes Supplement, 1986, be amended to read as follows:

53-169. (1) No manufacturer, distributor, or wholesaler shall directly or indirectly: (a) Pay for any license to sell alcoholic liquor at retail; or advance, furnish, lend, or give money for payment of such license; (b) purchase or become the owner of any note, mortgage, or other evidence of indebtedness of such licensee or any form of security therefor; (c) be interested in the ownership, conduct, or operation of the business of any licensee authorized to sell alcoholic liquor at retail; or (d) be interested directly or indirectly, or as owner, part owner, lessee, or lessor thereof, in any premises upon which alcoholic liquor is sold at retail.

(2) This section shall not apply to the holder of a farm winery license or a brewpub license.

Sec. 25. That section 53-171, Revised Statutes Supplement, 1986, be amended to read as follows:

53-171. No person, having been licensed as a manufacturer or distributor of alcoholic liquors, shall be permitted to receive any retailer's license at the same time. No person having been licensed as a retailer of alcoholic liquors shall be permitted to receive any manufacturer's or distributor's license at the same time. This section shall not apply to the holder of a farm winery license or a brewpub license.

Sec. 26. That section 53-174, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-174. Beer which contains one-half of one percent of alcohol by volume or less, which is commonly classified as near beer, shall not be sold by any persons other than those licensed under this act, and all such near beer shall be subject to the same tax, license fees, and to all other requirements of this act, the same as all other beer, regardless of its alcoholic content. It shall be unlawful for any person or for any licensee to sell or offer for sale in this state any beer to which has been added any alcohol, or to permit any person to add any alcohol to any beer on the premises of such person or licensee.

Sec. 27. That section 53-175, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-175. It shall be unlawful for any person to purchase, receive, acquire, accept, or have possession of any alcoholic liquors which shall be acquired from any person other than one duly licensed to handle alcoholic liquors under the provisions of this act, Nebraska Liquor Control Act unless within the specific exemptions or exceptions in this act provided in the act. No licensed retailer of alcoholic liquors shall purchase such liquors other than from a manufacturer or distributor having who has the requisite certificate of authority, and is duly licensed under the laws of the state, and having has his or her place of business within this state.

Sec. 28. That section 53-188, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-188. It shall not be lawful to operate a brewpub or sell alcoholic liquor at retail nor shall the commission grant or issue, or cause to be granted or issued, any license to operate a brewpub or to sell alcoholic liquor at retail within the limits of any governmental subdivision of this state, while the prohibition against such sales, arising under sections

53-121 and 53-122, or otherwise as provided in ~~this act~~ the Nebraska Liquor Control Act, is in effect, and if any such license be granted or issued in violation thereof the same shall be void. ~~This~~ PROVIDED, ~~this~~ section shall not prohibit the issuance of a manufacturer's or distributor's license in accordance with law by the commission in such prohibited territory.

Sec. 29. That section 53-1,116, Revised Statutes Supplement, 1986, 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, 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) (2)~~ 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)~~ (4) of this section.

~~(4) (3)~~ 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)~~ (2) of this section, shall be granted by the commission on application of any one party.

~~(5)~~ (4)(a) If the local governing body does not make a recommendation to the commission, any decision of the commission granting or refusing to grant or suspending, canceling, 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, remanded, 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, remand, 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, remand, 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. The appeal shall be tried by the court without a jury on the record of the commission. The local governing body and the commission shall be entitled to reasonable notice and to be heard. All such hearings shall be open to the public. If after such hearing the court determines that such license has been arbitrarily or capriciously denied, granted, revoked, or refused to be revoked or a hearing to revoke has been improperly refused, the court shall enter a written order in conformity with such finding. A certified copy of the order shall be transmitted to the commission, and the commission shall take such action as is necessary to conform to such order.

(b) If the local governing body does make a recommendation to the commission on the issuance or

denial of a license, special designated permit, or permit for the sale of alcoholic liquors, including beer, the recommendation shall be binding on the commission. The decision of the commission based on the recommendation of the local governing body may be reversed, vacated, remanded, or modified by the district court of a county in which the local governing body is located on appeal by any party to the hearing before the local governing body. The procedure to obtain such a reversal, vacation, remand, or modification shall be by the filing with the local governing body of a notice of intention to appeal, followed by the filing of a petition in the district court of the county in which the local governing body is located, setting forth the contention upon which such party relies for reversal, vacation, remand, or modification. Such notice of intention to appeal shall be filed with the local governing body within twenty days following the mailing of a copy of the final decision of the commission to each party of record. The petition shall be filed in the district court in a county in which the local governing body is located within thirty days after such mailing of a copy of the decision. The commission shall not be a party to such appeal unless it so requests.

Any appeal brought pursuant to subdivision (1) of section 53-134 or this subdivision shall be tried by the court without a jury on the record of the local governing body. The commission shall not be a party to such appeal unless it so requests. The local governing body shall be entitled to reasonable notice and to be heard. All such hearings shall be open to the public. If after such hearing the court determines that such license has been arbitrarily or capriciously denied, granted, revoked, or refused to be revoked or a hearing to revoke has been improperly refused, the court shall enter a written order in conformity with such finding. A certified copy of such order shall be transmitted to the local governing body, and the local governing body shall recommend such action to the commission as may be necessary to conform to such order, and the commission of a notice of intention to appeal, followed by the filing of a petition in the district court of a county in which the local governing body is located, setting forth the contention upon which such party relies for reversal, vacation, remand, or modification. Such notice of intention to appeal shall be filed with the local governing body and the commission within twenty days following the mailing of a copy of the final decision of the commission to each party of record. The

petition shall be filed in the district court in a county in which the local governing body is located within thirty days after such mailing of a copy of the decision.

~~(6)~~ ~~(5)~~ It shall be unnecessary to issue or serve a summons upon the filing of a petition referred to in subsection ~~(5)~~ ~~(4)~~ 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 local governing body and 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)~~ ~~(6)~~ Upon the filing of a notice of intention to appeal with the commission, as provided for in subdivision ~~(5)~~ ~~(4)~~(a) 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, remanded, or modified. Such transcripts shall be filed in the district court of the proper county, as designated in subdivision ~~(5)~~ ~~(4)~~(a) 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)~~ All appeals provided for or referred to in subsections ~~(6)~~ and ~~(7)~~ of this section and subdivision ~~(5)~~(a) of this section shall be heard and tried by the court without a jury on the record of the commission. All appeals provided for or referred to in subdivision ~~(5)~~(b) of this section shall be heard and tried by the court without a jury on the record of the local governing body.

~~(9)~~ ~~(7)~~ 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)~~ (6) of this section.

Sec. 30. Sections 23 and 31 of this act shall become operative on September 1, 1988. The remaining sections of this act shall become operative on their effective date.

Sec. 31. That original section 53-164.01, Revised Statutes Supplement, 1986, is repealed.

Sec. 32. That original sections 53-101, 53-114, 53-115, 53-117, 53-122, 53-123.04, 53-129, 53-135, 53-138.01, 53-138.02, 53-140, 53-144, 53-159, 53-174, 53-175, and 53-188, Reissue Revised Statutes of Nebraska, 1943, sections 53-123, 53-123.12, 53-124, 53-132, 53-160, 53-169, 53-171, and 53-1,116, Revised Statutes Supplement, 1986, section 53-103, Revised Statutes Supplement, 1987, section 53-131, Revised Statutes Supplement, 1986, as amended by section 1, Legislative Bill 550, Ninetieth Legislature, Second Session, 1988, and section 53-134, Revised Statutes Supplement, 1986, as amended by section 3, Legislative Bill 550, Ninetieth Legislature, Second Session, 1988 are repealed.