

LEGISLATIVE BILL 386

Approved by the Governor April 26, 1978

Introduced by DeCamp, 40

AN ACT to amend sections 2-219, 53-102, 53-123.04, 53-129, 53-145, 53-160.08, 53-180.07, 53-183, 53-186.01, and 53-1,106, Reissue Revised Statutes of Nebraska, 1943, section 53-179, Revised Statutes Supplement, 1976, and section 53-124, Revised Statutes Supplement, 1977, relating to liquor; to change certain prohibitions; to change certain licensing provisions; to provide an absolute defense; to change procedures for prosecution as prescribed; and to repeal the original sections.

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

Section 1. That section 2-219, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-219. No person shall be permitted to sell intoxicating liquors, wine or beer of any kind, or exhibit or conduct indecent shows or dances, or be engaged in any gambling or other games of chance or horse racing, either inside the enclosure where any state, district, or county agricultural society fair is being held, or within forty rods thereof, during the time of holding such fairs; Provided, that nothing herein shall be construed to prohibit wagering on the results of horse races by the pari-mutuel or certificate method when conducted by licensees within the race track enclosure at licensed horse-race meetings or to prohibit the operation of bingo games as provided in Chapter 9, article 1; and provided further, that nothing herein shall be construed to prohibit the sale of intoxicating liquors, wine, or beer by a person properly licensed pursuant to Chapter 53 on premises under the control of the State Board of Agriculture, ~~except that no such sale shall be permitted during the annual state fair.~~ Any person who violates the provisions of this section shall be guilty of a Class V misdemeanor; Provided, the trial of speed of horses under direction of the society shall not be included in the term horse racing. Upon the filing of proof with the State Treasurer of a violation of this section inside the enclosure of such fair, the amount of money appropriated shall be withheld from any money appropriated for the ensuing year.

Sec. 2. That section 53-102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-102. No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish or possess any alcoholic liquor for beverage purposes, except as specifically provided in this act; Provided, nothing herein contained shall prevent the possession and transportation of alcoholic liquor for the personal use of the possessor, his family and guests; nor prevent the making of wine, cider or other alcoholic liquor by a person from fruits, vegetables or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of the maker, his family and guests; nor prevent any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his profession, or any hospital or other institution caring for the sick and diseased persons, from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution, or any drug store employing a licensed pharmacist from possessing or using alcoholic liquors in the compounding of prescriptions of duly licensed physicians; nor prevent the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church; nor prevent persons who are sixteen years old or older from carrying beer from grocery stores when they are accompanied by a person not a minor; nor prevent persons who are sixteen years old or older from handling beer containers and beer in the course of their employment in grocery stores; nor prevent persons who are sixteen years or older from removing and disposing of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment as waiters, waitresses, or busboys, by any restaurant, club, hotel, or similar organization.

Sec. 3. 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 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; 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. 4. That section 53-124, Revised Statutes Supplement, 1977, 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;

Provided, the words daily capacity, as used herein, shall mean the average daily barrel production for the previous twelve months of manufacturing operation; and provided further, 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 the original packages only, and for catering and dispensing alcoholic liquor on premises away from the licensed premises, the sum of two hundred and fifty dollars; Provided, this license held by a nonprofit corporation 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 catering and dispensing alcoholic liquor on premises away from the licensed premises, the sum of one hundred and 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 and 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; Provided, 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; Provided, that 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; and provided further, 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 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, including beer, issued for consumption on the premises, to a municipal corporation, a fine arts museum incorporated as a nonprofit corporation, or religious or fraternal nonprofit corporation which has been exempted from payment of federal income taxes and does not hold a retail liquor license under this section. Such license shall be issued subject to the following conditions:

- (a) The license authorized in this

- subdivision shall not be applied for and used by the same municipal corporation or nonprofit corporation on more than three occasions in one calendar year;
- (b) The license shall be valid only for the occasion or the date of such occasion indicated on the license and shall only be used on three calendar days in one calendar year;
 - (c) The fee for such license shall be twenty dollars for each such occasion and shall be submitted with the application for the license;
 - (d) The municipal corporation or nonprofit corporation seeking such license shall, at least thirty days prior to the occasion for which the license is required, file an application which shall include the date, time, and place of the occasion together with the required fee and such other information that may be required by the commission to determine if the applicant is qualified to receive such license; and
 - (e) The application shall be processed by the commission without the necessity of forwarding it to the local governing body or having a hearing thereon, nor shall the applicant be required to file a bond or lease. The application, if it meets the requirements of this subdivision, shall be approved and a permission shall be granted and a license issued for use of the described premises, but all other statutory provisions and rules and regulations of the commission shall be applicable, except the provision of section 53-177 shall not apply to the applicant. If the application does not qualify for a license, it shall be denied by the commission;

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:
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|---------------|---------|
| 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 \$500.00 in any county having a population of five thousand five hundred inhabitants or more; Provided, that 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; 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. 5. That section 53-129, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-129. Except where a retail licensee is catering as provided in this act, retail ~~retail~~ licenses issued hereunder apply only to the premises described in

the application 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 abandon the premises therein described and remove therefrom to other premises approved by him or it, but in order to obtain such approval the retail licensee shall file with the local governing body a request in writing, and a statement under oath which shall show that the premises to which removal is to be made comply in all respects with the requirements of this act. No such removal shall be made by any such licensee until his said license has been endorsed to that effect in writing both by the local governing body and by the commission.

Sec. 6. That section 53-145, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-145. On sale beer licenses and on sale beer and wine licenses shall be granted only to bona fide hotels, restaurants, incorporated clubs, and to such other persons qualified under this act as the commission may determine. On sale licensee hotels or restaurants may serve beer only to bona fide guests to be consumed at regular public tables, or in guest rooms at such reasonable hours as the licensing officials shall prescribe; provided, that no sale of beer shall be made by on sale licensees or off sale licensees to any minor.

Sec. 7. That section 53-160.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-160.08. No licensee shall sell alcoholic liquor, including beer, to any person for consumption off the licensed premises while such person is in any manner within any motor vehicle. ~~↑--Provided,--that--the~~ The provisions of this section shall not apply to sales for consumption on the licensed premises or sales to paraplegics in a motor vehicle displaying a current paraplegic license plate issued by the Department of Motor Vehicles.

Sec. 8. That section 53-179, Revised Statutes Supplement, 1976, be amended to read as follows:

53-179. (1) No person shall sell at retail or dispense any alcoholic liquor during the hours the polls are open on the day in which any statewide primary or general election is conducted. ~~on--the--day--of--any~~

~~election, including any primary election, within the boundaries of any political subdivision when the election is one in which all of the electors of such political subdivision may participate in the voting, during the hours the polls are open within the political subdivision in which such election is being held;~~

(2) No alcoholic liquors, including beer, shall be sold at retail or dispensed between the hours of 1:00 a.m. Sunday and 6:00 a.m. Sunday. No alcoholic liquors for consumption on the premises, except beer and wine, shall be sold at retail or dispensed between the hours of 6:00 a.m. Sunday and 6:00 p.m. Sunday; and no alcoholic liquors for consumption off the premises, except beer and wine, shall be sold at retail or dispensed between the hours of 6:00 a.m. Sunday and 12:00 midnight Sunday; Provided, that such limitations shall not apply after 12:00 noon on Sunday to a licensee which is a nonprofit corporation as defined in section 53-103 and is the holder of a license issued under the provisions of either subdivision (5) C. or subdivision (5) H. of section 53-124 but such licensee shall not sell or dispense liquors on more than six days each week. The permissible hours for the sale of alcoholic liquors, including beer, at retail or the dispensing thereof on Sunday, if allowed, by other than a nonprofit corporation licensee, within the corporate limits of cities and villages, shall be governed by ordinance of the local governing body; and outside the corporate limits of cities and villages, as shall be determined by resolution of the county board as provided more fully in subsection (3) hereof.

(3) No alcoholic liquors, including beer, shall be sold at retail or dispensed on secular days between 1:00 a.m. and 6:00 a.m.; Provided, that the local governing body of any city or village, in respect to the licensees within the corporate limits of cities or villages, or the county board, in respect to licensees outside the corporate limits of cities or villages, may require closing prior to 1:00 a.m. by ordinance or resolution on any day, including Sundays.

(4) It shall be unlawful on property licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open containers to remain or be in possession or control of any person for purposes of consumption after one 1:15 a.m. on any day; Provided, that where any city or village provides by law for an earlier closing hour, the provisions of this subsection shall become effective fifteen minutes after such closing hour.

(5) Nothing in this section shall be construed to prohibit licensed premises from being open for other

business on days and hours during which the sale or dispensing of alcoholic liquor is prohibited by this section.

Sec. 9. That section 53-180.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-180.07. In any prosecution of, or any proceeding against, any licensee charged with having made a sale to a minor, proof of the following shall be received-as-mitigating-evidence an absolute defense to the charge:

(1) The purchaser falsely represented in writing and supported with other documentary proof that he was of legal age to purchase alcoholic liquor;

(2) The appearance of such purchaser was such that an ordinary and prudent person would believe that such appearance conformed to any documentary description of appearance presented by the purchaser; and

(3) The sale was made in good faith and in reliance upon the written representation, other documentary evidence, the appearance of the purchaser, and in the belief the purchaser was of legal age to make such purchase; or

(4) The sale was made with the knowledge of, and in cooperation with, a duly authorized law enforcement officer.

Sec. 10. That section 53-183, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-183. No person shall sell or furnish alcoholic liquor at retail to any person on credit or on a passbook, or order on a store, or in exchange for any goods, wares or merchandise, or in payment for any services rendered; and if any person shall extend credit for such purpose, the debt thereby attempted to be created shall not be recoverable at law; Provided, nothing herein contained shall be construed to prevent any club holding a class C liquor license from permitting checks or statements for alcoholic liquor to be signed by members or bona fide guests of members and charged to the account of such members or guests in accordance with the by-laws of such club; and provided further, nothing herein contained shall be construed to prevent any hotel or restaurant holding a class-E retail alcoholic liquor license from permitting checks or statements for liquor

to be signed by regular guests residing at such hotel or eating at such restaurant and charged to the accounts of such guests.

Sec. 11. That section 53-186.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-186.01. (1) It shall be unlawful for any person owning, operating, managing or conducting any dance hall, restaurant, cafe, club or any place open to the general public to permit or allow any person to consume alcoholic liquor upon the premises, except as permitted by a license theretofore issued to such premises pursuant to this act.

(2) It shall be unlawful for any person to consume alcoholic liquor in any dance hall, restaurant, cafe, club or any place open to the general public except as permitted by a license theretofore issued to such premises pursuant to this act.

(3) This section shall not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages.

~~(3)~~ (4) Any person violating subsection (1) of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to the penalties contained in section 53-1,100.

~~(4)~~ (5) Any person violating subsection (2) of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to the penalties contained in section 53-180.05.

Sec. 12. That section 53-1,106, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-1,106. In any indictment, information, complaint or affidavit charging the violation of any of the provisions of this act, it shall not be necessary to allege the quantity of such alcoholic liquor or the kind thereof further than to allege that the same was alcoholic liquor and, in case of sale, keeping for sale or delivering, it shall not be necessary to set out the name of the person to whom sale or delivery has been made; and except, in any prosecution for a second offense, it shall not be necessary to state in the indictment, complaint or affidavit the record of the former conviction, but it shall be sufficient briefly to allege such conviction. In any prosecution for an

offense, no indictment, information, complaint, or affidavit shall state or allege, nor shall any consideration be given to the record of a former filing of an indictment, information, complaint, or affidavit, or the record of a former conviction, which is four years old or older. Proof of sale, delivery or unlawful disposition of alcoholic liquors to any person, not authorized by this act to purchase or receive the same, shall be sufficient to sustain the allegation of unlawful sale, delivery or disposition, as the case may be.

Sec. 13. (1) Notwithstanding any other provisions of this act, the holder of a license issued under subdivisions (5) (C) and (5) (D) of section 53-124 may deliver, sell, or dispense alcoholic liquors including beer for consumption off the licensed premises under conditions specified in this section.

(2) Any licensee may only provide such services to municipal corporations, nonprofit groups, organizations, or political organizations which have been exempted from the payment of federal income taxes.

(3) The organizations enumerated in this section may share with the licensee in part or all of the proceeds from the sale of any alcoholic liquor sold and dispensed under this section.

(4) No organization enumerated in this section may be provided the services permitted under this section more than six times per calendar year.

Sec. 14. That original sections 2-219, 53-102, 53-123.04, 53-129, 53-145, 53-160.08, 53-180.07, 53-183, 53-186.01, and 53-1,106, Reissue Revised Statutes of Nebraska, 1943, section 53-179, Revised Statutes Supplement, 1976, and section 53-124, Revised Statutes Supplement, 1977, are repealed.