

LEGISLATIVE BILL 780

Approved by the Governor May 25, 1989

Introduced by General Affairs Committee, Smith, 33,
Chairperson; Hall, 7; R. Johnson, 34;
Kristensen, 37; Beck, 8; Elmer, 38

AN ACT relating to the Nebraska Liquor Control Act; to amend sections 53-107, 53-109 to 53-112, 53-113, 53-114, 53-123.05, 53-132, 53-134, 53-159, 53-164.01, 53-172, and 53-1,116, Reissue Revised Statutes of Nebraska, 1943; to change references to the secretary of the Nebraska Liquor Control Commission; to change a provision relating to compensation of employees of the commission; to eliminate certain oath and bond requirements; to change provisions relating to delivery of a resolution; to eliminate a requirement for the sale of beer; to eliminate a requirement that revenue stamps be attached to packages; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

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

Section 1. That section 53-107, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-107. A majority of the commission shall constitute a quorum to transact business, but no vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission. Every 7 and every act of a majority of the members of the commission shall be deemed to be the act of the commission. The commission shall have a secretary an executive director, to be appointed by it subject to the approval of the Governor, who shall keep a record of all proceedings, transactions, communications, and official acts of the commission. The executive director 7 and who shall be the custodian of all records and perform such other duties as the commission may prescribe.

Sec. 2. That section 53-109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-109. Each commissioner, and each person appointed by the commission, shall take and subscribe an

oath that he will support and enforce the provisions of this act; such oath to be in the form prescribed by the Governor. Before entering upon the duties of his or her office, each commissioner shall be bonded under the blanket surety bond required by section 11-201. Employees of the commission who are accountable for public funds shall be bonded under the blanket surety bond required by section 11-201 to secure the safety of the same such funds. The premium on all bonds provided for in this section shall be paid by the State of Nebraska out of the state General Fund. Before entering upon the duties of his or her office, the secretary executive director of the commission shall be bonded under the blanket surety bond required by section 11-201.

Sec. 3. That section 53-110, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-110. No person shall be appointed as a commissioner, secretary or the executive director of the commission, or an inspector for the commission who is not a citizen of the United States and who has not resided within the State of Nebraska successively for two years next preceding the date of his or her appointment. No person (1) convicted of, or who shall have has pleaded guilty to, a felony, or of any violation of any federal or state law concerning the manufacture or sale of alcoholic liquor prior or subsequent to the passage of this act, or the Nebraska Liquor Control Act, (2) who has paid a fine or penalty in settlement of any prosecution against him or her for any violation of such laws, or (3) who shall have has forfeited his or her bond to appear in court to answer charges for any such violation, shall be appointed commissioner. No commissioner, inspector, or other employee, may, directly or indirectly, individually or as a member of a partnership, or as a shareholder of a corporation, have any interest whatsoever in the manufacture, sale, or distribution of alcoholic liquor, nor receive any compensation or profit therefrom, nor or have any interest whatsoever in the purchases or sales made by the persons authorized by this the act, or to purchase or to sell alcoholic liquor. No provisions of this This section shall not prevent any such commissioner, secretary, the executive director, any inspector, or any other employee from purchasing and keeping in his or her possession for the use of himself, herself, or members of his or her family or guests any alcoholic liquor which may be purchased or kept by any

person by virtue of ~~this~~ the act.

Sec. 4. That section 53-111, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-111. ~~No A~~ commissioner, secretary or the executive director of the commission, or any person appointed or employed by the commission shall not solicit or accept any gift, gratuity, emolument, or employment from any person subject to the provisions of this act; Nebraska Liquor Control Act or from any officer, agent, or employee thereof; ~~nor~~ or solicit, request from, or recommend, directly or indirectly, to any such person or to any officer, agent, or employee thereof; the appointment of any person to any place or position. Any ; and every such person; and every officer, agent, or employee thereof; is hereby forbidden to may not offer to any commissioner, secretary the executive director, or ~~to~~ any person appointed or employed by the commission; any gift, gratuity, emolument, or employment. If any a commissioner, secretary the executive director, or any person appointed or employed by the commission shall violate any of the provisions of violates this section, he or she shall be removed from the his or her office or employment, held by him. Every person violating the provisions of this section shall be guilty of a Class II misdemeanor.

Sec. 5. That section 53-112, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-112. Each member of the commission shall receive an annual salary of not to exceed twelve thousand five hundred dollars, to be fixed by the Governor, payable monthly, and in addition actual and necessary expenses incurred on behalf of the commission. The salary of the secretary executive director of the commission shall be fixed by the commission, payable monthly. All clerks, inspectors, and employees of the commission shall receive reasonable compensation in an amount fixed by the commission; subject to the approval in writing of the Governor.

Sec. 6. That section 53-113, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-113. The commissioners, the secretary executive director of the commission, and all clerks, inspectors, and other employees shall be reimbursed for all actual and necessary traveling expenses and disbursements incurred or made by them in the discharge

of their official duties as provided in sections 81-1174 to 81-1177. ~~for state employees.~~ The commission may also incur necessary expenses for office furniture and other incidental expenses. No commissioner, appointee, or employee of the commission shall request or be allowed mileage or other traveling expenses unless such sections 81-1174 to 81-1177 are strictly complied with.

Sec. 7. 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 and may hold such special meetings as it may deem ~~deems~~ 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 process, notice, or other paper which the commission may be ~~is~~ authorized by law to issue shall be deemed sufficient if signed by the chairperson and secretary executive director of the commission and authenticated by such seal. 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 executive director attached.

Sec. 8. That section 53-123.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-123.05. (1) The commission may issue a license to any airline company, dining car company, sleeping car company, or railroad company operating in this state which ~~shall authorize~~ authorizes the holder thereof to keep for sale and to sell or dispense alcoholic liquor for consumption in its airplanes, dining cars, sleeping cars, buffet cars, observation cars, and any other cars used for transportation or accommodation of passengers. ~~; alcoholic liquors for consumption therein.~~ Each such company shall keep a duplicate of such license posted in each car or airplane where such ~~alcoholic liquors are~~ liquor is served. ~~Surety bond in the penal sum of one thousand dollars shall be required from such companies.~~

(2) Every such license, described in

subsection (1) of this section, shall expire on April 30 of each year. Each such license shall be good throughout this state as a state license. Only one such license shall be required for all cars or airplanes operated in this state by the same owner. No further license shall be required or tax levied by any county, city, or village for the privilege of selling or dispensing alcoholic ~~liquers~~ liquor for consumption in such cars or airplanes, ~~7 described in subsection (1) of this section.~~ Nothing in this act the Nebraska Liquor Control Act shall apply to or affect the right of holders of such licenses to transport within this state or to import into this state alcoholic ~~liquers~~ liquor to be kept for dispensing or sale or to be sold while actually enroute in the cars or airplanes of such licensees.

Sec. 9. That section 53-132, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-132. (1) If no hearing is required pursuant to subdivision (1)(a) of section 53-133, the commission may waive the sixty-day objection period 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~~ the executive director of the commission 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.

(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. 10. That section 53-134, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-134. (1) 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} (a) To cancel, revoke, or suspend for cause retail or bottle club licenses to sell or dispense alcoholic ~~liquers~~ liquor issued to persons for premises within its jurisdiction; subject to the right of appeal as provided in section 53-1,116;

{2} (b) 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} (c) 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} (d) 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} (e) 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; and

{6} (f) 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, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic ~~liquers~~ liquor. Such order of

cancellation or revocation shall be subject to appeal as provided in section 53-1,116, 7 and

(7) (2). 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 the issuance, the denial, or the renewal of such license or the refusal to issue, deny, or renew such license. The clerk of such city, village, or county shall thereupon mail or deliver 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 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 required in this section shall be paid by the commission from the security for costs.

Sec. 11. 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 his, her, or their title to such premises, and the name of the owner thereof. Every such manufacturer or distributor of beer on filing such notice 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, 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) certify that he or she will keep, or cause to be kept, books and records and make reports in the manner and for the purposes 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) and 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 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 53-123.14, the commission may require by rule and regulation adopted and promulgated as provided in the Nebraska Liquor Control Act that beer be kept, received, and withdrawn from bonded warehouses, as other alcoholic liquors are liquor is kept, received, and withdrawn, as hereinbefore provided; whenever it deems that the public interest demands. No beer manufactured or distributed within this state shall be sold 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. 12. That section 53-164.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-164.01. Payment of the tax provided for in section 53-160 on alcoholic ~~liquors~~ liquor shall be paid by the manufacturer or distributor as 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 or affirmation to the commission upon forms to be furnished by the commission for the purpose of showing the exact total amount in gallons of alcoholic ~~liquors~~ liquor, 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 or affirmation 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 or affirmation to the 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 ~~liquers~~ liquor, 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 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 alcoholic ~~liquers~~ liquor, 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 ~~liquers~~ liquor. Such discount shall be deducted from the payment of such tax before remittance 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 in this section, then such discount shall not be allowed and the 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 ~~liquers~~ liquor 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 ~~liquers~~ liquor 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 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~~ liquor in this state which ~~have~~ has 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~~ liquor 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 not be limited to~~, 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, 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. 13. That section 53-172, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-172. No manufacturer or distributor shall sell or deliver any original package containing alcoholic liquor, except beer and wine, manufactured or distributed by him or her, unless the same package shall have affixed thereto all revenue stamps required by federal law and shall also bear thereon a clear and legible label containing the name and address of the manufacturer, the kind of alcoholic liquor contained therein, and, in the case of alcoholic liquor other than beer, the date when manufactured. No original package of alcoholic liquor shall be delivered by any manufacturer or distributor unless the same package shall be securely sealed so that the contents thereof cannot be removed without breaking the seal so placed thereon by such manufacturer, and no other licensee shall sell, have in his or her possession, or use any original package which does not comply with sections 53-172 to 53-174, or which does not bear evidence that such original package, when delivered to him or her, complied herewith with this section.

Sec. 14. That section 53-1,116, Reissue

Revised Statutes of Nebraska, 1943, 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) 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 executive director 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 (4) of this section.

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

(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~~ liquor, 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 petition shall

be filed in the district court within thirty days after the mailing of a copy of the decision to the parties of record. In the event that a motion for rehearing has been filed with the commission as provided in this section, the time for filing a 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, the suspension, cancellation, revocation, or renewal of, or the refusal to issue, deny, suspend, cancel, revoke or renew a license, special designated permit, or permit for the sale of alcoholic ~~liquors~~ liquor, 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 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)(a) 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.

(5) The petition shall set forth: (a) The name and mailing address of the petitioner; (b) the name and mailing address of the commission and the local governing body making the decision or recommendation; (c) the identification of the final decision or recommendation at issue together with a duplicate copy of the decision or recommendation; (d) the identification of the parties in the contested case that led to the final decision or recommendation; (e) facts to demonstrate proper venue; (f) the petitioner's reasons for believing that relief should be granted; and (g) a request for relief specifying the type and extent of the relief requested.

(6)(a) Upon the filing of a petition as provided for in subdivision (4)(a) of this section and the making of a request, the secretary of the commission executive director shall prepare and deliver to the appellant a certified copy of the official record of the proceedings had before the commission. Such official record shall include: (i) Notice of all proceedings; (ii) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the commission pertaining to the contested case; (iii) the transcribed record of the hearing before the commission including all exhibits and evidence introduced during such hearing, a statement of the matters officially noticed by the commission during the proceeding, and all proffers of proof and objections and rulings thereon; and (iv) the final order appealed from. The commission shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The

commission may require payment or bond prior to the transmittal of the record. Such record shall be filed 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 executive director. 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 record.

(b) Upon the filing of a petition as provided for in subdivision (4)(b) of this section and the making of a request, the local governing body shall prepare and deliver to the appellant a certified copy of the official record of the proceedings had before the local governing body. Such official record shall include: (i) Notice of all proceedings; (ii) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the local governing body pertaining to the contested case; (iii) the transcribed record of the hearing before the local governing body including all exhibits and evidence introduced during such hearing, a statement of the matters officially noticed by the local governing body during the proceeding, and all proffers of proof and objections and rulings thereon; and (iv) the final order appealed from. The local governing body shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the costs for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The local governing body may require payment or bond prior to the transmittal of the record. Such record shall be filed 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 local governing body. 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 record.

Sec. 15. If Legislative Bill 781, Ninety-first Legislature, First Session, 1989, or any other legislative bill is enacted by the Ninety-first Legislature, First Session, 1989, and becomes law containing references to the secretary of the Nebraska Liquor Control Commission, the Revisor of Statutes shall change such references to refer to the executive director of the commission consistent with this legislative bill.

Sec. 16. That original sections 53-107,

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53-109 to 53-112, 53-113, 53-114, 53-123.05, 53-132, 53-134, 53-159, 53-164.01, 53-172, and 53-1,116, Reissue Revised Statutes of Nebraska, 1943, are repealed.