

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 407

Introduced by Karpisek, 32.

Read first time January 13, 2011

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 sections 53-123.12, 53-124.12, 53-131, and 53-133,
3 Reissue Revised Statutes of Nebraska; to provide for
4 mailing and electronic delivery of certain notices as
5 prescribed; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 53-123.12, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 53-123.12 (1) Any person desiring to obtain a new license
4 to operate a farm winery shall:

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

8 (b) Pay the license fee to the commission under sections
9 53-124 and 53-124.01, which fee shall be returned to the applicant if
10 the application is denied; and

11 (c) Pay the nonrefundable application fee to the
12 commission in the sum of four hundred dollars.

13 (2) To renew a farm winery license, a farm winery
14 licensee shall file an application with the commission, pay the
15 license fee under sections 53-124 and 53-124.01, and pay the renewal
16 fee of forty-five dollars.

17 (3) License fees, application fees, and renewal fees may
18 be paid to the commission by certified or cashier's check of a bank
19 within this state, personal or business check, United States post
20 office money order, or cash in the full amount of such fees.

21 (4) For a new license, the commission shall then notify
22 ~~by registered or certified mail marked return receipt requested with~~
23 ~~postage prepaid,~~ the municipal clerk of the city or incorporated
24 village where such license is sought or, if the license is not sought
25 within a city or incorporated village, the county clerk of the county

1 where such license is sought of the receipt of the application and
2 shall ~~enclose~~include with such notice one copy of the application.
3 No such license shall then be issued by the commission until the
4 expiration of at least forty-five days from the date of ~~mailing~~
5 receipt by mail or electronic delivery of such application ~~by~~from
6 the commission. Within thirty-five days from the date of receipt of
7 such application from the commission, the local governing bodies of
8 nearby cities or villages or the county may make and submit to the
9 commission recommendations relative to the granting of or refusal to
10 grant such license to the applicant.

11 Sec. 2. Section 53-124.12, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 53-124.12 (1) The holder of a license to sell alcoholic
14 liquor at retail issued under subsection (6) of section 53-124, a
15 craft brewery license, a microdistillery license, or a farm winery
16 license may obtain an annual catering license as prescribed in this
17 section. The catering license shall be issued for the same period and
18 may be renewed in the same manner as the retail license, craft
19 brewery license, microdistillery license, or farm winery license.

20 (2) Any person desiring to obtain a catering license
21 shall file with the commission:

22 (a) An application in triplicate original upon such forms
23 as the commission prescribes; and

24 (b) A license fee of one hundred dollars payable to the
25 commission, which fee shall be returned to the applicant if the

1 application is denied.

2 (3) When an application for a catering license is filed,
3 the commission shall notify, ~~by registered or certified mail, return~~
4 ~~receipt requested with postage prepaid,~~ (a) the clerk of the city or
5 incorporated village in which such applicant is located or, (b) if
6 the applicant is not located within a city or incorporated village,
7 the county clerk of the county in which such applicant is located, of
8 the receipt of the application. The commission shall ~~enclose~~ include
9 with such notice one copy of the application by mail or electronic
10 delivery. The local governing body and the commission shall process
11 the application in the same manner as provided in section 53-132.

12 (4) The local governing body with respect to catering
13 licensees within its liquor license jurisdiction as provided in
14 subsection (5) of this section may cancel a catering license for
15 cause for the remainder of the period for which such catering license
16 is issued. Any person whose catering license is canceled may appeal
17 to the district court of the county in which the local governing body
18 is located.

19 (5) For purposes of this section, local governing body
20 means (a) the governing body of the city or village in which the
21 catering licensee is located or (b) if such licensee is not located
22 within a city or village, the governing body of the county in which
23 such licensee is located.

24 (6) The local governing body may impose an occupation tax
25 on the business of a catering licensee doing business within the

1 liquor license jurisdiction of the local governing body as provided
2 in subsection (5) of this section. Such tax may not exceed double the
3 license fee to be paid under this section.

4 Sec. 3. Section 53-131, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 53-131 (1) Any person desiring to obtain a new license to
7 sell alcoholic liquor at retail, a craft brewery license, or a
8 microdistillery license shall file with the commission:

9 (a) An application in triplicate original upon forms the
10 commission prescribes, including the information required by
11 subsection (3) of this section for an application to operate a cigar
12 bar;

13 (b) The license fee if under sections 53-124 and
14 53-124.01 such fee is payable to the commission, which fee shall be
15 returned to the applicant if the application is denied; and

16 (c) The nonrefundable application fee in the sum of four
17 hundred dollars, except that the nonrefundable application fee for an
18 application for a cigar bar shall be one thousand dollars.

19 (2) The commission shall notify, ~~by registered or~~
20 ~~certified mail, return receipt requested with postage prepaid,~~ (a)
21 the clerk of the city or village in which such license is sought or,
22 ~~(b)~~ if the license sought is not sought within a city or village, the
23 county clerk of the county in which such license is sought, of the
24 receipt of the application and shall ~~enclose~~ include one copy of the
25 application with the notice. No such license shall be issued or

1 denied by the commission until the expiration of the time allowed for
2 the receipt of a recommendation of denial or an objection requiring a
3 hearing under subdivision (1)(a) or (b) of section 53-133. During the
4 period of forty-five days after the date of ~~receiving~~ receipt by mail
5 or electronic delivery of such application from the commission, the
6 local governing body of such city, village, or county may make and
7 submit to the commission recommendations relative to the granting or
8 refusal to grant such license to the applicant.

9 (3) For an application to operate a cigar bar, the
10 application shall include proof of the cigar bar's annual gross
11 revenue as requested by the commission and such other information as
12 requested by the commission to establish the intent to operate as a
13 cigar bar. The commission may adopt and promulgate rules and
14 regulations to regulate cigar bars.

15 (4) For renewal of a license under this section, a
16 licensee shall file with the commission an application, the license
17 fee as provided in subdivision (1)(b) of this section, and a renewal
18 fee of forty-five dollars.

19 Sec. 4. Section 53-133, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 53-133 (1) The commission shall set for hearing before it
22 any application for a retail license, craft brewery license, or
23 microdistillery license relative to which it has received:

24 (a) Within forty-five days after the date of receipt of
25 such application by the city, village, or county clerk, a

1 recommendation of denial from the city, village, or county;

2 (b) Within ten days after the receipt of a recommendation
3 from the city, village, or county, or, if no recommendation is
4 received, within forty-five days after the date of receipt of such
5 application by the city, village, or county clerk, objections in
6 writing by not less than three persons residing within such city,
7 village, or county, protesting the issuance of the license.
8 Withdrawal of the protest does not prohibit the commission from
9 conducting a hearing based upon the protest as originally filed and
10 making an independent finding as to whether the license should or
11 should not be issued;

12 (c) Within forty-five days after the date of receipt of
13 such application by the city, village, or county clerk, objections by
14 the commission or any duly appointed employee of the commission,
15 protesting the issuance of the license; or

16 (d) An indication on the application that the location of
17 a proposed retail establishment is within one hundred fifty feet of a
18 church as described in subsection (2) of section 53-177.

19 (2) Hearings upon such applications shall be in the
20 following manner: Notice indicating the time and place of such
21 hearing shall be mailed or electronically delivered to the applicant,
22 the local governing body, each individual protesting a license
23 pursuant to subdivision (1)(b) of this section, and any church
24 affected as described in subdivision (1)(d) of this section, ~~by~~
25 ~~certified mail, return receipt requested,~~ at least fifteen days prior

1 to such hearing. The notice shall state that the commission will
2 receive evidence for the purpose of determining whether to approve or
3 deny the application. Mailing or electronic delivery to the attorney
4 of record of a party shall be deemed to fulfill the purposes of this
5 section. The commission may receive evidence, including testimony and
6 documentary evidence, and may hear and question witnesses concerning
7 the application. The commission shall not use electronic delivery
8 with respect to an applicant, a protestor, or a church under this
9 section without the consent of the recipient to electronic delivery.

10 Sec. 5. Original sections 53-123.12, 53-124.12, 53-131,
11 and 53-133, Reissue Revised Statutes of Nebraska, are repealed.