

ONE HUNDRED FIFTH LEGISLATURE - SECOND SESSION - 2018
COMMITTEE STATEMENT
LB1120

Hearing Date: Monday February 05, 2018
Committee On: General Affairs
Introducer: Larson
One Liner: Change provisions of the Nebraska Liquor Control Act and music licensing provisions

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Blood, Brasch, Krist, Larson, Quick, Riepe, Wayne
Nay:
Absent:
Present Not Voting: 1 Senator Thibodeau

Verbal Testimony:

Proponents:

Josh Eickmeier
Michelle Weber
Les Meyer
Sean Kelley
Richard Hilske
Alan Jacobsen

Representing:

Senator Larson (Introducer)
Kum & Go
Nebraska Wine and Grape Growers
himself
Cellar 426 Winery
himself

Opponents:

Dennis Carlson
Chandra Walker
Chris Wagner
Clint Densberger
Jim Otto
Lanette Richards
Kim Kavulak

Representing:

himself
Native Caucus of the Democratic Party of Nebraska
Project Extra Mile
himself
Nebraska Retail Federation
Monument Prevention
Nebraska Brewing Company / Nebraska Craft Brewers
Guild
Nebraska Craft Brewers Guild
Nebraska Liquor Control Commission

Neutral:

Jim Pautinston
Eric Froeschz
Shawn Cole

Representing:

Nebraska Restaurant Assn.
himself
Black Dog Bookings

Summary of purpose and/or changes:

LB 1120 Contains the following provisions in the order of appearance:

1. Clarifies that the fees for beer shippers licenses go to the Nebraska Beer Industry Promotional Fund. (p.2) In the State Auditors November 16, 2017 report, it noted a perceived conflict in statute regarding where the shippers fees were

to be deposited. This provision in LB 1120 clarifies the Legislatures intent that only the beer shippers fees were to go to the Nebraska Beer Industry Promotional Fund.

2. Requires third-party shippers to file annual reports with the Commission. (p. 7) This provision is intended to be a resource for the Liquor Control Commission in identifying the entities who are directly shipping alcohol into Nebraska and ensuring that the appropriate taxes and license fees are being paid. This provision would require third-party shippers such as UPS or FEDEX to file an annual report to the Commission.

3. Requires SDL applications to be received within 10 working days prior to the event, but this requirement may be waived by the Commissions Executive Director. (p. 10) In the State Auditors November 16, 2017 report, it stated concerns with the Commissions process for waiving this rule. This provision would codify the 10-working-day requirement that is already in the Commissions Rules and Regulations and would address the State Auditors concern by granting the Commissions Executive Director the authority to waive this requirement.

4. Includes statutory references that were meant to be removed and would be removed in a Committee Amendment. (p. 10, ln. 18-19)

5. Allows Class C licensees with a Bottling Endorsement to increase the size of their growlers from 32 ounces to 64 ounces. (p.11) Keep in mind that this current limitation in growler size only applies to Class C licensees with a Bottling Endorsement and not Craft Brewers.

6. Prohibits the Commission from requiring the long-form application unless the local governing body requests in writing a hearing to determine whether there has been a change in circumstances to warrant requiring the long-form application. (p.11 - p.12) The long-form application is the original application an applicant would submit for a license under the Liquor Control Act. The renewal form is considerably simpler and approval is common.

7. Addresses delinquent alcoholic liquor accounts. (p.13 - p.14) This provision puts into place procedures requiring the Commission to keep an updated list of overdue accounts and prohibits wholesalers from selling to retailers who are more than 34 days overdue.

8. Allows the Commission the discretion to suspend a license for a second and subsequent violations of the Liquor Control Act in addition to compliance check violations. (p.15 - p. 16) The Commission requested this provision to give it more discretion when addressing violations in the Liquor Control Act.

9. Allows a party to apply for a rehearing when an application is denied. (p. 19) Under current law, parties may apply for a rehearing of certain Commission actions and this provision would include the denial of an application as one of those actions. The application for rehearing would still have to be made within 30 days after the service of the action.

10. Prohibits expenditures from the Nebraska Beer Industry Promotional Fund to be used for the salaries or compensation for employees of any licensee or entity representing licensees under the Liquor Control Act. (p. 21) Under current law, the fund shall not be used for lobbying purposes and this provision would extend that prohibition to compensation for employees of alcohol licensees or entities representing such licensees.

11. Includes the Music Licensing Agency Act. (p. 21 - p. 26) This Act would provide protections for those entities that host live music performances and are being aggressively contacted by agencies claiming to hold the copyrights to the music being performed and demanding a licensing fee.

The Music Licensing Act includes the following:

Sec. 14

(1) Requires the music licensing agency to register and file annually by February 15 with the Department of Revenue an electronic copy of each variation of the performing-rights agreement providing for the payment of royalties made available from the music licensing agency to any proprietor within Nebraska. There is a \$10,000 late fee for each 45-day late period.

(2) Requires the music licensing agency to provide a list of members and affiliates it represents and a catalog of its music licenses.

Sec. 15

(1) Seventy-two hours prior to a contract's execution, the proprietor or his/her employees receive in writing a schedule of the rates and terms of royalties under the contract and notice that the proprietor is entitled to the information filed with the Department of Revenue pursuant to section 14 of this act.

(2) A contract for the payment of royalties executed in Nebraska shall:

be in writing; be signed by the parties; and include at least the following information: (i) the proprietor's name and business address; (ii) the name and location of each place of business to which the contract applies; (iii) the duration of the contract; and (iv) the schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of those rates for the duration of the contract.

Sec. 16

(1) When making contact with a proprietor, the music licensing agency agent or representative must identify himself or herself and disclose whom he/she is representing and why they are on the premises.

(2) The agent or representative shall not:

use obscene, abusive, or profane language;

communicate at the proprietor's place of business during business hours unless otherwise authorized by proprietor;

substantially disrupt proprietor's business;

use or attempt to use unfair or deceptive acts or practices in negotiating with proprietor;

communicate with proprietor once the agency has received written notice that all further contact will be through the proprietor's attorney unless the attorney fails to respond within 60 days.

Sec. 17

The Department of Revenue is responsible for notifying proprietors of their rights and responsibilities.

Sec. 18

Music licensing agencies may still conduct investigations to determine music use by the proprietor or informing the proprietor of his/her obligations under United States copyright law.

Sec. 21

States that multiple violations on a single day may be considered separate violations.

12. Severability Clause (p. 26)

13. Emergency Clause (p. 27)

Explanation of amendments:

The Committee Amendment strikes all sections of LB 1120 except for the Music Licensing Agency Act. Within the Act, the only change is that the "late fee" is now called a "fine" (page 3, line 9) and because it's a fine, the Nebraska Constitution would direct it to schools, therefore the language in LB 1120 that directed the late fee to the Department of Revenue's Enforcement Fund has also been stricken.

Strikes the severability and emergency clauses.

Tyson Larson, Chairperson