

ONE HUNDRED FIFTH LEGISLATURE - FIRST SESSION - 2017
COMMITTEE STATEMENT (CORRECTED)
LB632

Hearing Date: Monday February 13, 2017
Committee On: General Affairs
Introducer: Larson
One Liner: Change provisions relating to the Nebraska Liquor Control Act and music licensing agencies

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

Vote Results:
Aye: 6 Senators Brasch, Harr, Krist, Larson, Riepe, Wayne
Nay: 2 Senators Blood, Quick
Absent:
Present Not Voting:

Verbal Testimony:

Proponents:

Senator Larson
Jim Ballard
Chris Wagner
Michelle Weber
Lester Jones
Mike Madigan

Representing:

Introducer
Nebraska Grape & Winery Association
Project Extra Mile
Kum & Go
NBWA ABDN
ABDN

Opponents:

Chris Hernstrom
Christopher Rosacker
Dustin Rutledge
Ben Stolder
Annette Wiles
Matt Stinchfield
Vanessa Silke
Tom Wilmoth
Cody Schmick
Kim Karulak
Eric Schafer
Marcus Powers

Representing:

Bolo Beer Co.
Downtown Grand Island Business Improvement District
Nebraska Hop Growers Assoc.
Self
self
self
Nebraska Craft Brewers Guild
Nebraska Craft Brewers Guild
Nebraska Craft Brewers Guild
Nebraska Brewing Company
Empyrean Brewing Co.
Zipline Brewing Co.

Neutral:

Hobert Rupe
Justin Brady

Representing:

Nebraska Liquor Control Commission
NE Liquor Wholesalers

Written Testimony:

Proponents:

Representing:

Opponents:

Representing:

Adam Kosmicki
Justin Cermak
Amanda Podwinski
Silas Clarice
Linda Anderson
Nicholas Middlekauff

American Beer Equipment
self
Blue Blood Brewing
Nebraska Hop Growers Association
Bold NE
self

Neutral:

Representing:

Summary of purpose and/or changes:

P. 2, In 10-23

Creates a definition for "Bottle Club"

P. 3, In 4-8

LB 632 also clarifies the "at rest" provision in the Nebraska Liquor Control Act that requires all alcohol to be taken to the wholesaler's warehouse where it is then placed "at rest" before being transported to retail locations.

P. 3, In 19-31

Requires satellite locations to be wholly owned by the craft brewery

P. 4, In 16-18

Requires the five separate locations be craft breweries or brewpub premises, meaning there is on-site production.

P. 4, In 19-22

Clarifies that except for the ability to transport to and sell at their own retail locations, craft brewers or any person owning a partial interest in a craft brewery must go through a distributor.

P. 5, In 17-19

Strikes language to clean up an out-dated provision.

P. 10, In 7-10

Requires third-party shippers to file an annual report to the Commission documenting shipment details in a form and manner prescribed by the Commission when they are delivering out-of-state alcohol directly to someone in Nebraska.

P. 11, In 3-4

Limits SDLs to 12 per calendar year for certain licensees.

P. 12, In 31 - P. 13, In 3

Prohibits the Commission from waiving the requirement that the SDL licensee go through a distributor (53-123.01 to 53-123.03, 53-123.14 and 53-169). It also requires a showing of substantial need and undue hardship before the Commission may waive statutes when issuing SDLs.

P. 13, In 30-31

Increases the growler size for Class C retail licensees with a bottling endorsement from 32 ounces to 64 ounces.

P. 16, In 18-22

Clarifies that the wholesaler pays the excise tax when it is distributing craft beer, but craft brewers pay the excise tax when selling direct to customers.

P. 19, In 17-29

Currently, the Commission can only suspend a license for second and subsequent offenses for compliance check violations. LB 632 would provide the Commission with the authority to suspend licenses for other second or subsequent

offenses.

P. 22, In 19 - P. 27, In 8

The Music Licensing Agency Act includes:

Sec. 15

- (1) Defines "copyright owner"
- (2) Defines "music licensing agency"
- (3) Defines "performing right"
- (4) Defines "person"
- (5) Defines "proprietor"
- (6) Defines "royalty"

Sec. 16

Bill drafter cleanup strikes language

Sec. 17

(1) Requires the music licensing agency to register and file annually with the Secretary of State an electronic copy of each performing-rights agreement providing for the payment of royalties made available from the music licensing agency to any proprietor within Nebraska.

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

Sec. 18

(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 Secretary of State pursuant to section 17 of this act.

(2) A contract for the payment of royalties executed in Nebraska shall (a) be in writing; (b) be signed by the parties; and (c) 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. 19

(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 (a) use obscene, abusive, or profane language; (b) communicate at the proprietor's place of business during business hours unless otherwise authorized by proprietor; (c) substantially disrupt proprietor's business; (d) use or attempt to use unfair or deceptive acts or practices in negotiating with proprietor; (e) 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. 20

The Secretary of State is responsible for notifying proprietors of their rights and responsibilities.

Sec. 21

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

Sec. 22

Identifies these sections as the "Music Licensing Agency Act" and includes bill drafter clean up language.

Sec. 23

Bill drafter term and language clean up language.

Sec. 24

Identifies these sections as the "Music Licensing Agency Act" and states that multiple violations on a single day may be considered separate violations.

Explanation of amendments:

The Committee Amendment does the following:

1. Removes the 12 SDL limit
2. Removes the requirement to show "substantial need and undue hardship" before the Commission may waive a statutory provision
3. Language was included to clarify that the "at rest" requirement for distribution does not apply to farm wineries
4. Removes the requirement that production occur at each of the satellite locations
5. The Commission may still waive the requirement that alcohol be purchased through a wholesaler when issuing SDLs to nonprofits, churches, municipalities etc.
6. Added language to require the Commission to keep track of delinquent wine and spirit retailers and includes additional safeguards.
7. Defines satellite locations to require they be 100 percent owned and be bars and/or restaurants and includes a definition for bar.
8. The responsibility for enforcing the Music Licensing Agency Act will be moved from the Secretary of State's office to the Department of Revenue. The registration requirement has an operative date of January 1, 2018. There is a late fee of \$10,000 for every 30 days that an agency fails to register starting January 1, 2018.
9. The amendment also contains a severability clause and an emergency clause.

Tyson Larson, Chairperson