

LEGISLATIVE BILL 1204

Approved by the Governor April 18, 2022

Introduced by Briese, 41; Wayne, 13.

A BILL FOR AN ACT relating to the Nebraska Liquor Control Act; to amend sections 53-101, 53-123.12, 53-124.12, 53-131.01, 53-132, 53-135, 53-148.01, and 53-180.04, Reissue Revised Statutes of Nebraska; to change provisions relating to application forms and delivery methods for licenses and warning signs; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 53-101, Reissue Revised Statutes of Nebraska, is amended to read:

53-101 Sections 53-101 to 53-1,122 and section 2 of this act shall be known and may be cited as the Nebraska Liquor Control Act.

Sec. 2. When delivering any type of license under the Nebraska Liquor Control Act to a licensee, the commission may use mail or electronic delivery.

Section 3. Section 53-123.12, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

(4) For a new license, the commission shall then notify the municipal clerk of the city or incorporated village where such license is sought or, if the license is not sought within a city or incorporated village, the county clerk of the county where such license is sought of the receipt of the application and shall include with such notice one copy of the application. No such license shall then be issued by the commission until the expiration of at least forty-five days from the date of receipt by mail or electronic delivery of such application from the commission. Within thirty-five days from the date of receipt of such application from the commission, the local governing bodies of nearby cities or villages or the county may make and submit to the commission recommendations relative to the granting of or refusal to grant such license to the applicant.

(5)(a) A farm winery licensee may apply to the local governing body for a temporary expansion of the licensed premises to an immediately adjacent area owned or leased by the licensee or to an immediately adjacent street, parking lot, or alley, not to exceed fifty days for calendar year 2020 and, for each calendar year thereafter, not to exceed fifteen days per calendar year. The temporary area shall comply with the Nebraska Liquor Control Act for consumption on the premises and shall be subject to the following conditions: (i) The temporary area shall be enclosed during the temporary expansion by a temporary fence or other means approved by the county, city, or village; (ii) the temporary area shall have easily identifiable entrances and exits; and (iii) the licensee shall ensure that the area meets all sanitation requirements for a licensed premises. The local governing body shall electronically notify the commission within five days after the authorization of any temporary expansion pursuant to this subsection.

(b) The licensee shall file an application with the local governing body which shall contain (i) the name of the applicant, (ii) the premises for which a temporary expansion is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (iii) the name of the owner or lessee of the premises for which the temporary expansion is requested, (iv) sufficient evidence that the licensee will carry on the activities and business authorized by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (v) a statement of the type of activity to be carried on during the time period for which a temporary expansion is requested, and (vi) sufficient evidence that the temporary expansion will be supervised by persons or managers who are agents of and directly responsible to the licensee.

(c) No temporary expansion provided for by this subsection shall be granted without the approval of the local governing body. The local governing

body may establish criteria for approving or denying a temporary expansion. The local governing body may designate an agent to determine whether a temporary expansion is to be approved or denied. Such agent shall follow criteria established by the local governing body in making the determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body.

(d) For purposes of this section, the local governing body shall be that of the city or village within which the premises for which the temporary expansion is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be that of the county within which the premises for which the temporary expansion is requested are located.

(e) The decision of the local governing body shall be final. If the applicant does not qualify for a temporary expansion, the temporary expansion shall be denied by the local governing body.

(f) The city, village, or county clerk shall deliver confirmation of the temporary expansion to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

Sec. 4. Section 53-124.12, Reissue Revised Statutes of Nebraska, is amended to read:

53-124.12 (1) The holder of a license to sell alcoholic liquor at retail issued under subsection (6) of section 53-124, a craft brewery license, a microdistillery license, a farm winery license, or a manufacturer's license issued under subsection (2) of section 53-123.01 may obtain an annual catering license as prescribed in this section. The catering license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, microdistillery license, farm winery license, or manufacturer's license.

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

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

(b) A license fee of one hundred dollars payable to the commission, which fee shall be returned to the applicant if the application is denied.

(3) When an application for a catering license is filed, the commission shall notify the clerk of the city or incorporated village in which such applicant is located or, if the applicant is not located within a city or incorporated village, the county clerk of the county in which such applicant is located, of the receipt of the application. The commission shall include with such notice one copy of the application by mail or electronic delivery. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

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

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

(6) The local governing body may impose an occupation tax on the business of a catering licensee doing business within the liquor license jurisdiction of the local governing body as provided in subsection (5) of this section. Such tax may not exceed double the license fee to be paid under this section.

Sec. 5. Section 53-131.01, Reissue Revised Statutes of Nebraska, is amended to read:

53-131.01 (1) The application for a new license shall be submitted upon such forms as the commission may prescribe. Such forms shall contain (a) the name and residence of the applicant and how long he or she has resided within the State of Nebraska, (b) the particular premises for which a license is desired designating the same by street and number if practicable or, if not, by such other description as definitely locates the premises, (c) the name of the owner of the premises upon which the business licensed is to be carried on, (d) a statement that the applicant is a resident of Nebraska and legally able to work in Nebraska, that the applicant and the spouse of the applicant are not less than twenty-one years of age, and that such applicant has never been convicted of or pleaded guilty to a felony or been adjudged guilty of violating the laws governing the sale of alcoholic liquor or the law for the prevention of gambling in the State of Nebraska, except that a manager for a corporation applying for a license shall qualify with all provisions of this subdivision as though the manager were the applicant, except that the provisions of this subdivision shall not apply to the spouse of a manager-applicant, (e) a statement that the applicant intends to carry on the business authorized by the license for himself or herself and not as the agent of any other persons and that if licensed he or she will carry on such business for himself or herself and not as the agent for any other person, (f) a statement that the applicant intends to superintend in person the management of the business licensed and that if so licensed he or she will superintend in person the management of the business, and (g) such other information as the commission may from time to time direct. The applicant shall also submit two legible sets of fingerprints to be furnished to the Federal Bureau of Investigation through the Nebraska

State Patrol for a national criminal history record check and the fee for such record check payable to the patrol.

~~(2) The application shall be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If any false statement is made in any part of such application, the applicant or applicants shall be deemed guilty of perjury, and upon conviction thereof the license shall be revoked and the applicant subjected to the penalties provided by law for that crime.~~

Sec. 6. Section 53-132, Reissue Revised Statutes of Nebraska, is amended to read:

53-132 (1) If no hearing is required pursuant to subdivision (1)(a) or (b) of section 53-133 and the commission has no objections pursuant to subdivision (1)(c) of such section, the commission may waive the forty-five-day objection period and, if not otherwise prohibited by law, cause a retail license, bottle club license, craft brewery license, or microdistillery license to be signed by its chairperson, attested by its executive director 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, bottle club license, craft brewery license, or microdistillery license may be issued to any qualified applicant if the commission finds that (a) 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, (b) the applicant can conform to all provisions and requirements of and rules and regulations adopted pursuant to the Nebraska Liquor Control Act, (c) the applicant has demonstrated that the type of management and control to be exercised over the premises described in the application will be sufficient to insure that the licensed business can conform to all provisions and requirements of and rules and regulations adopted pursuant to the act, and (d) the issuance of the license is or will be required by the present or future public convenience and necessity.

(3) In making its determination pursuant to subsection (2) of this section the commission shall consider:

(a) The recommendation of the local governing body;

(b) The existence of a citizens' protest made in accordance with section 53-133;

(c) The existing population of the city, village, or county and its projected growth;

(d) The nature of the neighborhood or community of the location of the proposed licensed premises;

(e) The existence or absence of other retail licenses, bottle club licenses, craft brewery licenses, or microdistillery licenses with similar privileges within the neighborhood or community of the location of the proposed licensed premises and whether, as evidenced by substantive, corroborative documentation, the issuance of such license would result in or add to an undue concentration of licenses with similar privileges and, as a result, require the use of additional law enforcement resources;

(f) The existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises;

(g) The adequacy of existing law enforcement;

(h) Zoning restrictions;

(i) The sanitation or sanitary conditions on or about the proposed licensed premises; and

(j) 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.

(4) Retail licenses, bottle club licenses, craft brewery licenses, or microdistillery licenses issued or renewed by the commission shall be mailed or delivered electronically to:

(a) The clerk of the city, village, or county who shall deliver the same to the licensee upon receipt from the licensee of proof of payment of (i) the license fee if by the terms of subsection (6) of section 53-124 the fee is payable to the treasurer of such city, village, or county, (ii) any fee for publication of notice of hearing before the local governing body upon the application for the license, (iii) the fee for publication of notice of renewal as provided in section 53-135.01, and (iv) occupation taxes, if any, imposed by such city, village, or county except as otherwise provided in subsection (7) of this section; or -

(b) The licensee, upon confirmation from the clerk of the city, village, or county that the necessary fees and taxes described in subdivision (4)(a) of this section have been received by the clerk of such city, village, or county.

~~(5)~~ Notwithstanding any ordinance or charter power to the contrary, no city, village, or county shall impose an occupation tax on the business of any person, firm, or corporation licensed under the act and doing business within the corporate limits of such city or village or within the boundaries of such county in any sum which exceeds two times the amount of the license fee required to be paid under the act to obtain such license.

~~(6)~~ Each license shall designate the name of the licensee, the place of business licensed, and the type of license issued.

~~(7)~~ Class J retail licensees shall not be subject to occupation taxes under subsection (4) of this section.

Sec. 7. Section 53-135, Reissue Revised Statutes of Nebraska, is amended to read:

53-135 A retail or bottle club license issued by the commission and

outstanding may be automatically renewed by the commission without formal application upon payment of the renewal fee and license fee if payable to the commission prior to or within thirty days after the expiration of the license. The payment shall be an affirmative representation and certification by the licensee that all answers contained in an application, if submitted, would be the same in all material respects as the answers contained in the last previous application. The commission may at any time require a licensee to submit an application, and the commission shall at any time require a licensee to submit an application if requested in writing to do so by the local governing body.

If a licensee files an application form ~~in triplicate original~~ upon seeking renewal of his or her license, the application shall be processed as set forth in section 53-131.

Sec. 8. Section 53-148.01, Reissue Revised Statutes of Nebraska, is amended to read:

53-148.01 Any retail or bottle club licensee shall post in a conspicuous place a sign which clearly reads as follows: Warning: Drinking alcoholic beverages during pregnancy can cause birth defects. The commission shall prescribe the form of such warning sign and shall make such warning signs available to all retail and bottle club licensees. Warning signs may be provided electronically by the commission to the licensee.

Sec. 9. Section 53-180.04, Reissue Revised Statutes of Nebraska, is amended to read:

53-180.04 (1) Every licensee of a place where alcoholic liquor is sold at retail shall display at all times in a prominent place a printed card with a minimum height of twenty inches and a width of fourteen inches, with each letter to be a minimum of one-fourth inch in height, which shall read as follows:

WARNING TO PERSONS UNDER 21

YOU ARE SUBJECT TO

NOTIFICATION OF PARENTS OR GUARDIAN

AND

YOU ARE SUBJECT TO A PENALTY OF UP TO

\$500 FINE

3 MONTHS IN JAIL

OR BOTH IF YOU ARE UNDER 21 AND YOU CONSUME,

PURCHASE, ATTEMPT TO PURCHASE,

OR HAVE IN YOUR POSSESSION

ALCOHOLIC LIQUOR IN THIS ESTABLISHMENT

AND

WARNING TO ADULTS

YOU ARE SUBJECT TO A PENALTY OF UP TO

\$1000 FINE

1 YEAR IN JAIL

OR BOTH

IF YOU ARE 21 OR OVER AND YOU PURCHASE

ALCOHOLIC LIQUOR

FOR A PERSON UNDER 21

AND

WARNING TO PURCHASERS OF BEER KEGS

PROPER IDENTIFICATION AND PURCHASER'S SIGNATURE

ARE REQUIRED

LAWS OF THE STATE OF NEBRASKA

(2) Such warning sign may be provided electronically by the commission to the licensee.

Sec. 10. Original sections 53-101, 53-123.12, 53-124.12, 53-131.01,

53-132, 53-135, 53-148.01, and 53-180.04, Reissue Revised Statutes of Nebraska, are repealed.