

ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010
COMMITTEE STATEMENT
LB861

Hearing Date: Monday January 25, 2010
Committee On: General Affairs
Introducer: General Affairs
One Liner: Transfer, reorganize, and remove unconstitutional provisions of the Nebraska Liquor Control Act

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

Vote Results:
Aye: 8 Senators Coash, Cook, Dierks, Dubas, Karpisek, Krist, Price, Rogert
Nay:
Absent:
Present Not Voting:

Proponents:
Joshua Eickmeier, Legal Counsel
Jim Moylan

Representing:
Committee on General Affairs
NE Licensed Beverage Association

Opponents:

Representing:

Neutral:
Hobert Rupe

Representing:
NE Liquor Control Commission

Summary of purpose and/or changes:

LB 861 is a General Affairs Committee cleanup bill that consists of bill drafters' recommendations to the Liquor Control Act. The four changes in this bill are as follows:

1. Divide the definitions in section 53-103 into separate sections and place them in alphabetical order, found in sections 5 to 47. Sections 2, 3, 4, 50, 61, 65, 66, 67, 68, and 69 correct references to the new sections where the definitions are found.
2. Create a table in a new section for fees found in section 53-124 and leave section 53-124 as the section that provides procedures for fees. See sections 52 and 53 found on pages 32-38. Sections 1, 4, 48, 49, 51, 54, 55, 56, 57, 58, 59, and 62 correct references to the fees and subdivision of section 53-124 as changed.
3. Change the distribution language for the license fees to the common school fund according to direction from the office of the State Treasurer. See sections 60 and 64 on pages 49-50 and 55-57.
4. Reverse the changes made to section 53-169.01 by Laws 2007, LB578, Section 3. See section 63 on pages 54-55. The court declared the section as amended was unconstitutional in *Southern Wine & Spirits of America, Inc. v. Heineman*, 534 F.Supp.2d 1001 (D.Neb.2008). Case No. 4:07CV3244 (D. Neb.) (2/14/08). All the changes are reversed in this bill.

Explanation of amendments:

LB 786 repeals section 53-174 of the Liquor Control Act. Section 53-174 states that, "It shall be unlawful for any person or for any licensee to sell or offer for sale in this state any beer to which has been added any alcohol or to permit any person to add any alcohol to any beer on the premises of such person or licensee."

LB 869 with amendment amends section 53-123 of the Liquor Control Act by increasing the application fee for a liquor license from \$45 to \$400. The liquor license fee would also become non-refundable.

LB 870 with amendment amends section 53-149 of the Liquor Control Act by creating a temporary operator's permit. Under current law, a business owner with a liquor license may sell an establishment to a buyer who may then operate the establishment under the seller's liquor license until the buyer's liquor license application has been processed and the buyer qualifies for a regular liquor license. Any Liquor Control Act violations committed by the buyer currently go on the seller's liquor license.

Under this bill, once an establishment is sold, the seller's liquor license is immediately terminated and the buyer may apply for a temporary operator's permit to continue to operate the establishment until the buyer's application for a new license is processed. Any violations of the Liquor Control Act committed by the buyer would now go on the buyer's record and could impact the buyer's ability to qualify for a regular liquor license.

The buyer must provide the Liquor Control Commission with documentation that the seller is current on all accounts with any wholesaler. A seller who provides false information regarding such accounts is guilty of a Class IV misdemeanor for each offense. Also, if the application were withdrawn by the applicant or were denied by the Liquor Control Commission, the previous license may be reinstated at the discretion of the Liquor Control Commission upon request by the previous licensee.

LB 883 with amendment would allow farm wineries to store and warehouse products at an offsite facility. The Liquor Control Commission must be notified of the location and the farm winery must maintain at the offsite facility a separate perpetual inventory of the product stored there. Consumption of alcoholic liquor at the facility is strictly prohibited. LB 883 with amendment harmonizes the bill with federal law regarding reporting and tax payment schedules. Farm wineries that pay less than \$1,000 in excise taxes are to report the total amount of wine produced and pay their taxes on an annual basis. Farm wineries that pay \$1,000 or more in excise taxes are to report the total amount of wine produced and pay their taxes on a monthly basis. Farm wineries that were reporting and paying on an annual basis that become liable for \$1,000 or more in excise taxes are to pay their taxes immediately.

LB 906 with amendment amends section 53-177(1) of the Liquor Control Act by allowing the Liquor Control Commission to grant a liquor license for an establishment located within 150 feet of a church only after notice has been provided to the affected church and a hearing has been held. Under current law, no liquor license shall be issued for an establishment located within 150 feet of a church.

LB 1000 amends sections 53-125 and 53-103 of the Liquor Control Act. LB 1000 requires that any officer or director of the LLC or any member with an ownership interest of more than 25% would have to meet the qualifications for a liquor license, which is the current requirement for corporations. LB 1000 also requires that a manager for an LLC would need to be a citizen and a resident of Nebraska. This is consistent with LB 788 (2010), which would also require that a manager for a corporation be a citizen and resident of Nebraska. This bill merely codifies the current interpretation and requirement of the Liquor Control Commission that managers be citizens and residents of Nebraska.

LB 1012 increases the membership of the State Racing Commission from three to five members. One member shall be appointed from each of the three congressional districts and two shall be appointed at large. The term for each member shall be four years. Not more than three members of the Commission shall be from the same political party, no more than two members of the Commission shall reside in the same congressional district, and no more than two members shall reside in the same county.

Currently, no member or employee of the commission shall have an interest in a horse that is racing under the jurisdiction of the committee, shall have a pecuniary interest or engage in any private employment in a profession or business which is regulated by or interferes or conflicts with the performance or proper discharge of the duties of the commission, shall wager or cause a wager to be placed on the outcome of any race under the jurisdiction and supervision of the commission, or shall have a pecuniary interest or engage in any private employment in a business which does business with any racing association licensed by the commission or in any business issued a concession operator license by the commission. LB 1012 would allow a member of the commission to engage in these activities, but not an employee of the commission. A Racing Commissioner shall file a conflict of interest statement and recuse himself or herself from voting on matters in which there is a conflict of interest.

Russ Karpisek, Chairperson