

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 600**

Introduced by Karpisek, 32.

Read first time January 21, 2009

Committee: General Affairs

A BILL

1 FOR AN ACT relating to pool halls; to amend section 28-1422,  
2 Reissue Revised Statutes of Nebraska, and sections 53-101  
3 and 53-103, Revised Statutes Cumulative Supplement, 2008;  
4 to provide for an exemption for pool halls as prescribed;  
5 to define a term; to provide duties for pool hall owners;  
6 to harmonize provisions; to provide an operative date;  
7 to repeal the original sections; and to declare an  
8 emergency.

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

1           Section 1. Section 28-1422, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-1422 Every person, partnership, limited liability  
4 company, or corporation desiring a license under sections 28-1420  
5 to 28-1429 shall file with the clerk or finance department of  
6 the city, town, or village where his, her, their, or its place  
7 of business is located, if within the limits of a city, town,  
8 or village, or with the clerk of the county where such place of  
9 business is located, if outside the limits of any city, town, or  
10 village, a written application stating the name of the person,  
11 partnership, limited liability company, or corporation for whom  
12 such license is desired and the exact location of the place of  
13 business and shall deposit with such application the amount of the  
14 license fee provided in section 28-1423. If the applicant is an  
15 individual, the application shall include the applicant's social  
16 security number. If the applicant is the owner of a pool hall as  
17 defined in section 53-103 which allows smoking, the application,  
18 if other than an initial application, shall include proof that the  
19 pool hall satisfies such definition.

20           Sec. 2. Section 53-101, Revised Statutes Cumulative  
21 Supplement, 2008, is amended to read:

22           53-101 Sections 53-101 to 53-1,122 and section 4 of this  
23 act shall be known and may be cited as the Nebraska Liquor Control  
24 Act.

25           Sec. 3. Section 53-103, Revised Statutes Cumulative

1 Supplement, 2008, is amended to read:

2           53-103 For purposes of the Nebraska Liquor Control Act,  
3 unless the context otherwise requires:

4           (1) Alcohol means the product of distillation of any  
5 fermented liquid, whether rectified or diluted, whatever the origin  
6 thereof, and includes synthetic ethyl alcohol and alcohol processed  
7 or sold in a gaseous form. Alcohol does not include denatured  
8 alcohol or wood alcohol;

9           (2) Spirits means any beverage which contains alcohol  
10 obtained by distillation, mixed with water or other substance  
11 in solution, and includes brandy, rum, whiskey, gin, or other  
12 spirituous liquors and such liquors when rectified, blended, or  
13 otherwise mixed with alcohol or other substances;

14           (3) Wine means any alcoholic beverage obtained by the  
15 fermentation of the natural contents of fruits or vegetables,  
16 containing sugar, including such beverages when fortified by the  
17 addition of alcohol or spirits;

18           (4) Beer means a beverage obtained by alcoholic  
19 fermentation of an infusion or concoction of barley or other grain,  
20 malt, and hops in water and includes, but is not limited to, beer,  
21 ale, stout, lager beer, porter, and near beer;

22           (5) Alcoholic liquor includes alcohol, spirits, wine,  
23 beer, and any liquid or solid, patented or not, containing alcohol,  
24 spirits, wine, or beer and capable of being consumed as a beverage  
25 by a human being. Alcoholic liquor also includes confections or

1 candy with alcohol content of more than one-half of one percent  
2 alcohol. The act does not apply to (a) alcohol used in the  
3 manufacture of denatured alcohol produced in accordance with acts  
4 of Congress and regulations adopted and promulgated pursuant to  
5 such acts, (b) flavoring extracts, syrups, medicinal, mechanical,  
6 scientific, culinary, or toilet preparations, or food products  
7 unfit for beverage purposes, but the act applies to alcoholic  
8 liquor used in the manufacture, preparation, or compounding of such  
9 products or confections or candy that contains more than one-half  
10 of one percent alcohol, or (c) wine intended for use and used by  
11 any church or religious organization for sacramental purposes;

12 (6) Near beer means beer containing less than one-half of  
13 one percent of alcohol by volume;

14 (7) Original package means any bottle, flask, jug, can,  
15 cask, barrel, keg, hogshead, or other receptacle or container  
16 used, corked or capped, sealed, and labeled by the manufacturer of  
17 alcoholic liquor to contain and to convey any alcoholic liquor;

18 (8) Manufacturer means every brewer, fermenter,  
19 distiller, rectifier, winemaker, blender, processor, bottler,  
20 or person who fills or refills an original package and others  
21 engaged in brewing, fermenting, distilling, rectifying, or bottling  
22 alcoholic liquor, including a wholly owned affiliate or duly  
23 authorized agent for a manufacturer;

24 (9) Nonbeverage user means every manufacturer of any  
25 of the products set forth and described in subsection (4) of

1 section 53-160, when such product contains alcoholic liquor, and  
2 all laboratories, hospitals, and sanatoria using alcoholic liquor  
3 for nonbeverage purposes;

4 (10) Manufacture means to distill, rectify, ferment,  
5 brew, make, mix, concoct, process, blend, bottle, or fill an  
6 original package with any alcoholic liquor and includes blending  
7 but does not include the mixing or other preparation of drinks for  
8 serving by those persons authorized and permitted in the act to  
9 serve drinks for consumption on the premises where sold;

10 (11) Wholesaler means a person importing or causing to be  
11 imported into the state or purchasing or causing to be purchased  
12 within the state alcoholic liquor for sale or resale to retailers  
13 licensed under the act, whether the business of the wholesaler is  
14 conducted under the terms of a franchise or any other form of an  
15 agreement with a manufacturer or manufacturers, or who has caused  
16 alcoholic liquor to be imported into the state or purchased in  
17 the state from a manufacturer or manufacturers and was licensed  
18 to conduct such a business by the commission on May 1, 1970, or  
19 has been so licensed since that date. Wholesaler does not include  
20 any retailer licensed to sell alcoholic liquor for consumption off  
21 the premises who sells alcoholic liquor other than beer or wine  
22 to another retailer pursuant to section 53-175, except that any  
23 such retailer shall obtain the required federal wholesaler's basic  
24 permit and federal wholesale liquor dealer's special tax stamp.  
25 Wholesaler includes a distributor, distributorship, and jobber;

1           (12) Person means any natural person, trustee,  
2 corporation, partnership, or limited liability company;

3           (13) Retailer means a person who sells or offers for sale  
4 alcoholic liquor for use or consumption and not for resale in any  
5 form except as provided in section 53-175;

6           (14) Sell at retail and sale at retail means sale for use  
7 or consumption and not for resale in any form except as provided in  
8 section 53-175;

9           (15) Commission means the Nebraska Liquor Control  
10 Commission;

11           (16) Sale means any transfer, exchange, or barter in any  
12 manner or by any means for a consideration and includes any sale  
13 made by any person, whether principal, proprietor, agent, servant,  
14 or employee;

15           (17) To sell means to solicit or receive an order for, to  
16 keep or expose for sale, or to keep with intent to sell;

17           (18) Restaurant means any public place (a) which is kept,  
18 used, maintained, advertised, and held out to the public as a place  
19 where meals are served and where meals are actually and regularly  
20 served, (b) which has no sleeping accommodations, and (c) which  
21 has adequate and sanitary kitchen and dining room equipment and  
22 capacity and a sufficient number and kind of employees to prepare,  
23 cook, and serve suitable food for its guests;

24           (19) Club means a corporation (a) which is organized  
25 under the laws of this state, not for pecuniary profit, solely

1 for the promotion of some common object other than the sale or  
2 consumption of alcoholic liquor, (b) which is kept, used, and  
3 maintained by its members through the payment of annual dues, (c)  
4 which owns, hires, or leases a building or space in a building  
5 suitable and adequate for the reasonable and comfortable use and  
6 accommodation of its members and their guests, and (d) which  
7 has suitable and adequate kitchen and dining room space and  
8 equipment and a sufficient number of servants and employees for  
9 cooking, preparing, and serving food and meals for its members  
10 and their guests. The affairs and management of such club shall  
11 be conducted by a board of directors, executive committee, or  
12 similar body chosen by the members at their annual meeting, and  
13 no member, officer, agent, or employee of the club shall be paid  
14 or shall directly or indirectly receive, in the form of salary or  
15 other compensation, any profits from the distribution or sale of  
16 alcoholic liquor to the club or the members of the club or its  
17 guests introduced by members other than any salary fixed and voted  
18 at any annual meeting by the members or by the governing body of  
19 the club out of the general revenue of the club;

20 (20) Hotel means any building or other structure (a)  
21 which is kept, used, maintained, advertised, and held out to  
22 the public to be a place where food is actually served and  
23 consumed and sleeping accommodations are offered for adequate  
24 pay to travelers and guests, whether transient, permanent, or  
25 residential, (b) in which twenty-five or more rooms are used for

1 the sleeping accommodations of such guests, and (c) which has one  
2 or more public dining rooms where meals are served to such guests,  
3 such sleeping accommodations and dining rooms being conducted in  
4 the same buildings in connection therewith and such building or  
5 buildings or structure or structures being provided with adequate  
6 and sanitary kitchen and dining room equipment and capacity;

7 (21) Nonprofit corporation means any corporation  
8 organized under the laws of this state, not for profit, which has  
9 been exempted from the payment of federal income taxes;

10 (22) Minor means any person, male or female, under  
11 twenty-one years of age, regardless of marital status;

12 (23) Brand means alcoholic liquor identified as the  
13 product of a specific manufacturer;

14 (24) Franchise or agreement, with reference to the  
15 relationship between a manufacturer and wholesaler, includes one or  
16 more of the following: (a) A commercial relationship of a definite  
17 duration or continuing indefinite duration which is not required  
18 to be in writing; (b) a relationship by which the wholesaler is  
19 granted the right to offer and sell the manufacturer's brands by  
20 the manufacturer; (c) a relationship by which the franchise, as an  
21 independent business, constitutes a component of the manufacturer's  
22 distribution system; (d) a relationship by which the operation  
23 of the wholesaler's business is substantially associated with  
24 the manufacturer's brand, advertising, or other commercial symbol  
25 designating the manufacturer; and (e) a relationship by which the



1 operation of the wholesaler's business is substantially reliant on  
2 the manufacturer for the continued supply of beer;

3 (25) Territory or sales territory means the wholesaler's  
4 area of sales responsibility for the brand or brands of the  
5 manufacturer;

6 (26) Suspend means to cause a temporary interruption of  
7 all rights and privileges of a license;

8 (27) Cancel means to discontinue all rights and  
9 privileges of a license;

10 (28) Revoke means to permanently void and recall all  
11 rights and privileges of a license;

12 (29) Generic label means a label which is not protected  
13 by a registered trademark, either in whole or in part, or to  
14 which no person has acquired a right pursuant to state or federal  
15 statutory or common law;

16 (30) Private label means a label which the purchasing  
17 wholesaler or retailer has protected, in whole or in part, by  
18 a trademark registration or which the purchasing wholesaler or  
19 retailer has otherwise protected pursuant to state or federal  
20 statutory or common law;

21 (31) Farm winery means any enterprise which produces and  
22 sells wines produced from grapes, other fruit, or other suitable  
23 agricultural products of which at least seventy-five percent of  
24 the finished product is grown in this state or which meets the  
25 requirements of section 53-123.13;

1           (32) Campus, as it pertains to the southern boundary of  
2 the main campus of the University of Nebraska-Lincoln, means the  
3 south right-of-way line of R Street and abandoned R Street from  
4 10th to 17th streets;

5           (33) Brewpub means any restaurant or hotel which produces  
6 on its premises a maximum of ten thousand barrels of beer per year;

7           (34) Manager means a person appointed by a corporation to  
8 oversee the daily operation of the business licensed in Nebraska. A  
9 manager shall meet all the requirements of the act as though he or  
10 she were the applicant, except for residency and citizenship;

11           (35) Shipping license means a license granted pursuant to  
12 section 53-123.15;

13           (36) Sampling means consumption on the premises of a  
14 retail licensee of not more than five samples of one fluid ounce or  
15 less of alcoholic liquor by the same person in a twenty-four-hour  
16 period;

17           (37) Microbrewery means any small brewery producing a  
18 maximum of ten thousand barrels of beer per year;

19           (38) Craft brewery means a brewpub or a microbrewery;

20           (39) Local governing body means (a) the city council or  
21 village board of trustees of a city or village within which the  
22 licensed premises are located or (b) if the licensed premises are  
23 not within the corporate limits of a city or village, the county  
24 board of the county within which the licensed premises are located;

25           (40) Consume means knowingly and intentionally drinking

1 or otherwise ingesting alcoholic liquor; ~~and~~

2 (41) Microdistillery means a distillery located in  
3 Nebraska that is licensed to distill liquor on the premises of the  
4 distillery licensee and produces ten thousand or fewer gallons of  
5 liquor annually; ~~and-~~

6 (42) Pool hall means a holder of a Class C liquor license  
7 which:

8 (a) Is licensed as a pool hall if required by statute,  
9 resolution, or ordinance;

10 (b) Has at least twenty hourly fee pool tables not  
11 considered mechanical amusement devices as defined in section  
12 77-3001;

13 (c) Prohibits admittance to anyone under eighteen years  
14 of age; and

15 (d) Has a notice posted at each entrance stating that  
16 smoking is permitted inside the pool hall.

17 Sec. 4. Nothing in the Nebraska Clean Indoor Air Act or  
18 any similar city ordinance that prohibits smoking in indoor areas  
19 shall apply to pool halls as defined in section 53-103.

20 Sec. 5. This act becomes operative on June 1, 2009.

21 Sec. 6. Original section 28-1422, Reissue Revised  
22 Statutes of Nebraska, and sections 53-101 and 53-103, Revised  
23 Statutes Cumulative Supplement, 2008, are repealed.

24 Sec. 7. Since an emergency exists, this act takes effect  
25 when passed and approved according to law.