

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1130

Final Reading

Introduced by Coash, 27; Avery, 28; Council, 11; Fulton, 29;
Lathrop, 12; McGill, 26; Nordquist, 7; Campbell, 25;
Haar, 21; Lambert, 2; Mello, 5; Smith, 14.

Read first time January 19, 2012

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 sections 53-123, 53-123.04, 53-123.14, and 53-123.16,
3 Reissue Revised Statutes of Nebraska, and sections 53-101
4 and 53-134, Revised Statutes Supplement, 2011; to define
5 terms; to provide for an entertainment district license;
6 to provide for a fee; to harmonize provisions; and to
7 repeal the original sections.

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

1 Section 1. Section 53-101, Revised Statutes Supplement,
2 2011, is amended to read:

3 53-101 Sections 53-101 to 53-1,122 and section 6 of this
4 act shall be known and may be cited as the Nebraska Liquor Control
5 Act.

6 Sec. 2. Section 53-123, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 53-123 Licenses issued by the commission shall be of the
9 following types: (1) Manufacturer's license; (2) alcoholic liquor
10 wholesale license, except beer; (3) beer wholesale license; (4)
11 retail license; (5) railroad license; (6) airline license; (7) boat
12 license; (8) nonbeverage user's license; (9) farm winery license;
13 (10) craft brewery license; (11) shipping license; (12) special
14 designated license; (13) catering license; ~~and~~ (14) microdistillery
15 license; and (15) entertainment district license.

16 Sec. 3. Section 53-123.04, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 53-123.04 (1) A retail license shall allow the licensee
19 to sell and offer for sale at retail either in the original package
20 or otherwise, as prescribed in the retail license, on the premises
21 specified in the retail license or the entertainment district license
22 or on the premises where catering is occurring, alcoholic liquor or
23 beer for use or consumption but not for resale in any form except as
24 provided in section 53-175.

25 (2) Nothing in the Nebraska Liquor Control Act shall

1 prohibit a holder of a Class D license from allowing the sampling of
2 tax-paid wine for consumption on the premises by such licensee or his
3 or her employees in cooperation with a licensed wholesaler in the
4 manner prescribed by the commission.

5 (3)(a) A restaurant holding a license to sell alcoholic
6 liquor at retail for consumption on the licensed premises may permit
7 a customer to remove one unsealed bottle of wine for consumption off
8 the premises if the customer has purchased a full-course meal and
9 consumed a portion of the bottle of wine with such full-course meal
10 on the licensed premises. The licensee or his or her agent shall (i)
11 securely reseal such bottle and place the bottle in a bag designed so
12 that it is visibly apparent that the resealed bottle of wine has not
13 been opened or tampered with and (ii) provide a dated receipt to the
14 customer and attach to such bag a copy of the dated receipt for the
15 resealed bottle of wine and the full-course meal.

16 (b) If the resealed bottle of wine is transported in a
17 motor vehicle, it must be placed in the trunk of the motor vehicle or
18 the area behind the last upright seat of such motor vehicle if the
19 area is not normally occupied by the driver or a passenger and the
20 motor vehicle is not equipped with a trunk.

21 (c) For purposes of this subsection, full-course meal
22 means a diversified selection of food which is ordinarily consumed
23 with the use of tableware and cannot conveniently be consumed while
24 standing or walking.

25 Sec. 4. Section 53-123.14, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 53-123.14 Any person who operates a craft brewery shall
3 obtain a license pursuant to the Nebraska Liquor Control Act. A
4 license to operate a craft brewery shall permit a brewpub or
5 microbrewery to produce on the craft brewery premises a maximum of
6 ten thousand barrels of beer per year. A craft brewery may also sell
7 to beer wholesalers for sale and distribution to licensed retailers.
8 A craft brewery license issued pursuant to this section shall be the
9 only license required by the Nebraska Liquor Control Act for the
10 manufacture and retail sale of beer for consumption on or off the
11 licensed premises, except that the sale of any beer other than beer
12 manufactured by the craft brewery licensee, wine, or alcoholic liquor
13 by the drink for consumption on the craft brewery premises shall
14 require the appropriate retail license. Any license held by the
15 operator of a craft brewery shall be subject to the act. A holder of
16 a craft brewery license may obtain an annual catering license
17 pursuant to section 53-124.12, ~~or~~ a special designated license
18 pursuant to section 53-124.11, or an entertainment district license
19 pursuant to section 6 of this act.

20 Sec. 5. Section 53-123.16, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 53-123.16 Any person who operates a microdistillery shall
23 obtain a license pursuant to the Nebraska Liquor Control Act. A
24 license to operate a microdistillery shall permit the licensee to
25 produce on the premises a maximum of ten thousand gallons of liquor

1 per year. A microdistillery may also sell to licensed wholesalers for
2 sale and distribution to licensed retailers. A microdistillery
3 license issued pursuant to this section shall be the only license
4 required by the Nebraska Liquor Control Act for the manufacture and
5 retail sale of microdistilled product for consumption on or off the
6 licensed premises, except that the sale of any beer, wine, or
7 alcoholic liquor, other than microdistilled product manufactured by
8 the microdistillery licensee, by the drink for consumption on the
9 microdistillery premises shall require the appropriate retail
10 license. Any license held by the operator of a microdistillery shall
11 be subject to the act. A holder of a microdistillery license may
12 obtain an annual catering license pursuant to section 53-124.12, ~~or a~~
13 special designated license pursuant to section 53-124.11, or an
14 entertainment district license pursuant to section 6 of this act. The
15 commission may, upon the conditions it determines, grant to any
16 microdistillery licensed under this section a special license
17 authorizing the microdistillery to purchase and to import, from such
18 persons as are entitled to sell the same, wines or spirits to be used
19 solely as ingredients and for the sole purpose of blending with and
20 flavoring microdistillery products as a part of the microdistillation
21 process.

22 Sec. 6. (1) A local governing body may designate an
23 entertainment district in which a commons area may be used by retail,
24 craft brewery, and microdistillery licensees which obtain an
25 entertainment district license. The local governing body may, at any

1 time, revoke such designation if it finds that the commons area
2 threatens the health, safety, or welfare of the public or has become
3 a common nuisance. The local governing body shall file the
4 designation or the revocation of the designation with the commission.

5 (2) An entertainment district license allows the sale of
6 alcoholic liquor for consumption on the premises within the confines
7 of a commons area. The consumption of alcoholic liquor in the commons
8 area shall only occur during the hours authorized for sale of
9 alcoholic liquor for consumption on the premises under section 53-179
10 and while food service is available in the commons area. Only the
11 holder of an entertainment district license or employees of such
12 licensee may sell or dispense alcoholic liquor in the commons area.

13 (3) An entertainment district licensee shall serve
14 alcoholic liquor to be consumed in the commons area in containers
15 that prominently displays the licensee's trade name or logo or some
16 other mark that is unique to the licensee under the licensee's retail
17 license, craft brewery license, or microdistillery license. An
18 entertainment district licensee may allow alcohol sold by another
19 entertainment district licensee to enter the licensed premises of
20 either licensee. No entertainment district licensee shall allow
21 alcoholic liquor to leave the commons area or the premises licensed
22 under its retail license, craft brewery license, or microdistillery
23 license.

24 (4) If the licensed premises of the holder of a license
25 to sell alcoholic liquor at retail issued under subsection (6) of

1 section 53-124, a craft brewery license, or a microdistillery license
2 is adjacent to a commons area in an entertainment district designated
3 by a local governing body pursuant to this section, the holder of the
4 license may obtain an annual entertainment district license as
5 prescribed in this section. The entertainment district license shall
6 be issued for the same period and may be renewed in the same manner
7 as the retail license, craft brewery license, or microdistillery
8 license.

9 (5) In order to obtain an entertainment district license,
10 a person eligible under subsection (4) of this section shall:

11 (a) File an application with the commission upon such
12 forms as the commission prescribes; and

13 (b) Pay an additional license fee of three hundred
14 dollars for the privilege of serving alcohol in the entertainment
15 district payable to the clerk of the local governing body in the same
16 manner as license fees under subdivision (4) of section 53-134.

17 (6) When an application for an entertainment district
18 license is filed, the commission shall notify the clerk of the local
19 governing body. The commission shall include with such notice one
20 copy of the application by mail or electronic delivery. The local
21 governing body and the commission shall process the application in
22 the same manner as provided in section 53-132.

23 (7) The local governing body may impose an occupation tax
24 on the business of an entertainment district licensee doing business
25 within the liquor license jurisdiction of the local governing body as

1 provided in subdivision (11)(b) of this section in accordance with
2 section 53-132.

3 (8) The local governing body with respect to
4 entertainment district licensees within its liquor license
5 jurisdiction as provided in subdivision (11)(b) of this section may
6 cancel an entertainment district license for cause for the remainder
7 of the period for which such entertainment district license is
8 issued. Any person whose entertainment district license is canceled
9 may appeal to the commission in accordance with section 53-134.

10 (9) A local governing body may regulate by ordinance, not
11 inconsistent with the Nebraska Liquor Control Act, any area it
12 designates as an entertainment district.

13 (10) Violation of any provision of this section or any
14 rules or regulations adopted and promulgated pursuant to this section
15 by an entertainment district licensee may be cause to revoke, cancel,
16 or suspend the retail license issued under subsection (6) of section
17 53-124, craft brewery license, or microdistillery license held by
18 such licensee.

19 (11) For purposes of this section:

20 (a) Commons area means an area:

21 (i) Within an entertainment district designated by a
22 local governing body;

23 (ii) Shared by authorized licensees with entertainment
24 district licenses;

25 (iii) Abutting the licensed premises of such licensees;

1 (iv) Having limited pedestrian accessibility by use of a
2 physical barrier, either on a permanent or temporary basis; and

3 (v) Closed to vehicular traffic when used as a commons
4 area.

5 Commons area may include any area of a public or private
6 right-of-way if the area otherwise meets the requirements of this
7 section; and

8 (b) Local governing body means the governing body of the
9 city or village in which the entertainment district licensee is
10 located.

11 Sec. 7. Section 53-134, Revised Statutes Supplement,
12 2011, is amended to read:

13 53-134 The local governing body of any city or village
14 with respect to licenses within its corporate limits and the local
15 governing body of any county with respect to licenses not within the
16 corporate limits of any city or village but within the county shall
17 have the following powers, functions, and duties with respect to
18 retail, craft brewery, ~~and~~ microdistillery, and entertainment
19 district licenses:

20 (1) To cancel or revoke for cause retail, craft brewery,
21 ~~or~~ microdistillery, or entertainment district licenses to sell or
22 dispense alcoholic liquor issued to persons for premises within its
23 jurisdiction, subject to the right of appeal to the commission;

24 (2) To enter or to authorize any law enforcement officer
25 to enter at any time upon any premises licensed under the Nebraska

1 Liquor Control Act to determine whether any provision of the act, any
2 rule or regulation adopted and promulgated pursuant to the act, or
3 any ordinance, resolution, rule, or regulation adopted by the local
4 governing body has been or is being violated and at such time examine
5 the premises of such licensee in connection with such determination.
6 Any law enforcement officer who determines that any provision of the
7 act, any rule or regulation adopted and promulgated pursuant to the
8 act, or any ordinance, resolution, rule, or regulation adopted by the
9 local governing body has been or is being violated shall report such
10 violation in writing to the executive director of the commission (a)
11 within thirty days after determining that such violation has
12 occurred, (b) within thirty days after the conclusion of an ongoing
13 police investigation, or (c) within thirty days after the verdict in
14 a prosecution related to such an ongoing police investigation if the
15 prosecuting attorney determines that reporting such violation prior
16 to the verdict would jeopardize such prosecution, whichever is later;

17 (3) To receive a signed complaint from any citizen within
18 its jurisdiction that any provision of the act, any rule or
19 regulation adopted and promulgated pursuant to the act, or any
20 ordinance, resolution, rule, or regulation relating to alcoholic
21 liquor has been or is being violated and to act upon such complaints
22 in the manner provided in the act;

23 (4) To receive retail license fees, craft brewery license
24 fees, and microdistillery license fees as provided in sections 53-124
25 and 53-124.01 and entertainment district license fees as provided in

1 section 6 of this act and pay the same, after the license has been
2 delivered to the applicant, to the city, village, or county
3 treasurer;

4 (5) To examine or cause to be examined any applicant or
5 any retail licensee, craft brewery licensee, ~~or~~ microdistillery
6 licensee, or entertainment district licensee upon whom notice of
7 cancellation or revocation has been served as provided in the act, to
8 examine or cause to be examined the books and records of any
9 applicant or licensee, and to hear testimony and to take proof for
10 its information in the performance of its duties. For purposes of
11 obtaining any of the information desired, the local governing body
12 may authorize its agent or attorney to act on its behalf;

13 (6) To cancel or revoke on its own motion any license if,
14 upon the same notice and hearing as provided in section 53-134.04, it
15 determines that the licensee has violated any of the provisions of
16 the act or any valid and subsisting ordinance, resolution, rule, or
17 regulation duly enacted, adopted, and promulgated relating to
18 alcoholic liquor. Such order of cancellation or revocation may be
19 appealed to the commission within thirty days after the date of the
20 order by filing a notice of appeal with the commission. The
21 commission shall handle the appeal in the manner provided for hearing
22 on an application in section 53-133; and

23 (7) Upon receipt from the commission of the notice and
24 copy of application as provided in section 53-131, to fix a time and
25 place for a hearing at which the local governing body shall receive

1 evidence, either orally or by affidavit from the applicant and any
2 other person, bearing upon the propriety of the issuance of a
3 license. Notice of the time and place of such hearing shall be
4 published in a legal newspaper in or of general circulation in such
5 city, village, or county one time not less than seven and not more
6 than fourteen days before the time of the hearing. Such notice shall
7 include, but not be limited to, a statement that all persons desiring
8 to give evidence before the local governing body in support of or in
9 protest against the issuance of such license may do so at the time of
10 the hearing. Such hearing shall be held not more than forty-five days
11 after the date of receipt of the notice from the commission, and
12 after such hearing the local governing body shall cause to be
13 recorded in the minute record of their proceedings a resolution
14 recommending either issuance or refusal of such license. The clerk of
15 such city, village, or county shall mail to the commission by first-
16 class mail, postage prepaid, a copy of the resolution which shall
17 state the cost of the published notice, except that failure to comply
18 with this provision shall not void any license issued by the
19 commission. If the commission refuses to issue such a license, the
20 cost of publication of notice shall be paid by the commission from
21 the security for costs.

22 Sec. 8. Original sections 53-123, 53-123.04, 53-123.14,
23 and 53-123.16, Reissue Revised Statutes of Nebraska, and sections
24 53-101 and 53-134, Revised Statutes Supplement, 2011, are repealed.