

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 311
Final Reading

Introduced by Karpisek, 32.

Read first time January 12, 2011

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 section 53-1,104, Reissue Revised Statutes of Nebraska;
3 to change penalties for violations by licensees domiciled
4 outside the state as prescribed; and to repeal the
5 original section.

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

1 Section 1. Section 53-1,104, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 53-1,104 (1) Any licensee which sells or permits the sale
4 of any alcoholic liquor not authorized under the terms of such
5 license on the licensed premises or in connection with such
6 licensee's business or otherwise shall be subject to suspension,
7 cancellation, or revocation of such license by the commission.

8 (2) When an order suspending a license to sell alcoholic
9 liquor becomes final, the licensee may elect to pay a cash penalty to
10 the commission in lieu of suspending sales of alcoholic liquor for
11 the designated period if such election is not prohibited by order of
12 the commission. Except as otherwise provided in subsection (3) of
13 this section, for the first such suspension for any licensee, the
14 penalty shall be fifty dollars per day, and for a second or any
15 subsequent suspension, the penalty shall be one hundred dollars per
16 day.

17 (3)(a) For a second suspension for violation of section
18 53-180 or 53-180.02 occurring within four years after the date of the
19 first suspension, the commission, in its discretion, may order that
20 the licensee be required to suspend sales of alcoholic liquor for a
21 period of time not to exceed forty-eight hours and that the licensee
22 may not elect to pay a cash penalty. The commission may use the
23 required suspension of sales of alcoholic liquor penalty either alone
24 or in conjunction with suspension periods for which the licensee may
25 elect to pay a cash penalty. For purposes of this subsection, second

1 suspension for violation of section 53-180 shall include suspension
2 for a violation of section 53-180.02 following suspension for a
3 violation of section 53-180 and second suspension for violation of
4 section 53-180.02 shall include suspension for a violation of section
5 53-180 following suspension for a violation of section 53-180.02;

6 (b) For a third or subsequent suspension for violation of
7 section 53-180 or 53-180.02 occurring within four years after the
8 date of the first suspension, the commission, in its discretion, may
9 order that the licensee be required to suspend sales of alcoholic
10 liquor for a period of time not to exceed fifteen days and that the
11 licensee may not elect to pay a cash penalty. The commission may use
12 the required suspension of sales of alcoholic liquor penalty either
13 alone or in conjunction with suspension periods for which the
14 licensee may elect to pay a cash penalty. For purposes of this
15 subsection, third or subsequent suspension for violation of section
16 53-180 shall include suspension for a violation of section 53-180.02
17 following suspension for a violation of section 53-180 and third or
18 subsequent suspension for violation of section 53-180.02 shall
19 include suspension for a violation of section 53-180 following
20 suspension for a violation of section 53-180.02; and

21 (c) For a first suspension based upon a finding that a
22 licensee or an employee or agent of the licensee has been convicted
23 of possession of a gambling device on a licensee's premises in
24 violation of sections 28-1107 to 28-1111, the commission, in its
25 discretion, may order that the licensee be required to suspend sales

1 of alcoholic liquor for thirty days and that the licensee may not
2 elect to pay a cash penalty. For a second or subsequent suspension
3 for such a violation of sections 28-1107 to 28-1111 occurring within
4 four years after the date of the first suspension, the commission
5 shall order that the license be canceled.

6 (4) For any licensee which has no violation for a period
7 of four years consecutively, any suspension shall be treated as a new
8 first suspension.

9 (5) The election provided for in subsection (2) of this
10 section shall be filed with the commission in writing one week before
11 the suspension is ordered to commence and shall be accompanied by
12 payment in full of the sum required by this section. If such election
13 has not been received by the commission by the close of business one
14 week before the day such suspension is ordered to commence, it shall
15 be conclusively presumed that the licensee has elected to close for
16 the period of the suspension and any election received later shall be
17 absolutely void and the payment made shall be returned to the
18 licensee. The election shall be made on a form prescribed by the
19 commission. The commission shall remit all funds collected under this
20 section to the State Treasurer for distribution in accordance with
21 Article VII, section 5, of the Constitution of Nebraska.

22 (6) Recognizing that suspension of the license of a
23 licensee domiciled outside of the state poses unique enforcement
24 difficulties, the commission may, at its discretion, mandate that a
25 licensee domiciled outside of the state pay the cash penalty found in

1 subsection (2) of this section rather than serve the suspension.

2 Sec. 2. Original section 53-1,104, Reissue Revised

3 Statutes of Nebraska, is repealed.