

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 987**

Introduced by Karpisek, 32.

Read first time January 12, 2012

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend  
2 sections 53-101 and 53-110, Revised Statutes Supplement,  
3 2011; to provide for a division of the Nebraska Liquor  
4 Control Commission to investigate violations of the act;  
5 to harmonize provisions; and to repeal the original  
6 sections.

7 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 2 of this  
4 act shall be known and may be cited as the Nebraska Liquor Control  
5 Act.

6           Sec. 2. (1) The Liquor Control Enforcement Division is  
7 created. The division shall investigate activities involving  
8 violations of the Nebraska Liquor Control Act. The executive director  
9 shall appoint sufficient investigators to carry out the duties of the  
10 division. Such investigators shall be employees of the commission and  
11 shall meet the qualifications of section 53-110.

12           (2)(a) As specified by the executive director,  
13 investigators employed by the division who are certified law  
14 enforcement officers of the State of Nebraska shall be vested with  
15 the authority and power of a peace officer to carry out the laws of  
16 this state administered by the executive director. The general laws  
17 of this state applicable to peace officers shall be applicable to  
18 such investigators. Such investigators shall be empowered, among  
19 other powers, to search and arrest with or without a warrant, file  
20 and serve any lien, seize property, serve and return a summons,  
21 warrant, or subpoena issued by a court of law or the executive  
22 director, and bring an offender before any court with jurisdiction in  
23 this state. Such investigators shall not be authorized to enforce any  
24 laws other than laws administered by the executive director, except  
25 that such investigator may enforce other laws the violation of which

1 occur on the licensed premises in the course of the investigator's  
2 employment and pose an imminent threat to the public health, safety,  
3 or welfare.

4 (b) Subdivision (a) of this subsection shall not be  
5 construed to restrict any other law enforcement officer of this state  
6 from enforcing any state law, whether relating to liquor control or  
7 otherwise.

8 (3) The division shall:

9 (a) Initiate independent inquiries and conduct  
10 independent investigations when the division has cause to believe  
11 that a violation of the Nebraska Liquor Control Act has been or is  
12 currently being committed;

13 (b) Review reports or complaints of alleged violations of  
14 the act to determine whether such reports require further  
15 investigation and to conduct such investigation;

16 (c) Conduct independent examinations of alleged  
17 violations of the act and undertake independent studies to determine  
18 the extent of violations of the act; and

19 (d) Cooperate with federal, state, and local law  
20 enforcement, prosecuting attorneys, and the Attorney General in the  
21 investigation and prosecution of violations of the act. At the  
22 request of the division, through the executive director, the Attorney  
23 General shall prosecute violations of the act through criminal or  
24 civil proceedings as authorized by the Nebraska Liquor Control Act  
25 if, after investigation, the Attorney General is convinced that there

1 is sufficient legal merit to justify the proceeding. The Attorney  
2 General, after consultation with the executive director, may refer  
3 cases of violations of the act to a special assistant attorney  
4 general or county attorney for prosecution. Any costs directly  
5 associated with the prosecution and attorney's fees for any special  
6 assistant attorney general shall be paid by the division.

7 (4)(a) The executive director or his or her designee may:  
8 Administer oaths and affirmations; subpoena witnesses; compel  
9 attendance of witnesses; take evidence; and require the production of  
10 any books, papers, correspondence, memoranda, agreements, documents,  
11 records, and other tangible things which constitute or contain  
12 evidence that is deemed relevant or material to an investigation or  
13 enforcement of the Nebraska Liquor Control Act when it appears that  
14 such action is necessary and proper. The attendance of witnesses and  
15 the production of records shall be required from any place within the  
16 State of Nebraska. Witnesses summoned by the executive director or by  
17 his or her designee shall be paid the same fees that are paid  
18 witnesses in the courts of the State of Nebraska and mileage at the  
19 rate provided in section 81-1176.

20 (b) A subpoena of the executive director or of his or her  
21 designee may be served by any person designated in the subpoena to  
22 serve it. Service upon a natural person may be made by certified mail  
23 or personal delivery of the subpoena to him or her. Service may be  
24 made upon a domestic or foreign corporation or partnership, upon a  
25 domestic or foreign limited liability company, or upon any other

1 unincorporated association which is subject to suit under a common  
2 name, or any other entity by delivering the subpoena to an officer, a  
3 managing or general agent, a member, or any other agent authorized by  
4 appointment or by law to receive service of process. The affidavit of  
5 the person serving the subpoena entered on a true copy thereof by the  
6 person serving it shall be proof of service.

7 (c) If any person refuses to obey a subpoena issued by  
8 the executive director or by his or her designee, the executive  
9 director or his or her designee may invoke the aid of any court of  
10 the State of Nebraska within the jurisdiction of which the  
11 investigation is carried on or of which the subpoenaed person is an  
12 inhabitant, carries on business, or may otherwise be found, to compel  
13 compliance with such subpoena.

14 (d) The court may issue an order requiring the subpoenaed  
15 person to appear before the executive director or his or her designee  
16 to produce records, if so ordered, or to give testimony concerning  
17 the matter under investigation. Nothing in this section shall be  
18 construed to suspend or otherwise interfere with the operation of the  
19 Free Flow of Information Act.

20 (e) Any failure to obey the order of the court may be  
21 punished by the court as contempt. All process in any such case may  
22 be served in the judicial district in which the subpoenaed person is  
23 an inhabitant, carries on business, or may otherwise be found.

24 (5) If the division seeks evidence, documentation, or  
25 related materials located outside this state pertinent to an

1 investigation or examination, it may designate representatives or  
2 deputies, including officials of the state where the matter is  
3 located, to secure and inspect the evidence, documentation, or  
4 materials on its behalf.

5 (6) The papers, documents, reports, and evidence of the  
6 division regarding the subject of an investigation of a violation of  
7 the Nebraska Liquor Control Act shall not be subject to public  
8 inspection for so long as the executive director deems reasonably  
9 necessary to complete the investigation or to protect the person  
10 investigated from unwarranted injury or so long as the executive  
11 director deems it to be in the public interest. Such papers,  
12 documents, reports, and evidence regarding the subject of an  
13 investigation shall not be subject to subpoena until they are opened  
14 for public inspection by the division, unless the executive director  
15 consents, or until after notice to the division and a hearing, the  
16 court determines the division would not be unnecessarily hindered by  
17 such subpoena. Division investigators shall not be subject to  
18 subpoena in civil actions by any court of this state to testify  
19 concerning any matter of which they have knowledge regarding pending  
20 investigation by the division of a violation of the act.

21 (7)(a) The executive director may provide the papers,  
22 documents, reports, and evidence described in subsection (6) of this  
23 section to other state, federal, foreign, and international  
24 regulatory and law enforcement agencies if the recipient agrees in  
25 writing to maintain the confidentiality of the information.

1           (b) The executive director may receive papers, documents,  
2 reports, and evidence described in subsection (6) of this section  
3 from other state, federal, foreign, or international regulatory and  
4 law enforcement agencies. The executive director shall maintain as  
5 confidential or privileged information received pursuant to this  
6 subdivision if received with notice or the understanding that it is  
7 confidential or privileged under the laws of the jurisdiction that is  
8 the source of the information. Such information shall not be a public  
9 record subject to disclosure by the executive director pursuant to  
10 sections 84-712 to 84-712.09, subject to subpoena, subject to  
11 discovery, or admissible in evidence in any private civil action,  
12 except that the executive director may use such information in any  
13 regulatory or legal action brought by the executive director. The  
14 executive director, and any other person while acting under the  
15 authority of the executive director who has received information  
16 pursuant to this subdivision, may not, and shall not be required to,  
17 testify in any private civil action concerning any information  
18 subject to this section. Nothing in this section shall constitute a  
19 waiver of any applicable privilege or claim of confidentiality in the  
20 information received pursuant to this subdivision as a result of  
21 information sharing authorized by this section.

22           Sec. 3. Section 53-110, Revised Statutes Supplement,  
23 2011, is amended to read:

24           53-110 (1) No person shall be appointed as a  
25 commissioner, the executive director of the commission, or an

1 employee of the commission who is not a citizen of the United States  
2 and who has not resided within the State of Nebraska successively for  
3 two years next preceding the date of his or her appointment.

4 (2) No person (a) convicted of or who has pleaded guilty  
5 to a felony or any violation of any federal or state law concerning  
6 the manufacture or sale of alcoholic liquor prior or subsequent to  
7 the passage of the Nebraska Liquor Control Act, (b) who has paid a  
8 fine or penalty in settlement of any prosecution against him or her  
9 for any violation of such laws, or (c) who has forfeited his or her  
10 bond to appear in court to answer charges for any such violation  
11 shall be appointed commissioner.

12 (3)(a) Except as otherwise provided in subdivision (b) of  
13 this subsection, no commissioner or employee of the commission may,  
14 directly or indirectly, individually, as a member of a partnership,  
15 as a member of a limited liability company, or as a shareholder of a  
16 corporation, have any interest whatsoever in the manufacture, sale,  
17 or distribution of alcoholic liquor, receive any compensation or  
18 profit from such manufacture, sale, or distribution, or have any  
19 interest whatsoever in the purchases or sales made by the persons  
20 authorized by the act to purchase or to sell alcoholic liquor.

21 (b) With the written approval of the executive director,  
22 an employee of the commission, other than the executive director, ~~or~~  
23 a division manager, or an investigator of the division created  
24 pursuant to section 2 of this act, may accept part-time or seasonal  
25 employment with a person licensed or regulated by the commission. No



1 such employment shall be approved if the licensee receives more than  
2 fifty percent of the licensee's gross revenue from the sale or  
3 dispensing of alcoholic liquor.

4 (4) This section shall not prevent any commissioner, the  
5 executive director, or any employee from purchasing and keeping in  
6 his or her possession for the use of himself, herself, or members of  
7 his or her family or guests any alcoholic liquor which may be  
8 purchased or kept by any person pursuant to the act.

9 Sec. 4. Original sections 53-101 and 53-110, Revised  
10 Statutes Supplement, 2011, are repealed.