

**FISCAL NOTE**  
**LEGISLATIVE FISCAL ANALYST ESTIMATE**

<b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)</b>				
	<b>FY 2018-19</b>		<b>FY 2019-20</b>	
	<b>EXPENDITURES</b>	<b>REVENUE</b>	<b>EXPENDITURES</b>	<b>REVENUE</b>
GENERAL FUNDS	\$313,093	\$199,136	\$158,532	\$199,136
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
<b>TOTAL FUNDS</b>	<b>\$313,093</b>	<b>\$199,136</b>	<b>\$158,532</b>	<b>\$199,136</b>

**Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.**

LB 1120 amends a number of sections of the Nebraska Liquor Control Act and names and amends the Music Licensing Agency Act.

Section 53-123.15 is amended to clarify that the fees received for a shipping license issued to a beer manufacturer shall be credited to the Nebraska Beer Industry Promotional Fund.

New language is inserted into this section to require third-party shippers to file an annual report with the Commission regarding shipments made by the shipper into Nebraska.

Section 53-124.11 regarding special designated licenses is amended to require that the application, fees, and local governing body approval be received at least 10 working days prior to the event for which the license is requested. It also allows the executive director of the Commission to waive this requirement for applicants who are not licensed under the Act.

Section 53-134.01 is amended to change the size of containers, commonly known as "growlers," from the current 32 ounces to no more than 64 ounces.

Section 53-135 is amended to say that a retail license shall be automatically renewed by the Commission without formal application upon payment of the renewal and license fees unless the local governing board of jurisdiction requests in writing that a hearing be conducted by the Commission.

Section 53-168 is amended to make it unlawful for a wholesaler to sell to a retail license holder if that licensee has a payment on an account which is more than 34 days overdue. In addition, each delivery is to be accompanied by an invoice stating date of purchase. It also requires the wholesaler to report to the Commission any retailer who fails to make a payment within the required period.

The Commission is to keep a list, updated daily, of retail licensees with overdue accounts and post such on the Commission's website.

Section 53-1,100 regarding certain licensure is amended to provide that for a second violation of this section occurring within 4 years of the first violation, may result in suspension of sales for a period not to exceed 48 hours. A third or subsequent violation of this section within 4 years of the first violation, may result in suspension of sales for a period not exceed 15 days.

Section 53-504 regarding the Nebraska Beer Industry Promotional Fund is amended to provide that money in the fund may not be used for any type of compensation for any employee of a licensee or an entity representing licensees.

Fiscal Impact:

The Nebraska Liquor Control Commission has indicated that they will require 1.0 FTE Fiscal Compliance Analyst and 1.0 FTE Staff Assistant II to implement the provisions of the above portion of LB 1120. PSL for these two positions is \$74,027 for FY2018-19 and \$74,579 for FY2019-20. Total expenditures are \$313,093 for FY2018-19 and \$158,532 for FY2019-20.

In addition, the Commission estimates an increase in revenue of \$99,136 per fiscal year as a result of requiring third-party shipper notification (Section 53-123.15).

We have no basis to disagree with the Liquor Control Commission's estimate of fiscal impact or cost.

LB 1120 also amends a number of sections of Chapter 59 regarding music licensing and names the act the Music Licensing Agency Act. This portion of LB 1120 has an operative date of January 1, 2019.

LB 1120 names the Music Licensing Agency Act (Sections 59-1401 to 59-1406 and sections 12, 14, 15, 16, 17, and 18 of the bill). Provisions of the Act require a “music licensing agency” to register annually with the Department of Revenue and file an annual electronic copy of each performing-rights agreement providing for the payment of royalties made available from the music licensing agency to any proprietor in Nebraska. The Department of Revenue is also required to inform proprietors of their rights and responsibilities regarding the public performance of copyrighted music.

The Act provides responsibilities for music licensing agencies regarding contracts for royalties; duties regarding their conduct in seeking payment or communicating with a proprietor; and conducting investigations on the use of copyrighted music.

The Act provides for a late fee for failure to register on or before February 15 of each year of \$10,000 per 45-day period which passes after February 15. Any such fees collected are to be credited to the Department of Revenue Enforcement Fund.

Section 59-1405 is amended to provide a penalty of not less than \$500 and not more than \$2,000 for violations of the Act. Multiple violations on a single day may be considered separate violations.

The bill contains the emergency clause and the severability clause.

Fiscal Impact:

The Department of Revenue estimates that LB 1180 will have a minimal impact on General Fund revenue and minimal cost to implement.

We disagree with the Department of Revenue’s estimate of fiscal impact. We estimate an increase to the General Fund of approximately \$100,000 per fiscal year. It appears that only one of four major music licensing businesses that engage in business in the state pay the Nebraska tax imposed by Section 59-1403 and that Department of Revenue audit and collection efforts will result in increased compliance with the law and additional tax revenue.

We agree with the Department of Revenue’s estimate of cost to implement the provisions of LB 1120.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
<b>LB: 1120</b>	<b>AM:</b>	AGENCY/POLT. SUB: <b>Nebraska Department of Revenue (016)</b>
REVIEWED BY: Joe Wilcox	DATE: 01/31/2018	PHONE: <a href="tel:(402)471-4178">(402) 471-4178</a>
COMMENTS: No basis to dispute the Nebraska Department of Revenue estimate of “minimal” fiscal impact to the Agency from LB 1120.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
<b>LB: 1120</b>	<b>AM:</b>	AGENCY/POLT. SUB: <b>Nebraska Liquor Control Commission (035)</b>
REVIEWED BY: Joe Wilcox	DATE: 01/26/2018	PHONE: <a href="tel:(402)471-4178">(402) 471-4178</a>
COMMENTS: No basis to dispute the Nebraska Liquor Control Commission estimate of potential fiscal impact to the Agency from LB 1120.		

**State Agency Estimate**

State Agency Name: Department of Revenue		Date Due LFA: 02/1/2018			
Approved by: Tony Fulton		Phone: 471-5896			
<b>FY 2018-2019</b>		<b>FY 2019-2020</b>		<b>FY 2020-2021</b>	
	<u>Expenditures</u>	<u>Revenue</u>		<u>Expenditures</u>	<u>Revenue</u>
General Funds		Minimal			Minimal
Cash Funds					
Federal Funds					
Other Funds					
Total Funds		Minimal			Minimal

LB 1120 would amend several sections of the Liquor Control Act and adopt a new act called the Music Licensing Agency Act.

The changes to the Liquor Control Act would:

1. Require third-party shippers to file an annual report with the Liquor Control Commission regarding shipments into Nebraska;
2. Require applications for special designated licenses to be filed at least ten days prior to the event;
3. Allow the holder of a limited bottling endorsement to sell beer in sealed containers (growlers) holding no more than 64 ounces (increased from 32 ounces);
4. Allow the local governing body to request a hearing on whether a proposed license renewal should be processed as a new application;
5. Prohibit selling liquor to a retailer that has an account more than 34 days overdue. Wholesalers would also be required to report overdue accounts to the Liquor Control Commission and the Commission would post a list of retailers with overdue accounts on its website;
6. Limit the suspension for a second liquor violation to 48 hours, and for a third liquor violation to 15 days. Violations occurring more than four years later are not counted;
7. Provide that for a second or subsequent suspension, the Liquor Control Commission may order that the licensee suspend sales for a period of time, not to exceed 48 hours, and cannot opt for the cash penalty instead; and
8. Prohibit paying any compensation to any employee of any licensee or a representative from the Nebraska Beer Industry Promotional Fund.

The Music Licensing Agency Act adopts procedures and rights for restaurant and bar owners with respect to payment of royalties to copyright licensing agencies like BMI and ASCAP. LB 1120 also changes the responsibility for collection and enforcement of the 3% tax on revenues from licensing rights in any copyrighted musical composition from the Secretary of State to the Department of Revenue. The Department is required to adopt rules and regulations.

Beginning January 1, 2019, any licensing agency must register with the Department of Revenue by each February 15 and provide an electronic copy of each licensing contract providing for royalty payments. The bill imposes a penalty of \$10,000 for each 45 days the registration is late. Proceeds from the penalty (but not the tax) are deposited in the Revenue Enforcement Fund. A music licensing agency may not enter into or offer to enter into a licensing agreement unless it provides a schedule of rates and notice that the information is available at the Department of Revenue at least 72 hours earlier.



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2018

LB<sup>(1)</sup> 1120

FISCAL NOTE

State Agency OR Political Subdivision Name: (2) Nebraska Liquor Control Commission

Prepared by: (3) LeAnna Prange Date Prepared: (4) 1/24/18 Phone: (5) 402-471-4892

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2018-19		FY 2019-20	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	313,093	99,136	158,532	99,136
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	313,093	99,136	158,532	99,136

Explanation of Estimate:

OVERVIEW

LB 1120 financially impacts NLCC by providing a second point of reference to confirm shipments of alcohol to consumers in our State. NLCC determines that a reconciliation of this nature would be beneficial for compliance and enforcement of excise tax collection from entities located outside of our borders and shipping alcohol to consumers in our State. Additionally, LB 1120 financially impacts NLCC by requiring a daily updated and published list on NLCC's website of all retail licensees in arrears to wholesale licensees. NLCC determines this would be a useful tool to assist with accountability in the area of alcohol purchases and ultimately compliance in the retail market place.

REVENUE

**Common Carrier/S1 Direct to Consumer:**

To determine possible Revenue that could be generated by this part of LB 1120, NLCC looked at a full reporting year of 2016 (2017 has not been collected enough to report): \$65,000 excise tax was paid by S1 Shippers and deposited into the General Fund. This consisted of: 6.74 gallons of spirits (3 cases); 452.49 gallons of beer (200 cases); and 69,605 gallons of wine (29,280 cases). There is no way to determine the amount of lost revenue in that NLCC has no second point of reference. This LB, however, addresses this issue. NLCC would highlight the fact that approximately 3 cases of spirits were sold to consumers in the State of Nebraska through online sales in 2016. Due to this low amount, NLCC opines there is lost revenue due to either under reporting or unlicensed entities. Further, NLCC cites the State of Illinois' findings in December 2013 as a point of estimation because the same type of reconciliation was basically performed to determine the loss of excise tax dollars. Illinois reported: "there were more than 100,000 unlicensed deliveries of alcohol into Illinois. With each shipment averaging a half-case or six bottles of wine or liquor..." This equates to 119,000 gallons of alcohol Illinois projected as untaxed. If Nebraska would be comparable, a revenue impact could be determined by a dollar equivalent of these gallons. NLCC opines revenue could be as high as \$158,271 or as low as \$36,890. (lower number would assume all the gallons as beer at \$.31/gallon; the higher number equates half to beer (\$.31/gallon), a quarter to spirits (\$3.75/gallon) and a quarter as wine (\$.95/gallon). An average of these two scenarios were provided as a projection of possible revenue: \$99,136.

Additionally this would increase sales tax revenue. The sales tax revenue is not addressed in this fiscal note.

**Delinquent Credit:**

No revenue would be realized from this part of LB 1120.

**EXPENDITURE**

**Common Carrier/S1 Direct to Consumer:**

In order to prepare an approval process of common carriers that transport liquor in the State of Nebraska and to further accept, audit, process, reconcile and retain reporting and tax data annually from the common carriers and S1 Direct Shipper Annual Reports for compliance of collection of excise tax, NLCC would require 1 FTE (Fiscal Compliance Analyst). NLCC is estimating this cost as \$38,473 for FY18-19; \$38,760 for FY19-20.

**Delinquent Credit:**

In order to accept delinquent credit forms and process for possible administrative violations and update daily a list of delinquent accounts from wholesale tier and prepare for posting on NLCC website, NLCC would require 1 FTE (Staff Assistant II). NLCC is estimating this cost as \$35,554 in FY18-19; \$35,819 in FY19-20.

Benefits of each position include retirement, FICA, Life, Health, work comp, employee assistance. NLCC is estimating this cost as \$63,276 in FY18-19; \$67,465 in FY19-20.

Operating costs include accounting and E1 access, purchase assessment, HRMS assessment and cost of office space. At this time NLCC does not have office space for additional staff. It is hoped that NLCC may obtain additional or different space sufficient to meet their need. NLCC is estimating this cost as \$5,488 in FY18-19; \$5,488 in FY19-20.

Capital outlay includes L shaped desk, chair, file cabinet, wall panels, shelf light, computer, monitors, calculator, scanner, laptop, phone, wiring install for pc and phones for the first year and the second year includes scanner rental only. NLCC is estimating this cost as \$30,302 in FY18-19; \$1,000 in FY19-20.

Capital improvements includes an estimate based on quote received but is still obtaining additional quotes for an Onbase solution or web-based solution for NLCC to accept, audit, process, reconcile and retain Direct Shipper, Common Carrier, and tax data. NLCC is estimating the cost to be \$140,000 in FY18-19; \$10,000 in FY 19-20 for maintenance/support.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

POSITION TITLE	NUMBER OF POSITIONS		2018-19 EXPENDITURES	2019-20 EXPENDITURES
	18-19	19-20		
Fiscal Compliance Analyst A21211	1	1	38,473	38,760
Staff Asst II S01842	1	1	35,554	35,819
Benefits.....			63,276	67,465
Operating.....			5,488	5,488
Travel.....				
Capital outlay.....			30,302	1,000
Aid.....				
Capital improvements.....			140,000	10,000
TOTAL.....			313,093	158,532