

Revised due to adoption of amendments on General File.

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

| <b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES</b> (See narrative for political subdivision estimates) |                     |                |                     |                |
|---|---------------------|----------------|---------------------|----------------|
|   | <b>FY 2018-19</b>   |                | <b>FY 2019-20</b>   |                |
|   | <b>EXPENDITURES</b> | <b>REVENUE</b> | <b>EXPENDITURES</b> | <b>REVENUE</b> |
| GENERAL FUNDS   |                     | See Below      |                     | See Below      |
| CASH FUNDS  |                     | See Below      |                     | See Below      |
| FEDERAL FUNDS   |                     |                |                     |                |
| OTHER FUNDS   |                     |                |                     |                |
| TOTAL FUNDS   |                     | See Below      |                     | See Below      |

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

LB 1120, as amended by AM2545 and AM2784, names and amends the Music Licensing Agency Act and makes changes to the Nebraska Liquor Control 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.

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.

The bill, as amended, creates a new classification for a “bottle club” license under the Nebraska Liquor Control Act. A “bottle club” is defined as “an operation, whether formally organized as a club having a regular membership list, dues, officers, and meetings or not, keeping and meeting premises where persons who have made their own purchases of alcoholic liquor congregate for the express purposes of consuming alcoholic liquor upon payment of a fee or other consideration.”

A bottle club is required to be closed between the hours of 5:00 a.m. and 6:00 a.m. and shall not simultaneously hold another license under the Nebraska Liquor Control Act.

The annual fee for a bottle club license is \$300.

Fiscal Impact:

It appears that there are approximately five entities operating as bottle clubs at this time. Assuming that all five choose to obtain bottle club licenses, the potential revenue would be \$1500. Such fees are paid to the local political subdivision with jurisdiction.

LB 1120, as amended, also amends a number of sections of Chapter 59 regarding music licensing and names the act the Music Licensing Agency Act.

LB 1120 names the Music Licensing Agency Act (Sections 59-1401 to 59-1406 and sections 2, 4, 5, 6, 7, and 8 of the bill). Beginning January 1, 2019, 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 fine for failure to register or renew on or before February 15 of each year of \$10,000 per 45-day period which passes after February 15.

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 1120 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. Assuming compliance with the Act, 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 original 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: (402) 471-4178   |
| COMMENTS: No basis to dispute the Nebraska Department of Revenue estimate of "minimal" 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         |         |              |         |
| Date Prepared: 01/29/2018                |         |                         |         |              |         |
| FY 2018-2019                             |         | FY 2019-2020            |         | FY 2020-2021 |         |
| Expenditures                             | Revenue | Expenditures            | Revenue | Expenditures | Revenue |
| General Funds                            | Minimal |                         | Minimal |              | Minimal |
| Cash Funds                               |         |                         |         |              |         |
| Federal Funds                            |         |                         |         |              |         |
| Other Funds                              |         |                         |         |              |         |
| Total Funds                              | Minimal |                         | 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.

