

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1276

Introduced by Brewer, 43.

Read first time January 16, 2024

Committee: General Affairs

1 A BILL FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 sections 53-131, 53-133, 53-134, and 53-1,115, Reissue Revised
3 Statutes of Nebraska, and section 53-132, Revised Statutes
4 Cumulative Supplement, 2022; to change provisions relating to the
5 application, hearing, and license process for a retail, bottle club,
6 craft brewery, and microdistillery license in a city of the second
7 class or a village; to provide powers and duties to the Nebraska
8 Liquor Control Commission and the city or village clerk in a city of
9 the second class or village; to harmonize provisions; and to repeal
10 the original sections.

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

1 Section 1. Section 53-131, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 53-131 (1) Any person desiring to obtain a new license to sell
4 alcoholic liquor at retail, a bottle club license, a craft brewery
5 license, or a microdistillery license shall file with the commission:

6 (a) An application upon forms prescribed by the commission,
7 including the information required by subsection (3) of this section for
8 an application to operate a cigar shop;

9 (b) The license fee if under sections 53-124 and 53-124.01 such fee
10 is payable to the commission, which fee shall be returned to the
11 applicant if the application is denied; and

12 (c) The nonrefundable application fee in the sum of four hundred
13 dollars, except that the nonrefundable application fee for an application
14 for a cigar shop shall be one thousand dollars.

15 (2) The commission shall notify the clerk of the city or village in
16 which such license is sought or, if the license sought is not sought
17 within a city or village, the county clerk of the county in which such
18 license is sought, of the receipt of the application and shall include
19 one copy of the application with the notice. No such license shall be
20 issued or denied by the commission until the expiration of the time
21 allowed for the receipt of a recommendation of denial or an objection
22 requiring a hearing under subdivision (1)(a) or (b) of section 53-133,
23 except that the commission may issue or deny a license prior to such time
24 for a license in a city of the second class or village following a
25 hearing held pursuant to subsection (3) of section 53-133. During the
26 period of forty-five days after the date of receipt by mail or electronic
27 delivery of such application from the commission, the local governing
28 body of such city, village, or county may make and submit to the
29 commission recommendations relative to the granting or refusal to grant
30 such license to the applicant.

31 (3) For an application to operate a cigar shop, the application

1 shall include proof of the cigar shop's annual gross revenue as requested
2 by the commission and such other information as requested by the
3 commission to establish the intent to operate as a cigar shop. The
4 commission may adopt and promulgate rules and regulations to regulate
5 cigar shops. The rules and regulations existing on August 1, 2014,
6 applicable to cigar bars shall apply to cigar shops until amended or
7 repealed by the commission.

8 (4) For renewal of a license under this section, a licensee shall
9 file with the commission an application, the license fee as provided in
10 subdivision (1)(b) of this section, and a renewal fee of forty-five
11 dollars.

12 Sec. 2. Section 53-132, Revised Statutes Cumulative Supplement,
13 2022, is amended to read:

14 53-132 (1) If no hearing is required pursuant to subdivision (1)(a)
15 or (b) of section 53-133 or requested and held pursuant to subsection (3)
16 of section 53-133 and the commission has no objections pursuant to
17 subdivision (1)(c) of such section, the commission may waive the forty-
18 five-day objection period and, if not otherwise prohibited by law, cause
19 a retail license, bottle club license, craft brewery license, or
20 microdistillery license to be signed by its chairperson, attested by its
21 executive director over the seal of the commission, and issued in the
22 manner provided in subsection (4) of this section as a matter of course.

23 (2) A retail license, bottle club license, craft brewery license, or
24 microdistillery license may be issued to any qualified applicant if the
25 commission finds that (a) the applicant is fit, willing, and able to
26 properly provide the service proposed within the city, village, or county
27 where the premises described in the application are located, (b) the
28 applicant can conform to all provisions and requirements of and rules and
29 regulations adopted pursuant to the Nebraska Liquor Control Act, (c) the
30 applicant has demonstrated that the type of management and control to be
31 exercised over the premises described in the application will be

1 sufficient to insure that the licensed business can conform to all
2 provisions and requirements of and rules and regulations adopted pursuant
3 to the act, and (d) the issuance of the license is or will be required by
4 the present or future public convenience and necessity.

5 (3) In making its determination pursuant to subsection (2) of this
6 section the commission shall consider:

7 (a) The recommendation of the local governing body;

8 (b) The existence of a citizens' protest made in accordance with
9 section 53-133;

10 (c) The existing population of the city, village, or county and its
11 projected growth;

12 (d) The nature of the neighborhood or community of the location of
13 the proposed licensed premises;

14 (e) The existence or absence of other retail licenses, bottle club
15 licenses, craft brewery licenses, or microdistillery licenses with
16 similar privileges within the neighborhood or community of the location
17 of the proposed licensed premises and whether, as evidenced by
18 substantive, corroborative documentation, the issuance of such license
19 would result in or add to an undue concentration of licenses with similar
20 privileges and, as a result, require the use of additional law
21 enforcement resources;

22 (f) The existing motor vehicle and pedestrian traffic flow in the
23 vicinity of the proposed licensed premises;

24 (g) The adequacy of existing law enforcement;

25 (h) Zoning restrictions;

26 (i) The sanitation or sanitary conditions on or about the proposed
27 licensed premises; and

28 (j) Whether the type of business or activity proposed to be operated
29 in conjunction with the proposed license is and will be consistent with
30 the public interest.

31 (4) Retail licenses, bottle club licenses, craft brewery licenses,

1 or microdistillery licenses issued or renewed by the commission shall be
2 mailed or delivered electronically to:

3 (a) The clerk of the city, village, or county who shall deliver the
4 same to the licensee upon receipt from the licensee of proof of payment
5 of (i) the license fee if by the terms of subsection (6) of section
6 53-124 the fee is payable to the treasurer of such city, village, or
7 county, (ii) any fee for publication of notice of hearing before the
8 local governing body upon the application for the license, (iii) the fee
9 for publication of notice of renewal as provided in section 53-135.01,
10 and (iv) occupation taxes, if any, imposed by such city, village, or
11 county except as otherwise provided in subsection (7) of this section; or

12 (b) The licensee, upon confirmation from the clerk of the city,
13 village, or county that the necessary fees and taxes described in
14 subdivision (4)(a) of this section have been received by the clerk of
15 such city, village, or county.

16 (5) Notwithstanding any ordinance or charter power to the contrary,
17 no city, village, or county shall impose an occupation tax on the
18 business of any person, firm, or corporation licensed under the act and
19 doing business within the corporate limits of such city or village or
20 within the boundaries of such county in any sum which exceeds two times
21 the amount of the license fee required to be paid under the act to obtain
22 such license.

23 (6) Each license shall designate the name of the licensee, the place
24 of business licensed, and the type of license issued.

25 (7) Class J retail licensees shall not be subject to occupation
26 taxes under subsection (4) of this section.

27 Sec. 3. Section 53-133, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 53-133 (1) The commission shall set for hearing before it any
30 application for a retail license, bottle club license, craft brewery
31 license, or microdistillery license relative to which it has received:

1 (a) Within forty-five days after the date of receipt of such
2 application by the city, village, or county clerk, a recommendation of
3 denial from the city, village, or county;

4 (b) Within ten days after the receipt of a recommendation from the
5 city, village, or county, or, if no recommendation is received, within
6 forty-five days after the date of receipt of such application by the
7 city, village, or county clerk, objections in writing by not less than
8 three persons residing within such city, village, or county, protesting
9 the issuance of the license. Withdrawal of the protest does not prohibit
10 the commission from conducting a hearing based upon the protest as
11 originally filed and making an independent finding as to whether the
12 license should or should not be issued;

13 (c) Within forty-five days after the date of receipt of such
14 application by the city, village, or county clerk, objections by the
15 commission or any duly appointed employee of the commission, protesting
16 the issuance of the license; or

17 (d) An indication on the application that the location of a proposed
18 retail or bottle club establishment is within one hundred fifty feet of a
19 church as described in subsection (2) of section 53-177 and a written
20 request by the church for a hearing.

21 (2) Hearings upon such applications shall be in the following
22 manner: Notice indicating the time and place of such hearing shall be
23 mailed or electronically delivered to the applicant, the local governing
24 body, each individual protesting a license pursuant to subdivision (1)(b)
25 or subsection (3) of this section, and any church affected as described
26 in subdivision (1)(d) of this section, at least fifteen days prior to
27 such hearing. The notice shall state that the commission will receive
28 evidence for the purpose of determining whether to approve or deny the
29 application. Mailing or electronic delivery to the attorney of record of
30 a party shall be deemed to fulfill the purposes of this section. The
31 commission may receive evidence, including testimony and documentary

1 evidence, and may hear and question witnesses concerning the application.
2 The commission shall not use electronic delivery with respect to an
3 applicant, a protestor, or a church under this section without the
4 consent of the recipient to electronic delivery.

5 (3) For an application for a retail license, bottle club license,
6 craft brewery license, or microdistillery license in a city of the second
7 class or a village, if the city or village clerk has been informed of a
8 protest of the issuance of a proposed license prior to the applicant's
9 purchase of land for construction of the establishment for which a
10 license is sought or purchase and renovation of an existing property for
11 such purpose, the city or village clerk may submit a request to the
12 commission to waive the forty-five-day objection period and hold a
13 hearing on the issuance of such license. The commission may hold a
14 hearing on the license and may rule on the issuance or denial of such
15 license on the basis of the applicant submitting any renovation or
16 building plans for the proposed licensed premises for the intended use as
17 a licensed establishment under the Nebraska Liquor Control Act and the
18 other considerations required pursuant to section 53-132. A hearing held
19 pursuant to this subsection shall take place in accordance with the
20 process described in subsection (2) of this section.

21 Sec. 4. Section 53-134, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 53-134 The local governing body of any city or village with respect
24 to licenses within its corporate limits and the local governing body of
25 any county with respect to licenses not within the corporate limits of
26 any city or village but within the county shall have the following
27 powers, functions, and duties with respect to retail, bottle club, craft
28 brewery, microdistillery, and entertainment district licenses:

29 (1) To cancel or revoke for cause retail, craft brewery,
30 microdistillery, or entertainment district licenses to sell or dispense
31 alcoholic liquor or bottle club licenses, issued to persons for premises

1 within its jurisdiction, subject to the right of appeal to the
2 commission;

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

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

27 (4) To receive retail license fees, bottle club license fees, craft
28 brewery license fees, and microdistillery license fees as provided in
29 sections 53-124 and 53-124.01 and entertainment district license fees as
30 provided in section 53-123.17 and pay the same, after the license has
31 been delivered to the applicant, to the city, village, or county

1 treasurer;

2 (5) To examine or cause to be examined any applicant or any retail
3 licensee, bottle club licensee, craft brewery licensee, microdistillery
4 licensee, or entertainment district licensee upon whom notice of
5 cancellation or revocation has been served as provided in the act, to
6 examine or cause to be examined the books and records of any applicant or
7 licensee except as otherwise provided for bottle club licensees in
8 section 53-123.08, and to hear testimony and to take proof for its
9 information in the performance of its duties. For purposes of obtaining
10 any of the information desired, the local governing body may authorize
11 its agent or attorney to act on its behalf;

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

21 (7) Upon receipt from the commission of the notice and copy of
22 application as provided in section 53-131, to fix a time and place for a
23 hearing at which the local governing body shall receive evidence, either
24 orally or by affidavit from the applicant and any other person, bearing
25 upon the propriety of the issuance of a license. Notice of the time and
26 place of such hearing shall be published in a legal newspaper in or of
27 general circulation in such city, village, or county one time not less
28 than seven and not more than fourteen days before the time of the
29 hearing. Such notice shall include, but not be limited to, a statement
30 that all persons desiring to give evidence before the local governing
31 body in support of or in protest against the issuance of such license may

1 do so at the time of the hearing. Such hearing shall be held not more
2 than forty-five days after the date of receipt of the notice from the
3 commission, and after such hearing the local governing body shall cause
4 to be recorded in the minute record of their proceedings a resolution
5 recommending either issuance or refusal of such license. The clerk of
6 such city, village, or county shall mail to the commission by first-class
7 mail, postage prepaid, a copy of the resolution which shall state the
8 cost of the published notice, except that failure to comply with this
9 provision shall not void any license issued by the commission. If the
10 commission refuses to issue such a license, the cost of publication of
11 notice shall be paid by the commission from the security for costs;

12 (8) To review and authorize an application by a retail, bottle club,
13 craft brewery, farm winery, or microdistillery licensee for a temporary
14 expansion of its licensed premises within the jurisdiction of the local
15 governing body to an immediately adjacent area owned or leased by the
16 licensee or to an immediately adjacent street, parking lot, or alley, not
17 to exceed fifty days for calendar year 2020 and, for each calendar year
18 thereafter, not to exceed fifteen days per calendar year, as provided in
19 sections 53-123.12 and 53-129; ~~and~~

20 (9) To review and authorize an application by a craft brewery, farm
21 winery, or microdistillery licensee that holds a promotional farmers
22 market special designated license for a permit to use such promotional
23 farmers market special designated license to sell or dispense alcoholic
24 liquor, which the holder is licensed to produce, at a farmers market
25 within the jurisdiction of the local governing body as provided in
26 section 53-124.17. The local governing body shall electronically notify
27 the commission within five days after authorization of any permit
28 pursuant to this subdivision; and -

29 (10) In a city of the second class or village, to request a hearing
30 from the commission on the issuance of a retail license, bottle club
31 license, craft brewery license, or microdistillery license pursuant to

1 subsection (3) of section 53-133.

2 Sec. 5. Section 53-1,115, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 53-1,115 (1) A copy of the rule, regulation, order, or decision of
5 the commission denying an application or suspending, canceling, or
6 revoking a license or of any notice required by any proceeding before it,
7 certified under the seal of the commission, shall be served upon each
8 party of record to the proceeding before the commission. Service upon any
9 attorney of record for any such party shall be deemed to be service upon
10 such party. Each party appearing before the commission shall enter his or
11 her appearance and indicate to the commission his or her address for such
12 service. The mailing of a copy of any rule, regulation, order, or
13 decision of the commission or of any notice by the commission, in the
14 proceeding, to such party at such address shall be deemed to be service
15 upon such party.

16 (2) Within thirty days after the service of any rule, regulation,
17 order, or decision of the commission denying an application or
18 suspending, canceling, or revoking any license upon any party to the
19 proceeding, as provided for by subsection (1) of this section, such party
20 may apply for a rehearing with respect to any matters determined by the
21 commission. The commission shall receive and consider such application
22 for a rehearing within thirty days after its filing with the executive
23 director of the commission. If such application for rehearing is granted,
24 the commission shall proceed as promptly as possible to consider the
25 matters presented by such application. No appeal shall be allowed from
26 any decision of the commission except as provided in section 53-1,116.

27 (3) Upon final disposition of any proceeding, costs shall be paid by
28 the party or parties against whom a final decision is rendered. Costs may
29 be taxed or retaxed to local governing bodies as well as individuals.
30 Only one rehearing referred to in subsection (2) of this section shall be
31 granted by the commission on application of any one party.

1 (4) For purposes of this section, party of record means:

2 (a) In the case of an administrative proceeding before the
3 commission on the application for a retail, bottle club, craft brewery,
4 or microdistillery license:

5 (i) The applicant;

6 (ii) Each individual protesting the issuance of such license
7 pursuant to subdivision (1)(b) or subsection (3) of section 53-133;

8 (iii) The local governing body if it is entering an appearance to
9 protest the issuance of the license or if it is requesting a hearing
10 pursuant to subdivision (1)(c) or subsection (3) of section 53-133; and

11 (iv) The commission;

12 (b) In the case of an administrative proceeding before a local
13 governing body to cancel or revoke a retail, bottle club, craft brewery,
14 or microdistillery license:

15 (i) The licensee; and

16 (ii) The local governing body; and

17 (c) In the case of an administrative proceeding before the
18 commission to suspend, cancel, or revoke a retail, bottle club, craft
19 brewery, or microdistillery license:

20 (i) The licensee; and

21 (ii) The commission.

22 Sec. 6. Original sections 53-131, 53-133, 53-134, and 53-1,115,
23 Reissue Revised Statutes of Nebraska, and section 53-132, Revised
24 Statutes Cumulative Supplement, 2022, are repealed.