

LEGISLATIVE BILL 124

Approved by the Governor March 10, 1981

Introduced by Miscellaneous Subjects Committee, Hefner, 19, Chpn.; Von Minden, 17; Beyer, 3; Fenger, 45; Fitzgerald, 14; Cullan, 49; Newell, 13; Barrett, 39

AN ACT to amend section 53-132, Reissue Revised Statutes of Nebraska, 1943, and sections 53-164.01 and 53-180.02, Revised Statutes Supplement, 1980, relating to liquors; to provide standards for licenses; to provide duties; to clarify provisions relating to minors; and to repeal the original sections.

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

Section 1. It is hereby declared to be the policy of the Legislature to: (1) Regulate the transportation or importation of alcoholic liquor into this state when such alcoholic liquor is intended for delivery or use within the state; (2) promote adequate, economical, and efficient service by licensees selling alcoholic liquor within the State of Nebraska, without unjust or undue discrimination, preference, or advantage; (3) generate revenue by imposing an excise tax upon alcoholic liquor; and (4) promote the health, safety, and welfare of the people of the State of Nebraska and encourage temperance in the consumption of alcoholic liquor by sound and careful control and regulation of the manufacture, sale, and distribution of alcoholic liquor.

Sec. 2. That section 53-132, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-132. (1) Except as provided in subsection (1) of section 53-133, upon the expiration of forty-five days from the date of mailing notice, as provided in section 53-131, the commission may, if not otherwise prohibited by law, cause a retail license or bottle club license to be signed by its chairman chairperson, attested by its secretary over the seal of the commission and issued in the manner provided in subsection (2) (4) of this section as a matter of course.

(2) A retail license or bottle club license shall be issued to any qualified applicant if it is found by the commission that (a) the applicant is fit, willing, and able to properly provide the service proposed within the city, village, or county where the premises described

in the application are located, (b) the applicant can conform to all provisions, requirements, rules, and regulations provided for in the Nebraska Liquor Control Act, (c) the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to insure that the licensed business can conform to all provisions, requirements, rules, and regulations provided for in the Nebraska Liquor Control Act, and (d) the issuance of the license is or will be required by the present or future public convenience and necessity.

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

(a) The recommendation of the local governing body;

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

(c) The existing population of the city, village, or county, as the case may be, and their projected growth;

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

(e) The existence or absence of other retail licenses or bottle club licenses with similar privileges within the neighborhood or community of the location of the proposed licensed premises;

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

(g) The adequacy of existing law enforcement;

(h) Zoning restrictions;

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

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

{2} (4) Retail licenses or bottle club licenses issued or renewed by the commission shall be mailed to the city, village, or county clerk, as the case may be,

who shall deliver the same to the licensee upon receipt from the licensee of proof of payment of (a) the license fee if by the terms of subdivision (5) of section 53-124 the same is payable to the treasurer of such city, village, or county, (b) any fee for publication of notice of hearing before the board or council of such city, village, or county upon the application for license, (c) his or her fee for publication of notice of renewal as provided in section 53-135.01, and (d) occupation taxes, if any, imposed by such city, village, or county.

{3} (5) Each license shall designate the name of the licensee, the place of business licensed, and the type of license issued.

Sec. 3. That section 53-164.01, Revised Statutes Supplement, 1980, be amended to read as follows:

53-164.01. Payment of the tax provided for in section 53-160 on alcoholic liquors shall be paid by the manufacturer or distributor as herein provided. All aforesaid manufacturers or distributors, whether within or without this state, shall, on or before the twenty-fifth day of each calendar month commencing on the twenty-fifth day of the calendar month following the month in which the aforesaid shipments are made, make a report under oath to the Nebraska Liquor Control Commission upon forms to be furnished by the Nebraska Liquor Control Commission for the purpose of showing the exact total amount in gallons of alcoholic liquors or fractional parts thereof shipped by such aforesaid manufacturer or distributor whether within or without the State of Nebraska, during the preceding calendar month. Such report shall also contain a statement of the exact total amount in gallons, or fractional parts thereof, of alcoholic liquors, except beer, shipped to holders of retailer's licenses within this state. All reports submitted by such manufacturer or distributor, as required by the provisions of this section, shall contain such other information as the Nebraska Liquor Control Commission may require. The manufacturer or distributor shall, at the time of the filing of the report, pay to the Nebraska Liquor Control Commission the amount of the tax due on beer shipped to distributors within this state and on alcoholic liquors, except beer, shipped to holders of retailer's licenses within this state at the rate fixed in accordance with the provisions of section 53-160; said tax to be due on the date the aforesaid report is due, less a discount of one per cent of such tax on alcoholic liquors as defined by subdivision (6) of section 53-103, and which discount shall be deducted from the payment of such tax before remittance thereof to the Nebraska Liquor Control Commission, which discount shall

be shown in such report to the Nebraska Liquor Control Commission as required in this section, and which discount shall be a commission for the making of such report, for the timely payment of such tax, but if such tax is not paid within the time provided herein, then such discount shall not be allowed and the same shall not be deducted from the payment of such tax.

A penalty of ten per cent of the amount of the tax shall be collected by the Nebraska Liquor Control Commission if the aforesaid report is not filed by the twenty-fifth day of the calendar month or if the tax is not paid to the Nebraska Liquor Control Commission by the twenty-fifth day of the calendar month and in addition thereto, interest on the tax shall be collected at the rate of one per cent per month, or fraction of a month, from the date the tax became due until paid.

No tax shall be levied or collected on alcoholic liquors manufactured within the State of Nebraska and shipped or transported outside the State of Nebraska for sale and consumption outside the State of Nebraska.

In order to insure the payment of all state taxes imposed by law on alcoholic liquors together with all interest and penalties thereon, all persons required to make reports and payment of such tax shall first enter into a surety bond with corporate surety, both such bond form and surety to be approved by the Nebraska Liquor Control Commission. In lieu of such corporate surety bond, there may be filed a personal bond in such form as the commission may prescribe and secured by the pledge of property having a net value over and above any encumbrance or encumbrances thereon at least double the amount of the bond required. Subject to the limitations hereinafter specified, the amount of such bond required of any taxpayer shall be fixed by the Nebraska Liquor Control Commission and may be increased or reduced by it at any time; Provided, that in fixing the amount, the Nebraska Liquor Control Commission shall require a bond in a total amount equal to the amount of the taxpayer's estimated maximum monthly excise tax, ascertained in such manner as the Nebraska Liquor Control Commission may deem proper; and provided further, nothing contained in this section shall be construed to prevent or prohibit the commission from accepting and approving bonds which run for a term longer than the license period. In any event, the amount of such bond required of any one taxpayer shall not be less than one thousand dollars nor more than three hundred thousand dollars. These bonds shall be filed with the Nebraska Liquor Control Commission.

No person shall order or receive alcoholic liquors in this state which have been shipped directly to him from outside this state by any person other than a holder of a permit for a license year issued by the Nebraska Liquor Control Commission. The Nebraska Liquor Control Commission may issue such permits to manufacturers which shall allow the permittee to ship alcoholic liquors to and only to holders of a distributor's license issued under the provisions of this section. A fee of one two hundred dollars shall be charged by the Nebraska Liquor Control Commission for each permit issued. The application for such permit and the permit shall be in such form as the Nebraska Liquor Control Commission shall prescribe. The application shall contain all such provisions as the Nebraska Liquor Control Commission shall deem proper and necessary to effectuate the purpose of this any section of the Liquor Control Act and the rules and regulations of that commission that apply to manufacturers, and shall include, but without limitation by reason of this special mention, a provision that the permittee in consideration of the issuance of a permit, agrees:

(1) To comply with and be bound by the provisions of this section pertaining to the making and filing of a bond and the making and filing of returns, the payment of taxes, penalties, interest, and the keeping of records;

(2) That he will permit and be subject to all of the powers granted by the provisions of this section to the Nebraska Liquor Control Commission or its duly authorized employees or agents for inspection and examination of his premises and his records; and to pay his actual expenses excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the Nebraska Liquor Control Commission, if within the United States; and

(3) If any such permittee violates any of the provisions of his application or of the provisions of this any section of the Liquor Control Act, or the rules and regulations of the Nebraska Liquor Control Commission that apply to manufacturers, the Nebraska Liquor Control Commission may revoke or suspend such permit for such period of time as it may determine.

Where a manufacturer or distributor shall sell and deliver beer upon which the tax has been paid to any instrumentality of the armed forces of the United States engaged in resale activities as provided in section 53-160.01, the manufacturer or distributor shall be entitled to a credit in the amount of the tax paid upon such beer sold and delivered to such person or persons in

the event no tax is due on said beer as provided in section 53-160.01, and the amount of said credit, if any, shall be deducted from the tax due on the following monthly report, as provided by the provisions of this section to be filed, or shall be allowed as a credit on subsequent reports until liquidated.

Sec. 4. That section 53-180.02, Revised Statutes Supplement, 1980, be amended to read as follows:

53-180.02. Except as provided in section 53-102, ~~no~~ minor may sell or dispense or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place including public streets, alleys, roads, highways, upon property owned by the State of Nebraska or any subdivision thereof, or inside any vehicle while in or on any other place including but not limited to the public streets, alleys, roads, highways, or upon property owned by the State of Nebraska or any subdivision thereof, except that a minor may possess or have physical control of alcoholic liquor in his or her permanent place of residence.

The governing bodies of counties, cities, and villages shall have the power, and may by applicable resolution or ordinance, regulate, suppress, and control the transporting, knowingly possessing, or having under his or her control, beer or other alcoholic liquor in or transported by any motor vehicle, by persons under twenty years of age, and may provide penalties for violations of such ordinance.

Sec. 5. That original section 53-132, Reissue Revised Statutes of Nebraska, 1943, and sections 53-164.01 and 53-180.02, Revised Statutes Supplement, 1980, are repealed.