

LEGISLATIVE BILL 867

Passed over the Governor's veto March 9, 2010.

Introduced by Karpisek, 32; Howard, 9.

FOR AN ACT relating to alcoholic liquors; to amend section 53-138.01, Reissue Revised Statutes of Nebraska, section 53-123.15, Revised Statutes Cumulative Supplement, 2008, and section 53-124, Revised Statutes Supplement, 2009; to provide for placement of certain shipping license fees in the General Fund; to change fees for shipping licenses; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 53-123.15, Revised Statutes Cumulative Supplement, 2008, is amended to read:

53-123.15 (1) No person shall order or receive alcoholic liquor in this state which has been shipped directly to him or her from outside this state by any person other than a holder of a shipping license issued by the commission, except that a licensed wholesaler may receive not more than three gallons of wine in any calendar year from any person who is not a holder of a shipping license.

(2) The commission may issue a shipping license to a manufacturer. Such license shall allow the licensee to ship alcoholic liquor only to a licensed wholesaler, except that a licensed wholesaler may, without a shipping license and for the purposes of subdivision (2) of section 53-161, receive beer in this state which has been shipped from outside the state by a manufacturer in accordance with the Nebraska Liquor Control Act to the wholesaler, then transported by the wholesaler to another state for retail distribution, and then returned by the retailer to such wholesaler. A person who receives a license pursuant to this subsection shall pay the fee required in subdivision (10) of section 53-124. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.

(3) The commission may issue a shipping license to any person who deals with vintage wines, which shipping license shall allow the licensee to distribute such wines to a licensed wholesaler in the state. For purposes of distributing vintage wines, a licensed shipper must utilize a designated wholesaler if the manufacturer has a designated wholesaler. For purposes of this section, vintage wine shall mean a wine verified to be ten years of age or older and not available from a primary American source of supply. A person who receives a license pursuant to this subsection shall pay the fee required in subdivision (10) of section 53-124. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.

(4) The commission may issue a shipping license to any person who sells and ships alcoholic liquor from another state directly to a consumer in this state. A person who receives a license pursuant to this subsection shall pay the fee required in subdivision (11) of section 53-124. Until April 30, 2012, such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

(5) The application for a shipping license shall be in such form as the commission prescribes. The application shall contain all provisions the commission deems proper and necessary to effectuate the purpose of any section of the act and the rules and regulations of the commission that apply to manufacturers and shall include, but not be limited to, provisions that the applicant, in consideration of the issuance of such shipping license, agrees:

(a) To comply with and be bound by section 53-164.01 in making and filing reports, paying taxes, penalties, and interest, and keeping records;

(b) To permit and be subject to all of the powers granted by section 53-164.01 to the commission or its duly authorized employees or agents for inspection and examination of the applicant's premises and records and to pay the actual expenses, excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the commission if within the United States; and

(c) That if the applicant violates any of the provisions of the application or the license, any section of the act, or any of the rules and regulations of the commission that apply to manufacturers, the commission may revoke or suspend such shipping license for such period of time as it may determine.

Sec. 2. Section 53-124, Revised Statutes Supplement, 2009, is

amended to read:

53-124 At the time application is made to the commission for a license of any type, the applicant shall pay the fee provided in this section and, if the applicant is an individual, provide the applicant's social security number. The fees for annual licenses finally issued by the commission shall be as follows:

(1) (a) For a license to manufacture alcohol and spirits.....\$1,000.00;

(b) For a license to operate a microdistillery.....\$250.00;

(2) For a license to manufacture beer and wine or to operate a farm winery or craft brewery:

(a) Manufacture of beer, excluding beer produced by a craft brewery:

(i) 1 to 100 barrel daily capacity, or any part thereof.....\$100.00

(ii) 100 to 150 barrel daily capacity.....200.00

(iii) 150 to 200 barrel daily capacity.....350.00

(iv) 200 to 300 barrel daily capacity.....500.00

(v) 300 to 400 barrel daily capacity.....650.00

(vi) 400 to 500 barrel daily capacity.....700.00

(vii) 500 barrel daily capacity, or more.....800.00;

(b) Operation of a craft brewery.....\$250.00;

(c) Manufacture of wines.....\$250.00;

(d) Operation of a farm winery.....\$250.00.

For purposes of subdivision (2) (a) of this section, daily capacity shall mean the average daily barrel production for the previous twelve months of manufacturing operation. If no such basis for comparison exists, the manufacturing licensee shall pay in advance for the first year's operation a fee of five hundred dollars;

(3) Alcoholic liquor wholesale license, for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling alcoholic liquor, except beer and wines produced from farm wineries.....\$750.00;

(4) Beer wholesale license, for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling beer only.....\$500.00;

(5) For a retail license:

(a) Class A: Beer only except for craft breweries, for consumption on the premises, the sum of one hundred dollars;

(b) Class B: Beer only except for craft breweries, for consumption off the premises, sales in the original packages only, the sum of one hundred dollars;

(c) Class C: Alcoholic liquor, for consumption on the premises and off the premises, sales in original packages only, the sum of three hundred dollars, except for farm winery, microdistillery, or craft brewery sales outlets. If the applicant is making application to operate a cigar bar, the initial, nonrefundable application fee shall be one thousand dollars, the annual fee thereafter shall be as specified in this subdivision, and the application shall meet the requirements of section 53-131. If a Class C license is held by a nonprofit corporation, it shall be restricted to consumption on the premises only. A Class C license may have a sampling designation restricting consumption on the premises to sampling, but such designation shall not affect sales for consumption off the premises under such license;

(d) Class D: Alcoholic liquor, including beer, for consumption off the premises, sales in the original packages only, except as provided in subsection (2) of section 53-123.04, the sum of two hundred dollars, except for farm winery, microdistillery, or craft brewery sales outlets; and

(e) Class I: Alcoholic liquor, for consumption on the premises, the sum of two hundred fifty dollars, except for farm winery, microdistillery, or craft brewery sales outlets.

All applicable license fees shall be paid by the applicant or licensee directly to the city or village treasurer in the case of premises located inside the corporate limits of a city or village and directly to the county treasurer in the case of premises located outside the corporate limits of a city or village;

(6) For a railroad license.....\$100.00 and \$1.00 for each duplicate;

(7) For a boat license.....\$50.00;

(8) For a nonbeverage user's license:

Class 1.....\$5.00

Class 2.....25.00

Class 3.....50.00

Class 4.....100.00

Class 5.....250.00;

- (9) For an airline license.....\$100.00 and \$1.00 for each duplicate;
 (10) For a shipping license, except a shipping license issued pursuant to subsection (4) of section 53-123.15.....~~\$200.00~~, \$1,000.00; and
 (11) For a shipping license issued pursuant to subsection (4) of section 53-123.15.....\$500.00.

The license year, unless otherwise provided in the Nebraska Liquor Control Act, shall commence on May 1 of each year and shall end on the following April 30, except that the license year for a Class C license shall commence on November 1 of each year and shall end on the following October 31. During the license year, no license shall be issued for a sum less than the amount of the annual license fee as fixed in this section, regardless of the time when the application for such license has been made, except that (a) when there is a purchase of an existing licensed business and a new license of the same class is issued or (b) upon the issuance of a new license for a location which has not been previously licensed, the license fee and occupation taxes shall be prorated on a quarterly basis as of the date of issuance.

Sec. 3. Section 53-138.01, Reissue Revised Statutes of Nebraska, is amended to read:

53-138.01 The State Treasurer shall credit forty dollars of each state registration fee to the General Fund and the remaining five dollars to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund to be used for providing licensees with materials pursuant to section 53-117.05. All retail license fees received by the city or village treasurer, as the case may be, shall inure to the school fund of the district lying wholly or partially within the corporate limits of such city or village. The Except as otherwise provided in section 53-123.15, the State Treasurer shall credit all license fees received by the commission for licenses issued pertaining to alcoholic liquor, including beer, to the temporary school fund to be used for the support of the common schools as provided in Article VII, section 5, of the Constitution of Nebraska. All retail license fees received by the county treasurer, as provided in section 53-124, shall be credited to the school fund of the county.

Sec. 4. Original section 53-138.01, Reissue Revised Statutes of Nebraska, section 53-123.15, Revised Statutes Cumulative Supplement, 2008, and section 53-124, Revised Statutes Supplement, 2009, are repealed.