

LEGISLATIVE BILL 550

Approved by the Governor February 3, 1988

Introduced by General Affairs Committee, Morehead, 30,
Chairperson; Hartnett, 45; Smith, 33;
Miller, 37; R. Johnson, 34

AN ACT relating to liquors; to amend sections 53-131, 53-133, and 53-134, Revised Statutes Supplement, 1986; to change provisions relating to retail licenses; to change a hearing date requirement; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 53-131, Revised Statutes Supplement, 1986, be amended to read as follows:

53-131. Any person desiring to obtain a new license to sell alcoholic liquors at retail shall file with the commission:

(1) An application in triplicate original upon such forms as the commission shall from time to time prescribe;

(2) The license fee if under subdivision (5) of section 53-124 such fee is payable to the commission, which fee shall be returned to the applicant if the application is denied;

(3) The state registration fee in the sum of twenty-five dollars;

(4) The bond as set forth in section 53-138.02; and

(5) Security for costs in the amount of one hundred dollars.

License fees, registration fees, and security for costs shall be paid to the commission by certified or cashier's check of a bank within this state, United States post office money order, or cash in the full amount of such fees and costs. The commission shall forthwith notify, by registered or certified mail marked return receipt requested with postage prepaid, the municipal clerk of the city or incorporated village in which such license is sought or, if the license is not sought within a city or incorporated village, the county clerk of the county in which such license is sought of the receipt of the application and shall enclose with

the notice one copy of the application. No such license shall then be issued by the commission until the expiration of the time allowed for the receipt of an objection requiring a hearing under subdivision (1)(a) of section 53-133. During the period of forty-five days from the date of receiving such application from the commission, the local governing body of such city, village, or county may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant. If the local governing body recommends approving or denying the issuance of a license, the recommendation shall be binding on the commission, except that no license shall be issued if the commission determines that the issuance of a license would be a violation of section 53-125 or 53-126.

Sec. 2. That section 53-133, Revised Statutes Supplement, 1986, be amended to read as follows:

53-133. (1) The commission shall set for hearing before it any application for a retail license relative to which it has received:

(a) No recommendation from the local governing body within forty-five days from the date of receipt of such application by the city, village, or county clerk ~~or~~ and, within forty-five days from the date of receipt of such application by the city, village, or county clerk, objections in writing by not less than three persons residing within the city, village, or county, as the case may be, protesting the issuance of the license. No objections ~~will~~ shall be considered by the commission unless submitted in duplicate. The withdrawal of the protest shall not prohibit the commission from conducting a hearing based upon the protest as originally filed and making an independent finding as to whether the license should or should not be issued; or

(b) Within sixty days from the date of receipt of such application by the city, village, or county clerk, as the case may be, objections by the commission or any duly appointed employee of the commission protesting the issuance of the license.

(2) Hearings upon such applications shall be had in the manner provided in section 53-1,116.

(3) If the local governing body makes a recommendation regarding a license, the commission shall dispense with any hearing or further processing of the application, except to notify the applicant of such denial or approval. If the commission determines that the issuance of a license would be a violation of section 53-125 or 53-126, the commission shall not issue

a license.

Sec. 3. That section 53-134, Revised Statutes Supplement, 1986, be amended to read as follows:

53-134. The local governing body of any city or village with respect to licenses within its corporate limits, and the local governing body of any county with respect to licenses not within the corporate limits of any city or village, shall have the following powers, functions, and duties with respect to retail and bottle club licenses: (1) To cancel or revoke for cause retail or bottle club licenses to sell or dispense alcoholic liquors issued to persons for premises within its jurisdiction, subject to the right of appeal to the commission; (2) to enter or to authorize any law enforcement officer to enter at any time upon any premises licensed ~~hereunder~~ under the Nebraska Liquor Control Act to determine whether any of the provisions of ~~this the~~ act or any rules or regulations adopted and promulgated by it or by the commission have been or are being violated, and at such time to examine the premises of such licensee in connection therewith; (3) to receive a signed complaint from any citizen within its jurisdiction that any of the provisions of ~~this the~~ act, or any rules or regulations adopted and promulgated pursuant thereto, have been or are being violated and to act upon such complaints in the manner ~~hereinafter~~ provided in this section; (4) to receive retail or bottle club license fees as provided in subdivision (5) or (9) of section 53-124, and pay the same forthwith, after ~~the~~ applicant has been delivered his or her retail or bottle club license, to the city or village, or county treasurer, as the case may be; (5) to examine, or cause to be examined, any applicant or any retail or bottle club licensee upon whom notice of cancellation or revocation has been served in the manner ~~hereinafter~~ provided in this section, and to examine or cause to be examined, the books and records of any such applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For the purpose of obtaining any of the information desired, the local governing body may authorize its agent or attorney to act on its behalf; (6) to cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in section 53-1,116, it determines that the licensee has violated any of the provisions of ~~this the~~ act or any valid and subsisting ordinance or regulation duly enacted relating to alcoholic liquors. Such order of cancellation or revocation shall be subject to appeal to the commission

as other orders or actions of the local governing body, as hereinafter provided in section 53-1,116; and (7) upon receipt from the commission of the notice and copy of application as provided in section 53-131, the local governing body shall fix a time and place at which a hearing will be had and at which such local governing body shall will receive evidence, either orally or by affidavit, from the applicant and any other person, bearing upon the propriety of the issuance of such license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in such city, village, or county, as the case may be, one time not less than seven nor more than fourteen days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the local governing body in support of or protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than twenty-one thirty-five days after the date of receipt of the notice from the commission. At the hearing, the considerations of the local governing body shall include, but not be limited to, (a) the adequacy of existing law enforcement and the recommendation of law enforcement agencies in the area, (b) existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises, (c) zoning restrictions, (d) the sanitation or sanitary conditions on or about the proposed licensed premises, (e) the existence of a citizens' protest and any other evidence in support of or opposition to the application, (f) the existing population of the city, village, or county, as the case may be, its projected growth, the existence of licenses in such city, village, or county, and the class of such licenses, (g) the nature of the neighborhood or community where the proposed licensed premises are located, (h) 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, and (i) any licensing standards enacted by such local governing body pursuant to section 53-134.01. After such hearing, the local governing body shall cause to be spread at large in the minute record of its proceedings a resolution recommending either issuance or refusal of such license. The clerk of such city, village, or county shall thereupon mail to the commission by first-class mail postage prepaid a copy of the resolution which shall state the cost of the published notice, except that failure to comply herewith

shall not render void any license issued by the commission. In the event the commission refuses to issue such a license, the cost of publication of notice as herein required shall be paid by the commission from the security for costs.

Sec. 4. That original sections 53-131, 53-133, and 53-134, Revised Statutes Supplement, 1986, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.