

## LEGISLATIVE BILL 781

Approved by the Governor May 25, 1989

Introduced by General Affairs Committee, Smith, 33,  
Chairperson; Elmer, 38; R. Johnson, 34;  
Kristensen, 37; Hall, 7; Harnett, 45;  
Beck, 8; Hefner, 19

AN ACT relating to the Nebraska Liquor Control Act; to amend sections 53-101.01, 53-116, 53-117, 53-122, 53-124, 53-128, 53-129, 53-131, 53-132, 53-133, 53-134, 53-147, and 53-1.116, Reissue Revised Statutes of Nebraska, 1943, and section 53-101, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 441, Ninety-first Legislature, First Session, 1989; to restate intent and policy; to change provisions relating to the powers of the Nebraska Liquor Control Commission and local governing bodies; to provide designated criteria relating to the issuance of licenses; to eliminate and change certain hearing, review, and appeal procedures; to provide for the issuance of certain information; to authorize a fee; to create a fund; to eliminate certain sections declared unconstitutional; to harmonize provisions; to provide severability; to repeal the original sections, and also sections 53-101.03, 53-117.03, 53-117.04, 53-127, and 53-134.01, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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

Section 1. That section 53-101, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 441, Ninety-first Legislature, First Session, 1989, be amended to read as follows:

53-101. Sections 53-101 to 53-1.121 and section 7 of this act and sections 13, 15, 17, and 18 of this act shall be known and may be cited as the Nebraska Liquor Control Act.

Sec. 2. That section 53-101.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-101.01. (1) It is hereby declared to be

the policy of the Legislature to: {1} (a) Regulate, restrict, license, or prohibit, as the case may be, the manufacture, distribution, sale, and traffic of alcoholic liquor and regulate the transportation or importation of alcoholic liquor into this state when such alcoholic liquor is intended for delivery or use within the state as permitted by the United States Constitution, the Constitution of Nebraska, and the laws of Nebraska; {2} (b) promote adequate, economical, and efficient service by licensees selling alcoholic liquor within the State of Nebraska, without unjust or undue discrimination, preference, or advantage the public interest by liberal construction of the Nebraska Liquor Control Act to remedy the abuses inherent in the traffic of alcoholic liquor; {3} (c) generate revenue by imposing an excise tax upon alcoholic liquor; and {4} (d) encourage temperance and restrict the consumption of alcoholic liquor; and (e) promote the health, safety, and welfare of the people of the State of Nebraska and encourage temperance in the consumption of alcoholic liquor by (i) sound and careful control and regulation of the manufacture, sale, and distribution, and sale of alcoholic liquor, (ii) empowering local governing bodies to enact police power regulations by ordinance governing the conduct on the licensed premises, the licensed premises, and the activities occurring on the licensed premises of retail licensees, (iii) empowering local governing bodies to approve or deny retail and bottle club licenses within their jurisdiction according to designated criteria, in accordance with the exercise of local police powers, utilizing all reasonable means within their discretion to fulfill the purposes of the act, (iv) authorizing the commission to exercise the ministerial oversight and administration of the receipt, handling, delivery, and processing of all retail and bottle club licenses and applications for such licenses, (v) authorizing the commission to regulate and control the manufacture, distribution, sale, and traffic of alcoholic liquor consistent with the act, (vi) authorizing local governing bodies and the commission to enforce the act, and (vii) authorizing the commission to approve and deny retail licenses pursuant to the act.

(2) The Legislature hereby declares that the business of retailing alcoholic liquor is a business affected with the public health, safety, and welfare such that it must be regulated locally. The Legislature hereby acknowledges that there is general concern among the citizens of the State of Nebraska regarding: (a) The increasing number of individuals driving while under the

influence of alcoholic liquor; (b) the widespread abuse of alcoholic liquor in the state; (c) the issuance of additional retail licenses in areas already adequately served by existing retail licensees; and (d) the inability of law enforcement alone to curb the abuse of alcoholic liquor. Reconciling the continued issuance of additional retail licenses in areas already adequately served with the other concerns listed in this section requires the State of Nebraska to declare a policy to regulate and control the sale of alcoholic liquor at retail by establishing criteria that local governing bodies shall consider in granting or denying the issuance of retail licenses in order to moderate the issuance of such licenses.

Sec. 3. That section 53-116, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-116. The power to regulate all phases of the and control of the manufacture, distribution, sale, and traffic in of alcoholic liquor pursuant to the Nebraska Liquor Control Act liquors, except as specifically delegated in this act, is hereby vested exclusively in the local governing bodies and the commission. Nothing in the act shall be construed or interpreted to limit the powers of local governing bodies to regulate and govern the conduct on the licensed premises, the licensed premises, and the activities occurring on the licensed premises of retail licensees.

Sec. 4. That section 53-117, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-117. The commission shall have the following powers, functions, and duties:

(1) To receive applications for and to approve, deny, issue, suspend, cancel, and revoke licenses to manufacturers, distributors, nonbeverage users, retailers, railroads, including owners and lessees of sleeping, dining, and cafe cars, airlines, and boats in accordance with the Nebraska Liquor Control Act;

(2) To approve, deny, issue, suspend, cancel, and revoke retail licenses in accordance with the act;

(3) To receive applications for retail licenses and to exercise ministerial oversight and administration of the receipt, handling, delivery, and processing of all retail and bottle club licenses and applications for such licenses;

(4) To fix by rules and regulations the

standards of manufacture of alcoholic ~~liquors~~ liquor not inconsistent with federal laws in order to insure the use of proper ingredients and methods in the manufacture and distribution thereof and to adopt and promulgate rules and regulations, not inconsistent with federal laws, for the proper labeling of containers, ~~or~~ barrels, casks, ~~or~~ other bulk containers, or bottles of alcoholic liquor manufactured or sold in this state. It is intended by the grant of power to adopt and promulgate rules and regulations that the commission shall be clothed with broad discretionary powers to govern the traffic in alcoholic ~~liquors~~ liquor and to enforce strictly all the provisions of the act in the interest of sanitation, purity of products, truthful representations, and honest dealings in such manner as generally will promote the public health and welfare. All such rules and regulations shall be absolutely binding upon all licensees and enforceable by the commission through the power of suspension or cancellation of licenses, except that all rules and regulations of the commission affecting a Class H license, a Class 9 license, or a club possessing any form of retail license shall have equal application to all such licenses or shall be void;

~~(3)~~ (5) To call upon other administrative departments of the state, county, and municipal governments, county sheriffs, city police departments, village marshals, peace officers, and prosecuting officers for such information and assistance as it may deem necessary in the performance of its duties;

(4) (6) To recommend to local governing bodies rules and regulations or ordinances, not inconsistent with law, for the distribution and sale of alcoholic ~~liquors~~ liquor throughout the state;

(5) (7) To inspect or cause to be inspected any premises where alcoholic ~~liquors~~ are liquor is manufactured, distributed, or sold and, when sold on an unlicensed premise or on any premises in violation of law, to bring an action to enjoin the use of the property for such purpose;

(6) To hear and determine appeals from orders of a local governing body in accordance with the act;

~~(7)~~ (8) To conduct or cause to be conducted an audit to inspect any license holder's records and books;

~~(8)~~ (9) In the conduct of any hearing or audit authorized to be held by the commission (a) to examine or cause to be examined, under oath, any licensee and to examine or cause to be examined the books and records of such licensee, (b) to hear testimony and take proof

material for its information in the discharge of its duties hereunder, and (c) to administer or cause to be administered oaths;

{9} {10} To investigate the administration of laws in relation to alcoholic ~~liquors~~ liquor in this and other states and to recommend from time to time to the Governor and through him or her to the Legislature of this state amendments to the act; and

{10} {11} To receive, account for, and turn over to the State Treasurer state license fees and taxes provided for in the act.

Sec. 5. That section 53-122, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-122. The commission may issue licenses for the sale of alcoholic ~~liquors~~ liquor, except beer, by the drink subject to all the terms and conditions of the Nebraska Liquor Control Act in all cities and villages in this state and outside of cities and villages as provided in subdivision (5)G. of section 53-124 ~~and section 53-127~~ except in those cases when it shall affirmatively appear that the issuance thereof will render null and void prior conveyances of land thereto for public uses and purposes by purchase, gift, or devise under the conditions and in the manner provided in this section.

If a sufficient petition is signed by the electors of any such city or village of such number as equals twenty percent of the votes cast at the last general election held in such city or village which requests that the question of licensing the sale of alcoholic ~~liquors~~ liquor, except beer, by the drink be submitted to the electors of such city or village at a special election to be called for that purpose and such petition is presented to the municipal clerk of such city or village, the municipal clerk shall cause to be published one time in a legal newspaper published in or of general circulation in such city or village a notice of a special election to be held not less than ten days nor more than twenty days from the date of such publication. The notice shall state the proposition to be submitted to the electors at such special election.

The question of licensing the sale of such alcoholic ~~liquors~~ liquor either by the drink or in the original package, or both by the drink and in the original package, may also be submitted at any general municipal election, except as otherwise provided in section 53-121, in any city or village in this state subject to the following conditions or procedure: Upon

the filing with the municipal clerk of such city or village of a petition signed by electors of such city or village of such number as equals twenty percent of the votes cast at the last general election held in such city or village, such proposition or propositions shall be submitted. Each sheet of each petition shall contain not more than thirty signatures of electors with their personal signatures, addresses, and the date of such signatures, all in their own handwriting. Each signature shall be the same as it appears upon the registration records. At the top of each sheet shall be stated the proposition or propositions to be submitted and the date of the general municipal election at which it is proposed to be submitted. No signature on such petition shall be valid unless appended to the petition within the last ninety days prior to the date of filing the petition with the municipal clerk of the city or village. At the bottom of each sheet of such petition shall be the affidavit of the person who circulated the same, stating that the signatures to the petition were made in his or her presence, that he or she has reasonable cause to believe that they are qualified electors of the particular city or village, and that they are the persons they represent themselves to be. Such petition shall be filed thirty days prior to the day of the general municipal election at which the proposition is to be submitted, and during such thirty-day period no signature shall be withdrawn and no signature shall be added.

Any person who signs any proposal or petition contemplated under this section, knowing that he or she is not a qualified elector in the place where such proposal or petition is made, who aids or abets any other person in doing any of the acts mentioned, or who bribes, gives, or pays any money or thing of value to any person directly or indirectly to induce him or her to sign such proposal or petition shall be guilty of a Class III misdemeanor.

Upon the ballot either at the special election or at any general municipal election, the proposition or propositions shall be stated as follows:

Shall the sale of alcoholic ~~liquors~~ liquor except beer by the drink be licensed in (here insert the name of the city or village)?

.... For license to sell by drink.

.... Against license to sell by drink.

Shall the sale of alcoholic ~~liquors~~ liquor except beer by the package be licensed in (here insert the name of the city or village)?

.... For license to sell by the package.

.... Against license to sell by the package.

The provisions of the statutes of this state relating to election officers, voting places, election apparatus and blanks, preparation and form of ballots, information to voters, delivery of ballots, calling of elections, conduct of elections, manner of voting, counting of votes, records and certificates of elections, and recounts of votes, so far as applicable, shall apply to voting on the proposition or propositions under the Nebraska Liquor Control Act, and a majority vote of those voting on the question shall be mandatory upon the commission.

An election may not be held in the same city or village under the provisions of this section more often than once each twenty-three months.

The provisions of subdivision (5)H. or (9) of section 53-124 shall not be subject to this section.

If the question is to be submitted at a statewide primary or general election, such petitions shall be filed with the municipal clerk not less than sixty days prior to the election. The provisions for the required number of signers and the form of petition shall be the same as for a special election. The city clerk shall verify the signatures on the petitions with the voters' registration in the office of the county clerk or election commissioner. During the ten-day period while the petitions are being checked, no signatures shall be withdrawn and no signatures shall be added.

If the city clerk finds the petitions to be valid, he or she shall, not less than fifty days prior to the statewide primary or general election, give notice in writing to the county clerk or election commissioner that the question is to be submitted at the time of the statewide primary or general election. The election notices, issuing of the official ballots on election day, issuing of the official absentee ballots, and the counting and canvassing of the same shall be conducted by the county clerk or election commissioner as provided in Chapter 32 and the official results certified to the city clerk.

Sec. 6. That section 53-124, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-124. At the time application is made to the commission for a license of any class, the applicant shall pay the fee provided in this section. The fees for annual licenses finally issued by the commission

shall be as follows:

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

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

A. Beer, excluding beer produced by a brewpub:

- (a) 1 to 100 barrel daily capacity, or any part thereof ..... \$100.00
- (b) 100 to 150 barrel daily capacity ..... 200.00
- (c) 150 to 200 barrel daily capacity ..... 350.00
- (d) 200 to 300 barrel daily capacity ..... 500.00
- (e) 300 to 400 barrel daily capacity ..... 650.00
- (f) 400 to 500 barrel daily capacity ..... 700.00
- (g) 500 barrel daily capacity, or more ..... 800.00;
- B. Operation of a brewpub ..... \$250.00;
- C. Wines ..... \$250.00;
- D. Operation of a farm winery ..... \$250.00.

The words daily capacity, as used in subdivision (2)A. of this section, 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 distributor's license, for the first and each additional wholesale distributing place of business operated in this state by the same licensee and wholesaling or jobbing alcoholic ~~liquors~~ liquor, except beer and wines produced from farm wineries..... \$500.00;

(4) Beer distributor's license, for the first and each additional wholesale distributing place of business operated in this state by the same licensee and wholesaling or jobbing beer only ..... \$250.00;

(5) For a retailer's license:

A. Beer only except for brewpubs, within the corporate limits of cities and villages, for consumption on the premises, the sum of ten dollars in villages of five hundred population or less; twenty-five dollars in villages or cities, as the case may be, having a population of more than five hundred inhabitants and not more than twenty-five hundred inhabitants; fifty dollars



in cities having a population of more than twenty-five hundred inhabitants and less than ten thousand inhabitants; and one hundred dollars in cities having a population of ten thousand inhabitants or more;

B. Beer only except for brewpubs, for consumption off the premises, sales in the original packages only, the sum of twenty-five dollars;

C. Alcoholic ~~liquers~~ liquor within the corporate limits of cities and villages, for consumption on the premises and off the premises, sales in original packages only, the sum of two hundred fifty dollars, except for farm winery or brewpub sales outlets. If this license is held by a nonprofit corporation, it shall be restricted to consumption on the premises only;

D. Alcoholic ~~liquers~~ liquor, including beer, within the corporate limits of cities and villages, for consumption off the premises, sales in the original packages only, the sum of one hundred fifty dollars, except for farm winery or brewpub sales outlets;

E. Alcoholic ~~liquers~~ liquor without the corporate limits of cities and villages, in counties mentioned in section 53-127 in any county in which there is no incorporated city or village or in which the county seat is not located in an incorporated city or village, for consumption off the premises, sales in the original packages only, not less than one hundred fifty dollars for each license, except for farm winery or brewpub sales outlets;

F. Beer only except for brewpubs, without the corporate limits of cities and villages, for consumption on the premises, not less than twenty-five dollars for each license, the precise amount in each case to be such sum as shall equal the amount of license fee fixed in this section plus the occupation tax fixed by ordinance, if any, in the nearest incorporated city or village in the same county;

G. Alcoholic ~~liquers~~ liquor without the corporate limits of cities or villages in existing privately owned recreation areas, on which are located hotels or motels to be licensed in which twenty-five or more rooms are used for the sleeping accommodations of guests and having one or more public dining rooms where meals are served and which are of sufficient size to serve at least one hundred patrons, which recreational areas shall have, after licensing, a principal business purpose or purposes other than the sale of alcoholic ~~liquers~~ liquor and have at least one hundred sixty acres of real estate of the area under contiguous single ownership or lease, for consumption on the premises and

off the premises, sales in original packages only, the sum of two hundred fifty dollars. The commission shall first find that the proposed licensed premises are a part of an existing recreational area of substantial size and operation and that such area does, in fact, have a recreational purpose; subsequent to this finding the commission shall then determine that the issuance of the proposed license would be in the public interest;

H. Alcoholic ~~liquors~~ liquor, including beer, issued to a nonprofit corporation, for consumption on the premises, which license shall not be issued to any corporation authorized by law to receive a license under subdivision (5)C. of this section, except that this provision shall not apply when the nonprofit corporation shall be open for sale of alcoholic ~~liquors~~ liquor, including beer, for consumption on the premises not more than two days in any week:

(a) Within the corporate limits of cities and villages, for consumption on the premises, regardless of alcoholic content, the sum of twenty dollars in villages of five hundred population or less; fifty dollars in villages or cities, as the case may be, having a population of more than five hundred inhabitants and not more than twenty-five hundred inhabitants; one hundred dollars in cities having a population of more than twenty-five hundred inhabitants and less than ten thousand inhabitants; and two hundred dollars in cities having a population of ten thousand inhabitants or more; and

(b) Without the corporate limits of cities and villages, for consumption on the premises, not less than two hundred fifty dollars for each license, the precise amount in each case to be such sum as shall equal the amount of license fee herein fixed plus the occupation tax fixed by ordinance, if any, in the nearest incorporated city or village in the same county. If the incorporated city or village does not have an occupation tax for nonprofit corporation licenses, then the licensee shall pay an amount equal to a class C license occupation tax for such city or village. The applicable fee shall be paid by the applicant or licensee, as the case may be, directly to the city or village treasurer in the case of class A, C, and H(a) licenses; directly to the city or village treasurer in the case of class B, I, and J licenses within the corporate limits of cities and villages; directly to the county treasurer in the case of class B and H(b) licenses outside of the corporate limits of cities and villages; directly to the commission in the case of class D and E licenses; and

directly to the county treasurer in the case of class F and G licenses;

I. Alcoholic ~~liquors~~ liquor, within the corporate limits of cities and villages, for consumption on the premises, the sum of two hundred dollars, except for farm winery or brewpub sales outlets;

J. Beer and wine only except for brewpubs, within the corporate limits of cities and villages, for consumption on the premises of restaurants only, the sum of fifty dollars in villages of five hundred population or less; seventy-five dollars in villages or cities, as the case may be, having a population of more than five hundred inhabitants and not more than twenty-five hundred inhabitants; one hundred twenty-five dollars in cities having a population of more than twenty-five hundred inhabitants and less than ten thousand inhabitants; and two hundred twenty-five dollars in cities having a population of ten thousand inhabitants or more;

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

(7) For a boating 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) Bottle club license ..... \$250.00

in any county having a population of less than five thousand five hundred inhabitants, and five hundred dollars in any county having a population of five thousand five hundred inhabitants or more. No such license shall be issued within the corporate limits of any city or village when a license as provided in subdivision (5)C. of this section has been issued in such city or village. The applicable fee shall be paid, by the applicant or licensee, directly to the city or village treasurer in the case of a bottle club license within the corporate limits of a city or village, and directly to the county treasurer in the case of a bottle club license outside the limits of any city or village; and

(10) For an airline license ..... \$100.00 and \$1.00 for each duplicate.

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 for class C licenses which 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 shall have been made, ~~7 except that when a class C license is renewed only for the period of May 1 to October 31 to adjust the expiration date, only one-half of the annual license fee shall be paid to the state and only one-half of the local occupation tax shall be paid.~~

Sec. 7. That section 53-128, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-128. Whenever any retail licensee shall have has been convicted by any court of a violation of any of the provisions of this act; he the Nebraska Liquor Control Act, the licensee may, in addition to the penalties for such offense, incur a forfeiture of his or her license and all money that had been paid therefor. The local governing body may thereupon conditionally revoke his or her license, subject to final order in the commission; or the commission may revoke his or her license in an original proceeding brought before it for that purpose, as the case may be. The local governing body or the commission, as the case may be, shall issue the final order revoking the license subject to review as provided in section 53-1.116. The local governing body shall notify the commission of the revocation within ten days of such action.

Sec. 8. That section 53-129, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-129. Retail and bottle club licenses issued under the Nebraska Liquor Control Act shall apply only to that part of the premises described in the application approved by the commission and in the license issued thereon, and only one location shall be so described in each license. After such license has been granted for particular premises, the local governing body may endorse upon the license permission to add to, delete from, or abandon the premises described in such license and if applicable remove from the premises to other premises approved by it, but in order to obtain such approval the retail or bottle club licensee shall file with the local governing body a request in writing and a statement under oath which shall show that the premises as added to or deleted from, or to which removal is to be made, comply in all respects with the requirements of the act. No such

addition, deletion, or removal shall be made by any such licensee until his or her license has been endorsed to that effect in writing by the local governing body.

Sec. 9. That section 53-131, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-131. Any person desiring to obtain a new license to sell alcoholic ~~liquers~~ liquor at retail or a brewpub license 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 not approved; and

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

License fees and registration fees shall be paid to the commission by certified or cashier's check of a bank within this state, personal or business check, United States post office money order, or cash in the full amount of such fees. 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. 10. That section 53-132, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-132. (1) The local governing body of the county, city, or village shall, after the hearing provided in section 53-134, approve the application or deny the license within forty-five days after receiving a copy of the application from the commission as provided in section 53-131. If the local governing body denies the retail or bottle club license within such period, such denial shall be final and shall be subject to review as provided in sections 25-1901 to 25-1908. The local governing body shall issue the final order of denial to the licensee in writing and deliver or mail a copy to the commission within ten days of the date the application was denied. If the local governing body approves an application within such period, the local governing body shall within ten days of the date the application was approved notify the commission by mail or delivery of the action and the commission shall grant or deny the license as required according to the procedure provided in this section. The commission shall take no action until it receives the notice of approval from the local governing body. If no hearing is required pursuant to subdivision (1)(a) of section 53-133, the commission may waive the sixty-day objection period and, if not otherwise prohibited by law, cause a retail license or bottle club license to be signed by its chairperson, attested by its secretary over the seal of the commission, and issued in the manner provided in subsection (4) of this section as a matter of course.

(2) If the local governing body takes any action other than issuing a final order approving the application or denying the license within the forty-five-day period, the applicant may proceed under sections 25-2156 to 25-2169 to compel the performance required under section 53-134. If the local governing body does not issue a final order and notify the commission within fifty-five days after receiving the application, the commission shall stop processing the application except to notify the applicant.

(3) If the local governing body approves the application within the forty-five-day period, a A retail license or bottle club license may shall be issued to any qualified applicant if it is found by the commission that the applicant meets the requirements of the Nebraska Liquor Control Act other than the designated criteria enumerated in subsection (3) (2) of this section 53-134, and any licensing standards enacted by the local governing body pursuant to section 53-134-01. A retail license or bottle club license may be denied if any one or more of such criteria are not met. If the

local governing body of any county, city, or village, after complying with the requirements of section 53-134, makes a recommendation, such recommendation shall be binding on the commission, except that no license shall be issued if the commission determines that the issuance would be a violation of section 53-125 or 53-126. Any hearing held before the commission pursuant to section 53-133 after the effective date of this act shall be subject to the statutory provisions in existence on the date of such hearing. If prior to the effective date of this act the local governing body has held a hearing on an application for a retail liquor license or bottle club license and made its recommendation and (a) the commission has waived a hearing but has not approved the application, (b) no hearing has been held before the commission, or (c) a hearing has been held before the commission and an application for a rehearing has been filed with the commission, the application or applications shall be returned by the commission to the local governing body for a further hearing and decision. The application shall be reviewed and acted upon by the local governing body as provided in this section.

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

(a) The recommendation of the local governing body and shall recognize any licensing standards enacted by the local governing body which are not in conflict with the Nebraska Liquor Control Act;

(b) The existence of a citizens' protest made in accordance with section 53-133 and any other evidence in support of or opposition to the application, presented at the hearing before the local governing body;

(c) 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;

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

(e) If 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;

(f) If the applicant can conform to all provisions, requirements, rules, and regulations provided for in the Nebraska Liquor Control Act;

(g) The adequacy of existing law enforcement

and the recommendation of law enforcement agencies in the area; and

(h) If the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to insure that the licensee can conform to all provisions, requirements, rules, and regulations provided for in the Nebraska Liquor Control Act.

(4) Retail licenses or bottle club licenses issued or renewed by the commission shall be mailed or delivered 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.

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

Sec. 11. That section 53-133, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-133. (1) The commission after receiving notice as required under section 53-132 may shall set for hearing before it any application for a retail or bottle club license relative to which it has received:

(a) No recommendation from that has been approved by the local governing body, within forty-five days from the date of receipt of such application by the city, village, or county clerk 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 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 accordance with the rules and regulations adopted and promulgated by the commission. No license shall be denied by the commission except after a hearing with reasonable notice to the applicant and opportunity to appear and present evidence. (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. 12. That section 53-134, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-134. (1) 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) (a) To cancel, revoke, or suspend for cause retail or bottle club licenses to sell or dispense alcoholic ~~liquors~~ liquor issued to persons for premises within its jurisdiction; subject to the right of appeal review as provided in section 53-1,116;

(2) (b) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any of the provisions of the act, or any rules or regulations adopted and promulgated by ~~it~~ or by the commission, or any rule, regulation, or ordinance of the local governing body have been or are being violated and at such time to examine the premises of such licensee in connection therewith;

(3) (c) To receive a signed complaint from any citizen within its jurisdiction that any of the provisions of 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 provided in this section;

(4) (d) 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) (e) 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 provided in this section coming before it as provided in the act, 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; and

(6) (f) To cancel, or revoke, or suspend on its own motion any license if, upon the same notice and hearing as provided in section 53-1,116 ~~53-1,114~~, it determines that the licensee has violated any of the provisions of the act or any valid and subsisting ordinance, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic ~~liquors~~ liquor. Such order of cancellation, or revocation, or suspension shall be subject to appeal review as provided in section 53-1,116, and

(7) (2) 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 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 ~~thirty-five~~ forty-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 only consider the requirements of the Nebraska Liquor Control Act and the following criteria:

(a) The adequacy of existing law enforcement resources and services in the area;

(b) The recommendation of the police department or any other law enforcement agency;

(c) Existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises, potential traffic and parking problems, and the proximity and availability of onstreet and offstreet parking;

(d) Zoning restrictions and the local governing body's zoning and land-use policies;

(e) Sanitation or sanitary conditions on or about the proposed licensed premises;

(f) The existence of a citizen's protest and similar evidence in support of or in opposition to the application;

(g) The existing population and projected growth within the jurisdiction of the local governing body and within the area to be served;

(h) The existing liquor licenses, the class of each such license, and the distance and times of travel between establishments issued such licenses;

(i) Whether the proposed license would be compatible with the neighborhood or community where the proposed premises are located;

(j) Whether the type of business or activity proposed to be operated or presently operated in conjunction with the proposed license is and will be consistent with the public interest as declared in section 53-101.01;

(k) Whether the applicant can ensure that all alcoholic beverages, including beer and wine, will be handled by persons in accordance with section 53-102;

(l) Whether the applicant has taken every reasonable precaution to protect against the possibility of shoplifting of alcoholic liquor, which alcoholic liquor shall be displayed and kept in and sold from an area which is reasonably secured;

(m) Whether the applicant is fit, willing, and able to properly provide the service proposed in conformance with all provisions and requirements of and rules and regulations adopted and promulgated pursuant to the act;

(n) Whether the applicant has demonstrated that the type of management and control exercised over the licensed premises will be sufficient to ensure that the licensee can conform to all the provisions and requirements of and rules and regulations adopted and promulgated pursuant to the act;

(o) The background information of the applicant established by information contained in the

public records of the commission and investigations conducted by law enforcement agencies;

(p) Past evidence of discrimination involving the applicant as evidenced by findings of fact before any administrative board or agency of the local governing body, any other governmental board or agency of the local governing body, any other governmental unit, or any court of law;

(q) Whether the applicant or the applicant's representatives suppressed any fact or provided any inaccurate information to the commission or local governing body or the employees of the commission or local governing body in regard to the license application or liquor investigations. The applicant shall be required to cooperate in providing a full disclosure to the investigating agents of the local governing body;

(r) Proximity of and impact on schools, hospitals, libraries, parks, and other public institutions;

(s) Whether activities proposed to be conducted on the licensed premises or in adjacent related outdoor areas will create unreasonable noise or disturbance; and

(t) Compliance with state laws, liquor rules and regulations, and municipal ordinances and regulations and whether or not the applicant has ever forfeited bond to appear in court to answer charges of having committed a felony or charges of having violated any law or ordinance enacted in the interest of good morals and decency or has been convicted of violating or has forfeited bond to appear in court and answer charges for violating any law or ordinance relating to alcoholic liquor.

It shall be the applicant's duty to produce evidence pertaining to the designated criteria prescribed in this subsection. The burden of proof and persuasion shall be on the party filing the application. When applicable for purposes of this section, applicant shall be synonymous with licensee. - 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-

(3) After such hearing, the local governing body shall cause to be spread at large in the minute record of its proceedings a resolution recommending approving or denying the issuance, the denial, or the renewal of such license. No license shall be denied by the local governing body except after a hearing with reasonable notice to the applicant and opportunity to appear and present evidence. Any resolution denying or failing to renew an application or license rendered by a local governing body shall be in writing or stated in the record and shall be accompanied by findings. The findings shall consist of concise statements of the conclusions upon each contested issue. The applicant or licensee shall be notified of the decision in person or by mail. A copy of the decision and order and accompanying findings shall be delivered or mailed upon request to the applicant or licensee. or the refusal to issue, deny, or renew 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 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 required in this section shall be paid by the commission from the security for costs-

Sec. 13. Local governing bodies shall only have authority to approve applications and deny licenses pursuant to the Nebraska Liquor Control Act.

Sec. 14. That section 53-147, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-147. The governing bodies of cities and villages are hereby empowered to enact police power regulations by ordinance governing the conduct on the licensed premises, the licensed premises, and the activities occurring on the licensed premises authorized to regulate by ordinance, not inconsistent with the

provisions of this act, the business of all retail or bottle club licensees carried on within their corporate limits.

Sec. 15. (1) A copy of the rule, regulation, order, or decision of the commission suspending, canceling, or revoking any license, in any proceeding before it, certified under the seal of the commission, shall be served upon each party of record to the proceeding before the commission. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the commission shall enter his or her appearance and indicate to the commission his or her address for the service of a copy of any rule, regulation, order, decision, or notice. The mailing of a copy of any rule, regulation, order, or decision of the commission or of any notice by the commission, in the proceeding, to such party at such address shall be deemed to be service thereof upon such party.

(2) Within twenty days after the service of any rule, regulation, order, or decision of the commission suspending, canceling, or revoking any license upon any party to the proceeding, as provided for by subsection (1) of this section, such party may apply for a rehearing in respect to any matters determined by the commission. The commission shall consider such application for a rehearing at their next regularly scheduled meeting. In case such application for rehearing is granted, the commission shall proceed as promptly as possible to consider the matters presented by such application. No appeal shall be allowed from any decision of the commission except as is provided for in section 53-1,116.

(3) Upon the final disposition of any proceeding suspending, canceling, or revoking any license costs shall be paid by the party or parties against whom a final decision is rendered. Costs may be taxed or retaxed to local governing bodies as well as individuals. Only one rehearing, referred to in subsection (2) of this section, shall be granted by the commission on application of any one party. In the event that a motion for rehearing has been filed with the commission as provided in this section, the time for filing a petition for review under section 53-1,116 shall begin with the date of the mailing of the notice of the overruling of the motion for rehearing to each party to the record.

Sec. 16. That section 53-1,116, Reissue Revised Statutes of Nebraska, 1943, be amended to read

as follows:

53-1,116. (1) Review of any final decision or order under the Nebraska Liquor Control Act shall be according to sections 25-1901 to 25-1908. The Administrative Procedure Act and sections 15-1201 to 15-1205 shall not apply to review under this section. For purposes of review, a final decision or order shall include any final action rendered after a hearing required by the Nebraska Liquor Control Act.

(2) The secretary of the commission or the clerk of the local governing body shall prepare and deliver a transcript of the proceedings and a transcript of the testimony and evidence before the commission or local governing body upon request of the party seeking review. The party seeking review shall pay the costs of producing the transcript. The transcript of the proceedings shall contain a copy of the final decision sought to be reviewed and, if applicable, a copy of the application submitted.

(3) The venue appropriate for review of a final decision or order shall be as follows:

(a) For review of a final decision of a local governing body, the district court in the county in which the local governing body is located; and

(b) For review of a final order of the commission, the district court of Lancaster County.

The venue provided in this section shall be jurisdictional, and no court shall review any action unless the action is brought in the appropriate venue. A copy of the rule, regulation, order, or decision of the commission, in any proceeding before it, certified under the seal of the commission, shall be served upon each party of record to the proceeding before the commission. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the commission shall enter his or her appearance and indicate to the commission his or her address for the service of a copy of any rule, regulation, order, decision, or notice. The mailing of a copy of any rule, regulation, order, or decision of the commission or of any notice by the commission, in the proceeding, to such party at such address shall be deemed to be service thereof upon such party.

(2) Within twenty days after the service of any rule, regulation, order, or decision of the commission upon any party to the proceeding, as provided for by subsection (1) of this section, such party may apply for a rehearing in respect to any matters

determined by the commission. The commission shall receive and consider such application for a rehearing within twenty days from the filing thereof with the secretary of the commission. In case such application for rehearing is granted, the commission shall proceed as promptly as possible to consider the matters presented by such application. No appeal shall be allowed from any decision of the commission except as is provided for in subsection (4) of this section.

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

(4)(a) If the local governing body does not make a recommendation to the commission, any decision of the commission granting or refusing to grant or suspending, canceling, revoking, or renewing or refusing to suspend, cancel, revoke, or renew a license, special designated permit, or permit for the sale of alcoholic liquors, including beer, may be reversed, vacated, remanded, or modified by the district court of Lancaster County on appeal by any party to the hearing or rehearing before the commission. The petition shall be filed in the district court within thirty days after the mailing of a copy of the decision to the parties of record. In the event that a motion for rehearing has been filed with the commission as provided in this section, the time for filing a petition shall begin with the date of the mailing of the notice of the overruling of the motion for rehearing to each party to the record. The appeal shall be tried by the court without a jury on the record of the commission. The local governing body and the commission shall be entitled to reasonable notice and to be heard. All such hearings shall be open to the public. If after such hearing the court determines that such license has been arbitrarily or capriciously denied, granted, revoked, or refused to be revoked or a hearing to revoke has been improperly refused, the court shall enter a written order in conformity with such finding. A certified copy of the order shall be transmitted to the commission, and the commission shall take such action as is necessary to conform to such order.

(b) If the local governing body does make a recommendation to the commission on the issuance or denial of, the suspension, cancellation, revocation, or



renewal of, or the refusal to issue, deny, suspend, cancel, revoke or renew a license, special designated permit, or permit for the sale of alcoholic liquors, including beer, the recommendation shall be binding on the commission. The decision of the commission based on the recommendation of the local governing body may be reversed, vacated, remanded, or modified by the district court of a county in which the local governing body is located on appeal by any party to the hearing before the local governing body. The procedure to obtain such a reversal, vacation, remand, or modification shall be by the filing of a notice of intention to appeal, followed by the filing of a petition in the district court of the county in which the local governing body is located, setting forth the contention upon which such party relies for reversal, vacation, remand, or modification. Such notice of intention to appeal shall be filed with the local governing body within twenty days following the mailing of a copy of the final decision of the commission to each party of record. The petition shall be filed in the district court in a county in which the local governing body is located within thirty days after such mailing of a copy of the decision. The commission shall not be a party to such appeal unless it so requests.

Any appeal brought pursuant to subdivision (1) of section 53-134 or this subdivision shall be tried by the court without a jury on the record of the local governing body. The commission shall not be a party to such appeal unless it so requests. The local governing body shall be entitled to reasonable notice and to be heard. All such hearings shall be open to the public. If after such hearing the court determines that such license has been arbitrarily or capriciously denied, granted, revoked, or refused to be revoked or a hearing to revoke has been improperly refused, the court shall enter a written order in conformity with such finding. A certified copy of such order shall be transmitted to the local governing body, and the local governing body shall recommend such action to the commission as may be necessary to conform to such order.

(5) The petition shall set forth: (a) The name and mailing address of the petitioner, (b) the name and mailing address of the commission and the local governing body making the decision or recommendation, (c) the identification of the final decision or recommendation at issue together with a duplicate copy of the decision or recommendation, (d) the identification of the parties in the contested case that

led to the final decision or recommendation; (e) facts to demonstrate proper venue; (f) the petitioner's reasons for believing that relief should be granted; and (g) a request for relief specifying the type and extent of the relief requested.

(6)(a) Upon the filing of a petition as provided for in subdivision (4)(a) of this section and the making of a request, the secretary of the commission shall prepare and deliver to the appellant a certified copy of the official record of the proceedings had before the commission. Such official record shall include: (i) Notice of all proceedings; (ii) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the commission pertaining to the contested case; (iii) the transcribed record of the hearing before the commission including all exhibits and evidence introduced during such hearing; a statement of the matters officially noticed by the commission during the proceeding; and all proffers of proof and objections and rulings thereon; and (iv) the final order appealed from. The commission shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The commission may require payment or bond prior to the transmittal of the record. Such record shall be filed with the petition if received by the appellant within the time permitted for the filing of the petition; if not, as soon thereafter as the same may be received from the secretary of the commission. The jurisdiction of the district court of the appeal shall attach when the petition on appeal has been filed and shall not depend upon the filing of the record.

(b) Upon the filing of a petition as provided for in subdivision (4)(b) of this section and the making of a request, the local governing body shall prepare and deliver to the appellant a certified copy of the official record of the proceedings had before the local governing body. Such official record shall include: (i) Notice of all proceedings; (ii) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the local governing body pertaining to the contested case; (iii) the transcribed record of the hearing before the local governing body including all exhibits and evidence introduced during such hearing; a statement of the matters officially noticed by the local governing body

during the proceeding; and all proffers of proof and objections and rulings thereon; and (iv) the final order appealed from. The local governing body shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the costs for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The local governing body may require payment or bond prior to the transmittal of the record. Such record shall be filed with the petition if received by the appellant within the time permitted for the filing of the petition; if not, as soon thereafter as the same may be received from the local governing body. The jurisdiction of the district court of the appeal shall attach when the petition on appeal has been filed and shall not depend upon the filing of the record.

Sec. 17. The commission may issue or provide to any person regulated under the Nebraska Liquor Control Act a set of rules or regulations adopted and promulgated by the commission, a copy of the Nebraska Liquor Control Act, and any other information which the commission deems important in the area of liquor control in the State of Nebraska. The information may be printed in a booklet, a pamphlet, or any other form the commission may determine to be appropriate. The commission may update such material as often as it deems necessary and may charge a fee for the material. The fee shall be reasonable and shall not exceed any reasonable or necessary costs of producing the material for distribution.

Sec. 18. Any money collected by the commission pursuant to section 17 of this act shall be credited to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund which is hereby created. The purpose of the fund shall be to cover any costs incurred by the commission in producing or distributing the material referred to in section 17 of this act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 19. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 20. That original sections 53-101.01, 53-116, 53-117, 53-122, 53-124, 53-128, 53-129, 53-131, 53-132, 53-133, 53-134, 53-147, and 53-1.116, Reissue Revised Statutes of Nebraska, 1943, and section 53-101,

Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 441, Ninety-first Legislature, First Session, 1989, and also sections 53-101.03, 53-117.03, 53-117.04, 53-127, and 53-134.01, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 21. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.