

LEGISLATIVE BILL 267

Approved by the Governor May 24, 1999

Introduced by General Affairs Committee: Schellpeper, 18, Chairperson;
Connealy, 16; Cudaback, 36; Hartnett, 45; Robak, 22; Schrock, 38

AN ACT relating to the Nebraska Liquor Control Act; to amend sections 53-101.01, 53-103, 53-116, 53-116.02, 53-117, 53-122, 53-129, 53-131, 53-132 to 53-134, 53-134.03, 53-177, 53-180.06, 53-1,104, 53-1,115, and 53-1,116, Reissue Revised Statutes of Nebraska; to change provisions relating to issuance of liquor licenses; to permit certain sales of alcoholic liquor on college and university campuses as prescribed; to change duties of retail licensees; to provide penalties; to harmonize provisions; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 53-101.01, Reissue Revised Statutes of Nebraska, is amended to read:

53-101.01. It is 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 and encourage temperance in the consumption of alcoholic liquor by sound and careful control and regulation of the manufacture, distribution, and sale of alcoholic liquor. ~~(1) It is hereby declared to be the policy of the Legislature to: (a) Regulate, restrict, license, or prohibit 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; (b) promote the public interest by liberal construction of the Nebraska Liquor Control Act to remedy the abuses inherent in the traffic of alcoholic liquor; (c) generate revenue by imposing an excise tax upon alcoholic liquor; (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 by (i) sound, careful control and regulation of the manufacture, 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.

~~(3) It is the declared policy of the State of Nebraska that it is necessary to regulate and control the manufacture, sale, and distribution of alcoholic liquor within the state for the purpose of fostering temperance in consumption and respect for and obedience to the law.~~

Sec. 2. Section 53-103, Reissue Revised Statutes of Nebraska, is amended to read:

53-103. For purposes of the Nebraska Liquor Control Act, unless the context otherwise requires:

(1) Alcohol ~~shall mean~~ means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and ~~shall include~~ includes synthetic ethyl alcohol. Alcohol ~~shall~~ does not include denatured alcohol or wood alcohol;

(2) Spirits ~~shall mean~~ means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and ~~shall include~~ includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances;

(3) Wine ~~shall mean~~ means any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits;

(4) Beer ~~shall mean~~ means a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water and ~~shall include, but not be~~ includes, but is not limited to, beer, ale, stout, lager beer, porter, and near beer;

(5) Alcoholic liquor ~~shall include~~ includes alcohol, spirits, wine, beer, and any liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor ~~shall also include~~ also includes confections or candy with alcohol content of more than one-half of one percent alcohol. The act ~~shall~~ does not apply to (a) alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations adopted and promulgated pursuant to such acts, (b) flavoring extracts, syrups, medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but the act ~~shall apply~~ applies to alcoholic liquor used in the manufacture, preparation, or compounding of such products or confections or candy that contains more than one-half of one percent alcohol, or (c) wine intended for use and used by any church or religious organization for sacramental purposes;

(6) Near beer ~~shall mean~~ means beer containing less than one-half of one percent of alcohol by volume;

(7) Original package ~~shall mean~~ means any bottle, flask, jug, can, cask, barrel, keg, hogshead, or other receptacle or container used, corked or capped, sealed, and labeled by the manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor;

(8) Manufacturer ~~shall mean~~ means every brewer, fermenter, distiller, rectifier, winemaker, blender, processor, bottler, or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying, or bottling alcoholic liquor, including a wholly owned affiliate or duly authorized agent for a manufacturer;

(9) Nonbeverage user ~~shall mean~~ means every manufacturer of any of the products set forth and described in subsection (4) of section 53-160, when such product contains alcoholic liquor, and all laboratories, hospitals, and sanatoria using alcoholic liquor for nonbeverage purposes;

(10) Manufacture ~~shall mean~~ means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor and ~~shall include blending but shall~~ includes blending but does not include the mixing or other preparation of drinks for serving by those persons authorized and permitted in the act to serve drinks for consumption on the premises where sold;

(11) Wholesaler ~~shall mean~~ means a person importing or causing to be imported into the state or purchasing or causing to be purchased within the state alcoholic liquor for sale or resale to retailers licensed under the act, whether the business of the wholesaler is conducted under the terms of a franchise or any other form of an agreement with a manufacturer or manufacturers, or who has caused alcoholic liquor to be imported into the state or purchased in the state from a manufacturer or manufacturers and was licensed to conduct such a business by the commission on May 1, 1970, or has been so licensed since that date. Wholesaler ~~shall~~ does not include any retailer licensed to sell alcoholic liquor for consumption off the premises who sells alcoholic liquor other than beer or wine to another retailer

pursuant to section 53-175, except that any such retailer shall obtain the required federal wholesaler's basic permit and federal wholesale liquor dealer's special tax stamp. Wholesaler ~~shall include~~ includes a distributor, distributorship, and jobber;

(12) Person ~~shall mean~~ means any natural person, trustee, corporation, partnership, or limited liability company;

(13) Retailer ~~shall mean~~ means a person who sells or offers for sale alcoholic liquor for use or consumption and not for resale in any form except as provided in section 53-175;

(14) Sell at retail and sale at retail ~~shall mean~~ means sale for use or consumption and not for resale in any form except as provided in section 53-175;

(15) Commission ~~shall mean~~ means the Nebraska Liquor Control Commission;

(16) Sale ~~shall mean~~ means any transfer, exchange, or barter in any manner or by any means for a consideration and ~~shall include~~ includes any sale made by any person, whether principal, proprietor, agent, servant, or employee;

(17) To sell ~~shall mean~~ means to solicit or receive an order for, to keep or expose for sale, or to keep with intent to sell;

(18) Restaurant ~~shall mean~~ means any public place (a) which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, (b) which has no sleeping accommodations, and (c) which has adequate and sanitary kitchen and dining room equipment and capacity and a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests;

(19) Club ~~shall mean~~ means a corporation (a) which is organized under the laws of this state, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquor, (b) which is kept, used, and maintained by its members through the payment of annual dues, (c) which owns, hires, or leases a building or space in a building suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, and (d) which has suitable and adequate kitchen and dining room space and equipment and a sufficient number of servants and employees for cooking, preparing, and serving food and meals for its members and their guests. The affairs and management of such club shall be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting, and no member, officer, agent, or employee of the club shall be paid or shall directly or indirectly receive, in the form of salary or other compensation, any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members other than any salary fixed and voted at any annual meeting by the members or by the governing body of the club out of the general revenue of the club;

(20) Hotel ~~shall mean~~ means any building or other structure (a) which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, (b) in which twenty-five or more rooms are used for the sleeping accommodations of such guests, and (c) which has one or more public dining rooms where meals are served to such guests, such sleeping accommodations and dining rooms being conducted in the same buildings in connection therewith and such building or buildings or structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity;

(21) Nonprofit corporation ~~shall mean~~ means any corporation organized under the laws of this state, not for profit, which has been exempted from the payment of federal income taxes;

(22) Bottle club ~~shall mean~~ means an operation, whether formally organized as a club having a regular membership list, dues, officers, and meetings or not, keeping and maintaining premises where persons who have made their own purchases of alcoholic liquor congregate for the express purpose of consuming such alcoholic liquor upon the payment of a fee or other consideration, including among other services the sale of food, ice, mixes, or other fluids for alcoholic drinks and the maintenance of space for the storage of alcoholic liquor belonging to such persons and facilities for the dispensing of such liquor through a locker system, card system, or pool system, which shall not be deemed or considered a sale of alcoholic liquor. Such operation may be conducted by a club, an individual, a partnership, a limited liability company, or a corporation. An accurate and current membership list shall be maintained upon the premises which contains the names and residences of its members. ~~Nothing in this section shall be deemed to~~

This section does not prohibit the sale of alcoholic liquor for consumption on the premises to any person who is not a current member of such bottle club;

(23) Minor ~~shall mean~~ means any person, male or female, under twenty-one years of age, regardless of marital status;

(24) Brand ~~shall mean~~ means alcoholic liquor identified as the product of a specific manufacturer;

(25) Franchise or agreement, with reference to the relationship between a manufacturer and wholesaler, ~~shall include~~ includes one or more of the following: (a) A commercial relationship of a definite duration or continuing indefinite duration which is not required to be in writing; (b) a relationship by which the wholesaler is granted the right to offer and sell the manufacturer's brands by the manufacturer; (c) a relationship by which the franchise, as an independent business, constitutes a component of the manufacturer's distribution system; (d) a relationship by which the operation of the wholesaler's business is substantially associated with the manufacturer's brand, advertising, or other commercial symbol designating the manufacturer; and (e) a relationship by which the operation of the wholesaler's business is substantially reliant on the manufacturer for the continued supply of beer;

(26) Territory or sales territory ~~shall mean~~ means the wholesaler's area of sales responsibility for the brand or brands of the manufacturer;

(27) Suspend ~~shall mean~~ means to cause a temporary interruption of all rights and privileges of a license;

(28) Cancel ~~shall mean~~ means to discontinue all rights and privileges of a license;

(29) Revoke ~~shall mean~~ means to permanently void and recall all rights and privileges of a license;

(30) Generic label ~~shall mean~~ means a label which is not protected by a registered trademark, either in whole or in part, or to which no person has acquired a right pursuant to state or federal statutory or common law;

(31) Private label ~~shall mean~~ means a label which the purchasing wholesaler, retailer, or bottle club licensee has protected, in whole or in part, by a trademark registration or which the purchasing wholesaler, retailer, or bottle club licensee has otherwise protected pursuant to state or federal statutory or common law;

(32) Farm winery ~~shall mean~~ means any enterprise which produces and sells wines produced from grapes, other fruit, or other suitable agricultural products of which at least seventy-five percent is grown in this state;

(33) Campus, as it pertains to the southern boundary of the main campus of the University of Nebraska-Lincoln, ~~shall mean~~ means the south right-of-way line of R Street and abandoned R Street from 10th to 17th streets;

(34) Brewpub ~~shall mean~~ means any restaurant or hotel which produces on its premises a maximum of ten thousand barrels of beer per year;

(35) Manager ~~shall mean~~ means a person appointed by a corporation to oversee the daily operation of the business licensed in Nebraska. A manager shall meet all the requirements of the act as though he or she were the applicant, except for residency and citizenship;

(36) Shipping license ~~shall mean~~ means a license granted pursuant to section 53-123.15;

(37) Sampling ~~shall mean~~ means consumption on the premises of a retail licensee of not more than five samples of one fluid ounce or less of alcoholic liquor by the same person in a twenty-four-hour period;

(38) Microbrewery ~~shall mean~~ means any small brewery producing a maximum of ten thousand barrels of beer per year; and

(39) Craft brewery ~~shall mean~~ means a brewpub or a microbrewery; and

(40) Local governing body means the city council or village board of trustees of a city or village within which the licensed premises are located or, if such premises are not within the corporate limits of a city or village, the county board of the county within which the licensed premises are located.

Sec. 3. Section 53-116, Reissue Revised Statutes of Nebraska, is amended to read:

53-116. The power to regulate and control the manufacture, distribution, sale, and traffic of alcoholic liquor pursuant to the Nebraska Liquor Control Act is hereby vested 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. The power to regulate all phases of the control of the manufacture, distribution, sale, and traffic of alcoholic liquor, except as specifically delegated in the Nebraska Liquor Control Act, is vested exclusively in the commission.

Sec. 4. Section 53-116.02, Reissue Revised Statutes of Nebraska, is amended to read:

53-116.02. Whenever any retail licensee has been convicted by any court of a violation of 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 revoke the license, or the commission may revoke the license in an original proceeding brought before it for that purpose. The local governing body or the commission 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. Whenever any retail licensee, bottle club licensee, or craft brewery licensee has been convicted by any court of a violation of 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 for the license. The local governing body may conditionally revoke the license subject to a final order of the commission, or the commission may revoke the license in an original proceeding brought before it for that purpose.

Sec. 5. Section 53-117, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(2) 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;

(3) To fix by rules and regulations the standards of manufacture of alcoholic 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, barrels, casks, 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 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 bottle club license, or a club possessing any form of retail license shall have equal application to all such licenses or shall be void;

(4) 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 the commission may deem necessary in the performance of its duties;

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

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

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

(8) 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 under the act, and (c) to administer or cause to be administered oaths;

(9) To investigate the administration of laws in relation to alcoholic liquor in this and other states and to recommend from time to time to the Governor and through him or her to the Legislature amendments to the act, and

(10) To receive, account for, and remit to the State Treasurer state

license fees and taxes provided for in the act. The commission has the following powers, functions, and duties:

(1) To receive applications for and to issue licenses to and suspend, cancel, and revoke licenses of manufacturers, wholesalers, 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 fix by rules and regulations the standards of manufacture of alcoholic 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, barrels, casks, or other bulk containers or of bottles of alcoholic liquor manufactured or sold in this state. The Legislature intends, by the grant of power to adopt and promulgate rules and regulations, that the commission have broad discretionary powers to govern the traffic in alcoholic liquor and to enforce strictly all provisions of the act in the interest of sanitation, purity of products, truthful representations, and honest dealings in a manner that 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 bottle club license, or a club possessing any form of retail license shall have equal application to all such licenses or shall be void;

(3) 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 the commission deems necessary in the performance of its duties;

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

(5) To inspect or cause to be inspected any premises where alcoholic liquor is manufactured, distributed, or sold and, when sold on unlicensed premises 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) To conduct or cause to be conducted an audit to inspect any licensee's records and books;

(8) 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 under the act, and (c) to administer or cause to be administered oaths;

(9) To investigate the administration of laws in relation to alcoholic liquor in this and other states and to recommend to the Governor and through him or her to the Legislature amendments to the act; and

(10) To receive, account for, and remit to the State Treasurer state license fees and taxes provided for in the act.

Sec. 6. Section 53-122, Reissue Revised Statutes of Nebraska, is amended to read:

53-122. (1) The commission may issue licenses for the sale of alcoholic 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, except in those cases when it affirmatively appears that the issuance thereof will render null and void prior conveyances of land to such city or village for public uses and purposes by purchase, gift, or devise, under the conditions and in the manner provided in this section.

(2) If a sufficient petition is signed by the registered voters 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 liquor, except beer, by the drink be submitted to the registered voters of such city or village at a special election to be called for that purpose and such petition is presented to the clerk of such city or village, the 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 at such special election.

(3) The question of licensing the sale of such alcoholic 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:

(a) Upon the filing with the clerk of such city or village of a petition signed by registered voters 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;

(b) Each petition shall conform to the requirements of section 32-628;

(c) 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;

(d) 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 clerk of the city or village; and

(e) 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.

(4) Any person who signs any proposal or petition contemplated under this section knowing that he or she is not a registered voter in the place where such proposal or petition is made, who signs any name other than his or her own to such proposal or petition, or who aids or abets any other person in doing any of the acts mentioned shall be guilty of a Class I misdemeanor. Any person who bribes or 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, who accepts money for signing such proposal or petition, or who aids or abets any other person in doing any of such acts shall be guilty of a Class IV felony.

(5) 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 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 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 Election Act 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.

(6) If the question is to be submitted at a statewide primary or general election, the petitions shall be filed with the clerk of the city or village 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 clerk of the city or village shall verify the signatures on the petitions with the voter registration records 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 clerk of the city or village 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 counting and canvassing of the same shall be conducted by the county clerk or election commissioner as provided in the Election Act and the official results certified to the clerk of the city or village.

(7) An election may not be held in the same city or village under this section more often than once every twenty-three months. The provisions of subdivision (5)(g) or (9) of section 53-124 shall not be subject to this section. (1) The commission may issue licenses for the sale of alcoholic 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, except in those cases when it affirmatively appears that the issuance will render null and void prior conveyances of land to such city or village for public uses and purposes by purchase, gift, or devise, under the conditions and in the manner provided in this section.

(2) If (a) a sufficient petition is signed by the registered voters 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 petition requests that the question of licensing the sale of alcoholic liquor, except beer, by the drink in the city or village be submitted to the registered voters of the city or village at a special election to be called for that purpose and (b) such petition is presented to the clerk of the city or village, the clerk shall cause to be published one time in a legal newspaper published in or of general circulation in the city or village a notice of a special election to be held not less than ten days nor more than twenty days after the date of such publication. The notice shall state the proposition to be submitted at such special election.

(3) The question of licensing the sale of alcoholic 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:

(a) Upon the filing with the clerk of the city or village of a petition signed by registered voters of the city or village in a number equal to twenty percent of the votes cast at the last general election held in the city or village, such proposition or propositions shall be submitted;

(b) Each petition shall conform to the requirements of section 32-628;

(c) 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;

(d) No signature on the petition shall be valid unless appended to the petition within the last ninety days prior to the date of filing the petition with the clerk of the city or village; and

(e) The 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.

(4) Any person who signs any proposal or petition contemplated under this section knowing that he or she is not a registered voter in the place where such proposal or petition is made, who signs any name other than his or her own to such proposal or petition, or who aids or abets any other person in doing any of the acts mentioned is guilty of a Class I misdemeanor. Any person who bribes or 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, who accepts money for signing such proposal or petition, or who aids or abets any other person in doing any of such acts is guilty of a Class IV felony.

(5) 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 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 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 Election Act 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.

(6) If the question is to be submitted at a statewide primary or general election, the petitions shall be filed with the clerk of the city or village 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 clerk of the city or village shall verify the signatures on the petitions with the voter registration records 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 clerk of the city or village 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 counting and canvassing of the ballots shall be conducted by the county clerk or election commissioner as provided in the Election Act and the official results certified to the clerk of the city or village.

(7) An election may not be held in the same city or village under this section more often than once every twenty-three months. Subdivisions (5)(g) and (9) of section 53-124 are not subject to this section.

Sec. 7. Section 53-129, Reissue Revised Statutes of Nebraska, is amended to read:

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 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, to move from the premises to other premises approved by the local governing body, 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 shows that the premises as added to or deleted from or to which such move is to be made comply in all respects with the requirements of the act. No such addition, deletion, or move 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 and the licensee furnishes proof of payment of the state registration fee prescribed in section 53-131. Retail, bottle club, and craft brewery licenses issued under the Nebraska Liquor Control Act apply only to that part of the premises described in the application approved by the commission and in the license issued on the application, and only one location shall be described in each license. After such license has been granted for particular premises, the commission, with the approval of the local governing body and upon proper showing, may endorse upon the license permission to add to, delete from, or abandon the premises described in such license and, if applicable, to move from the premises to other premises approved by it, but in order to obtain such approval the retail, bottle club, or craft brewery licensee shall file with the local governing body a request in writing and a statement under oath which shows that the premises as added to or deleted from or to which such move is to be made comply in all respects with the requirements of the act. No such addition, deletion, or move 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 and by the commission and the licensee furnishes proof of payment of the state registration fee prescribed in section 53-131.

Sec. 8. Section 53-131, Reissue Revised Statutes of Nebraska, is amended to read:

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

(1) An application in triplicate original upon such forms as the commission prescribes;

(2) The license fee if under section 53-124 such fee is payable to the commission, which fee shall be returned to the applicant if the application is not approved; and

(3) The state registration fee in the sum of thirty dollars.

The commission shall notify, by registered or certified mail, return receipt requested with postage prepaid, the 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. (1) Any person desiring to obtain a new license to sell alcoholic liquor at retail, a bottle club license, or a craft brewery license shall file with the commission:

(a) An application in triplicate original upon forms the commission prescribes;

(b) The license fee if under section 53-124 such fee is payable to the commission, which fee shall be returned to the applicant if the

application is denied; and

(c) The state registration fee in the sum of thirty dollars.

(2) The commission shall notify, by registered or certified mail, return receipt requested with postage prepaid, the clerk of the city or village in which such license is sought or, if the license is not sought within a city or village, the county clerk of the county in which such license is sought, of the receipt of the application and shall enclose one copy of the application with the notice. No such license shall be issued or denied by the commission until the expiration of the time allowed for the receipt of a recommendation of denial or an objection requiring a hearing under subdivision (1)(a) or (b) of section 53-133. During the period of forty-five days after 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.

Sec. 9. Section 53-132, Reissue Revised Statutes of Nebraska, is amended to read:

53-132. ~~(1) The local governing body of the county, city, or village shall, after the hearing provided for in section 53-134, approve or deny the application 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 application for the retail, bottle club, or catering 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 applicant 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.~~

~~(2) If the local governing body takes any action other than issuing a final order approving or denying the application 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 retail, bottle club, or catering license 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 subdivisions (2)(a) through (2)(s) of section 53-134.~~

~~(4) Retail, bottle club, and catering licenses issued or renewed by the commission shall be mailed or delivered to the city, village, or county clerk 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) the 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. Notwithstanding any ordinance or charter power to the contrary, no city or village shall impose an occupation tax on the business of any person, firm, or corporation licensed under the act and doing business within the boundaries of such city or village in any sum which exceeds double the amount of the license fee required to be paid under the act to obtain such license.~~

~~(5) Each license shall designate the name of the licensee, the place of business licensed, and the type of license issued. (1) If no hearing is required pursuant to subdivision (1)(a) or (b) of section 53-133 and the commission has no objections pursuant to subdivision (1)(c) of such section, the commission may waive the forty-five-day objection period and, if not otherwise prohibited by law, cause a retail license, bottle club license, or craft brewery license to be signed by its chairperson, attested by its executive director over the seal of the commission, and issued in the manner provided in subsection (4) of this section as a matter of course.~~

~~(2) A retail license, bottle club license, or craft brewery license shall be issued to any qualified applicant if the commission finds 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 and requirements of and rules and regulations adopted pursuant to the Nebraska Liquor Control Act, (c) the applicant has demonstrated that the type of management and control to be exercised over the premises described in the application will be sufficient to insure that the licensed business can conform to all provisions and requirements of and rules and regulations adopted pursuant to the 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 and its 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, bottle club licenses, or craft brewery 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.

(4) Retail licenses, bottle club licenses, or craft brewery licenses issued or renewed by the commission shall be mailed or delivered to the clerk of the city, village, or county 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 fee is payable to the treasurer of such city, village, or county, (b) any fee for publication of notice of hearing before the local governing body upon the application for the license, (c) the 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. Notwithstanding any ordinance or charter power to the contrary, no city or village shall impose an occupation tax on the business of any person, firm, or corporation licensed under the act and doing business within the corporate limits of such city or village in any sum which exceeds two times the amount of the license fee required to be paid under the act to obtain such license.

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

Sec. 10. Section 53-133, Reissue Revised Statutes of Nebraska, is amended to read:

53-133. The commission after receiving notice as required under section 53-132 may set for hearing before it any application for a retail or bottle club license that has been approved by the local governing body. Hearings upon such applications shall be had in 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. (1) The commission shall set for hearing before it any application for a retail license, bottle club license, or craft brewery license relative to which it has received:

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

(b) Within ten days after the receipt of a recommendation from the city, village, or county, or, if no recommendation is received, within forty-five days after 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 such city, village, or county, protesting the issuance of the license. Withdrawal of the protest does 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

(c) Within forty-five days after the date of receipt of such

application by the city, village, or county clerk, 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 in the following manner: Notice indicating the time and place of such hearing shall be mailed to the applicant, the local governing body, and each individual protesting a license pursuant to subdivision (1)(b) of this section, by certified mail, return receipt requested, at least fifteen days prior to such hearing. The notice shall state that the commission will receive evidence for the purpose of determining whether to approve or deny the application. Mailing to the attorney of record of a party shall be deemed to fulfill the purposes of this section. The commission may receive evidence, including testimony and documentary evidence, and may hear and question witnesses concerning the application.

Sec. 11. Section 53-134, Reissue Revised Statutes of Nebraska, is amended to read:

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:~~

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

(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, any rules or regulations adopted and promulgated 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;~~

(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;~~

(d) ~~To receive retail or bottle club license fees as provided in subdivision (5) or (9) of section 53-124 and pay the same, after the applicant has been delivered his or her retail or bottle club license, to the city or village, or county treasurer;~~

(e) ~~To examine or cause to be examined any applicant or any retail or bottle club licensee 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~~

(f) ~~To cancel, revoke, or suspend on its own motion any license if, upon the notice and hearing as provided in section 53-134.04, 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 liquor. Such order of cancellation, revocation, or suspension shall be subject to review as provided in section 53-1,116.~~

(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 in writing, 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 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 forty-five days after the date of receipt of the notice from the commission. At the hearing, the local governing body shall 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 53-168.06;

(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.

(3) After such hearing, the local governing body shall cause to be spread at large in the minute record of its proceedings a resolution approving or denying the issuance 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. The clerk of such city, village, or county shall thereupon mail or deliver to the commission a copy of the resolution. 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 but within the county shall have the following powers, functions, and duties with respect to retail, bottle club, and craft brewery licenses:

(1) To cancel or revoke for cause retail, bottle club, or craft brewery licenses to sell or dispense alcoholic liquor 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 under the Nebraska Liquor Control Act to determine whether any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated and at such time examine the premises of such licensee in connection with such determination;

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

(4) To receive retail license fees, bottle club license fees, and craft brewery license fees as provided in section 53-124 and pay the same, after the license has been delivered to the applicant, to the city, village, or county treasurer;

(5) To examine or cause to be examined any applicant or any retail licensee, bottle club licensee, or craft brewery licensee upon whom notice of cancellation or revocation has been served as provided in the act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes 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 53-134.04, it determines that the licensee has violated any of the provisions of the act or any valid and subsisting ordinance or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the commission within thirty days after the date of the order by filing a notice of appeal with the commission. The commission shall handle the appeal in the manner provided for hearing on an application in section 53-133; and

(7) Upon receipt from the commission of the notice and copy of application as provided in section 53-131, to fix a time and place for a hearing at which the local governing body shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a 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 one time not less than seven and not 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 in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than forty-five days after the date of receipt of the notice from the commission, and after such hearing the local governing body shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The clerk of such city, village, or county shall 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 with this provision shall not void any license issued by the commission. If the commission refuses to issue such a license, the cost of publication of notice shall be paid by the commission from the security for costs.

Sec. 12. Section 53-134.03, Reissue Revised Statutes of Nebraska, is amended to read:

53-134.03. 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 of all retail or bottle club licensees carried on

within their corporate limits. The governing bodies of cities and villages are authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all retail, bottle club, or craft brewery licensees carried on within the corporate limits of the city or village.

Sec. 13. Section 53-177, Reissue Revised Statutes of Nebraska, is amended to read:

53-177. (1) No license shall be issued for the sale at retail of any alcoholic liquor within one hundred and fifty feet of any church, school, hospital, or home for aged or indigent persons or for veterans, their wives or children. ~~This prohibition does not apply~~ ~~PROVIDED, that this prohibition shall not apply~~ ~~(1)~~ (a) to any location within such distance of one hundred and fifty feet for which a license to sell alcoholic ~~liquors~~ liquor at retail has been granted by the Nebraska Liquor Control Commission for two years continuously prior to making of application for license, ~~and~~ ~~(2)~~ and (b) to hotels offering restaurant service, to regularly organized clubs, or to restaurants, food shops, or other places where sale of alcoholic ~~liquors~~ liquor is not the principal business carried on, if such place of business so exempted ~~shall have been~~ ~~was~~ established for such purposes prior to May 24, 1935.

(2) No alcoholic liquor, other than beer, shall be sold for consumption on the premises within three hundred feet from the campus of any college or university in the state, except that this section does not prohibit a nonpublic college or university from contracting with an individual or corporation holding a license to sell alcoholic liquor at retail for the purpose of selling alcoholic liquor at retail on the campus of such college or university at events sanctioned by such college or university but does prohibit the sale of alcoholic liquor at retail by such licensee on the campus of such nonpublic college or university at student activities or events.

Sec. 14. Section 53-180.06, Reissue Revised Statutes of Nebraska, is amended to read:

53-180.06. (1) To establish proof of age for the purpose of purchasing or consuming alcoholic liquor, a person shall present or display only a valid driver's or operator's license, Nebraska state identification card, military identification card, alien registration card, or passport.

(2) Every holder of a retail license ~~shall~~ may maintain, in a separate book, a record of each person who has furnished documentary proof of age for the purpose of making any purchase of alcoholic liquor. The record shall show the name and address of the purchaser, the date of the purchase, and a description of the identification used and shall be signed by the purchaser.

Sec. 15. Section 53-1,104, Reissue Revised Statutes of Nebraska, is amended to read:

53-1,104. (1) Any licensee which sells or permits the sale of any alcoholic liquor not authorized under the terms of such license on the licensed premises or in connection with such licensee's business or otherwise shall be subject to suspension, cancellation, or revocation of such license by the commission.

(2) When ~~any~~ an order suspending a retail license to sell alcoholic liquor becomes final, the licensee may elect to pay a cash penalty to the commission in lieu of suspending sales of alcoholic liquor for the designated period if such election is not prohibited by order of the commission. For the first such suspension for any licensee, the penalty shall be fifty dollars per day. For a second or any subsequent suspension, the penalty shall be one hundred dollars per day, except that:

(a) For a second suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed forty-eight hours and that the licensee may not elect to pay a cash penalty. The commission may use the required suspension of sales of alcoholic liquor penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, second suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and second suspension for violation of section 53-180.02 shall include suspension for a violation of section 53-180 following suspension for a violation of section 53-180.02; and

(b) For a third or subsequent suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed fifteen days and that the licensee may not elect to pay a cash penalty. The commission may use the required suspension of sales of alcoholic liquor

penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, third or subsequent suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and third or subsequent suspension for violation of section 53-180.02 shall include suspension for a violation of section 53-180 following suspension for a violation of section 53-180.02.

For , except that for any licensee which has no violation for a period of four years consecutively, the any suspension shall be treated as a new first suspension.

Such election The election provided for in this subsection shall be filed with the commission in writing one week before such the suspension is ordered to commence and shall be accompanied by payment in full of the sum required by this section. If such election has not been received by the commission by the close of business one week before the day such suspension is ordered to commence, it shall be conclusively presumed that the licensee has elected to close for the period of the suspension and any election received later shall be absolutely void and the payment made shall be returned to the licensee. The election shall be made on a form prescribed by the commission. All funds received under this section shall be remitted to the State Treasurer for credit to the temporary school fund.

Sec. 16. Section 53-1,115, Reissue Revised Statutes of Nebraska, is amended to read:

53-1,115. (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. (1) A copy of the rule, regulation, order, or decision of the commission denying an application or suspending, canceling, or revoking a license or of any notice required by 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 such service. 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 upon such party.

(2) Within thirty 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 with respect to any matters determined by the commission. The commission shall receive and consider such application for a rehearing within thirty days after its filing with the executive director of the commission. If 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 provided in section 53-1,116.

(3) Upon 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) For purposes of this section, party of record means:

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

(i) The applicant;

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

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

(iv) The commission;

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

(i) The licensee; and

(ii) The local governing body; and

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

(i) The licensee; and

(ii) The commission.

Sec. 17. Section 53-1,116, Reissue Revised Statutes of Nebraska, is amended to read:

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 14-813 and 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 executive director 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. Any order or decision of the commission granting, denying, 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 liquor, including beer, may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.~~

Sec. 18. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 19. Original sections 53-101.01, 53-103, 53-116, 53-116.02, 53-117, 53-122, 53-129, 53-131, 53-132 to 53-134, 53-134.03, 53-177, 53-180.06, 53-1,104, 53-1,115, and 53-1,116, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 20. Since an emergency exists, this act takes effect when passed and approved according to law.