

LEGISLATIVE BILL 205

Approved by the Governor March 20, 2003

Introduced by Janssen, 15

AN ACT relating to liquor control; to amend sections 53-123.02 and 53-123.03, Reissue Revised Statutes of Nebraska, and section 53-1,104, Revised Statutes Supplement, 2002; to change provisions relating to sampling; to change penalty provisions; and to repeal the original sections.

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

Section 1. Section 53-123.02, Reissue Revised Statutes of Nebraska, is amended to read:

53-123.02. An alcoholic liquor wholesale license, except beer, shall (1) allow the wholesale purchase, importation, and storage of alcoholic liquor and sale of alcoholic liquor, except beer, to licensees in this state and to persons outside the state as may be permitted by law and (2) allow the sampling of tax-paid alcoholic liquor, except beer, upon the premises of the licensed wholesaler by a licensed retailer or allow the sampling of tax-paid wine upon the premises of a licensed retailer as provided in subsection (2) of section 53-123.04 on the premises of any licensed retailer, whether the license permits consumption on or off the licensed premises, or both, or bottle club in the manner prescribed by the commission. The sampling authorized under this section shall be limited to persons licensed as wholesalers, and retailers, bottle clubs, and their employees. and agents.

Sec. 2. Section 53-123.03, Reissue Revised Statutes of Nebraska, is amended to read:

53-123.03. A beer wholesale license shall (1) allow the wholesale purchase, importation, and storage of beer and sale, including delivery, of the brand or brands described in such license to licensees in this state in the sales territory prescribed in the license for each brand and to such persons outside the state as may be permitted by law, and (2) allow the licensed wholesaler to do all things incident to the carrying on of the wholesale beer business, including the sampling of tax-paid beer upon the premises of the licensed wholesaler by a licensed retailer in the manner prescribed by the commission, and (3) allow the sampling of tax-paid beer upon the premises of any retailer, whether the license permits consumption on or off the licensed premises, or both, or bottle club in a manner prescribed by the commission.

The sampling authorized under subdivision (3) of this section shall be limited to persons licensed as wholesalers, retailers, or bottle clubs and their employees.

The license shall designate the territory within which the licensed wholesaler may sell the designated product of any brewer as agreed upon by the licensee and the brewer.

Sec. 3. Section 53-1,104, Revised Statutes Supplement, 2002, 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 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. Except as otherwise provided in subsection (3) of this section, for the first such suspension for any licensee, the penalty shall be fifty dollars per day, and for a second or any subsequent suspension, the penalty shall be one hundred dollars per day.

(3) (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;

(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; and

(c) For a first suspension based upon a finding that a licensee or an employee or agent of the licensee has been convicted of possession of a gambling device on a licensee's premises in violation of sections 28-1107 to 28-1111, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for thirty days and that the licensee may not elect to pay a cash penalty. For a second or subsequent suspension for such a violation of sections 28-1107 to 28-1111 occurring within four years after the date of the first suspension, the commission shall order that the license be canceled.

(4) For any licensee which has no violation for a period of four years consecutively, any suspension shall be treated as a new first suspension.

(5) The election provided for in subsection (2) of this section shall be filed with the commission in writing one week before 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. 4. Original sections 53-123.02 and 53-123.03, Reissue Revised Statutes of Nebraska, and section 53-1,104, Revised Statutes Supplement, 2002, are repealed.