

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 413

Introduced by Schumacher, 22.

Read first time January 22, 2013

Committee:

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 section 53-1,104, Revised Statutes Cumulative Supplement,
3 2012; to change provisions relating to licensee
4 violations; and to repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 53-1,104, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 53-1,104 (1) Any licensee which sells or permits the sale
4 of any alcoholic liquor not authorized under the terms of such
5 license on the licensed premises or in connection with such
6 licensee's business or otherwise shall be subject to suspension,
7 cancellation, or revocation of such license by the commission. Any
8 penalty ordered by the commission against a licensee for sale to or
9 possession by a minor under sections 53-180 and 53-180.02 as a result
10 of any compliance checks conducted pursuant to section 53-1,122 shall
11 not be considered as a previous violation when assessing penalties
12 for subsequent violations.

13 (2) When an order suspending a license to sell alcoholic
14 liquor becomes final, the licensee may elect to pay a cash penalty to
15 the commission in lieu of suspending sales of alcoholic liquor for
16 the designated period if such election is not prohibited by order of
17 the commission. Except as otherwise provided in subsection (1) or (3)
18 of this section, for the first such suspension for any licensee, the
19 penalty shall be fifty dollars per day, and for a second or any
20 subsequent suspension, the penalty shall be one hundred dollars per
21 day.

22 (3)(a) ~~For~~ Except as provided in subsection (1) of this
23 section, for a second suspension for violation of section 53-180 or
24 53-180.02 occurring within four years after the date of the first
25 suspension, the commission, in its discretion, may order that the

1 licensee be required to suspend sales of alcoholic liquor for a
2 period of time not to exceed forty-eight hours and that the licensee
3 may not elect to pay a cash penalty. The commission may use the
4 required suspension of sales of alcoholic liquor penalty either alone
5 or in conjunction with suspension periods for which the licensee may
6 elect to pay a cash penalty. For purposes of this subsection, second
7 suspension for violation of section 53-180 shall include suspension
8 for a violation of section 53-180.02 following suspension for a
9 violation of section 53-180 and second suspension for violation of
10 section 53-180.02 shall include suspension for a violation of section
11 53-180 following suspension for a violation of section 53-180.02. †

12 (b) ~~For~~ Except as provided in subsection (1) of this
13 section, for a third or subsequent suspension for violation of
14 section 53-180 or 53-180.02 occurring within four years after the
15 date of the first suspension, the commission, in its discretion, may
16 order that the licensee be required to suspend sales of alcoholic
17 liquor for a period of time not to exceed fifteen days and that the
18 licensee may not elect to pay a cash penalty. The commission may use
19 the required suspension of sales of alcoholic liquor penalty either
20 alone or in conjunction with suspension periods for which the
21 licensee may elect to pay a cash penalty. For purposes of this
22 subsection, third or subsequent suspension for violation of section
23 53-180 shall include suspension for a violation of section 53-180.02
24 following suspension for a violation of section 53-180 and third or
25 subsequent suspension for violation of section 53-180.02 shall

1 include suspension for a violation of section 53-180 following
2 suspension for a violation of section 53-180.02. ~~;~~ and

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

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

16 (5) The election provided for in subsection (2) of this
17 section shall be filed with the commission in writing one week before
18 the suspension is ordered to commence and shall be accompanied by
19 payment in full of the sum required by this section. If such election
20 has not been received by the commission by the close of business one
21 week before the day such suspension is ordered to commence, it shall
22 be conclusively presumed that the licensee has elected to close for
23 the period of the suspension and any election received later shall be
24 absolutely void and the payment made shall be returned to the
25 licensee. The election shall be made on a form prescribed by the

1 commission. The commission shall remit all funds collected under this
2 section to the State Treasurer for distribution in accordance with
3 Article VII, section 5, of the Constitution of Nebraska.

4 (6) Recognizing that suspension of the license of a
5 licensee domiciled outside of the state poses unique enforcement
6 difficulties, the commission may, at its discretion, mandate that a
7 licensee domiciled outside of the state pay the cash penalty found in
8 subsection (2) of this section rather than serve the suspension.

9 Sec. 2. Original section 53-1,104, Revised Statutes
10 Cumulative Supplement, 2012, is repealed.