

IN THE DISTRICT COURT FOR LANCASTER COUNTY, NEBRASKA

SHANE HARRINGTON, H & S CLUB
OMAHA, INC., MELTECH, INC., and
MIDWEST GIRLS CLUB,

Plaintiffs,

- versus -

STATE OF NEBRASKA, NEBRASKA
UNICAMERAL LEGISLATURE, NEBRASKA
LIQUOR CONTROL COMMISSION,
GOVERNOR PETE RICKETTS, TREASURER
DON STENBERG, HOBERT RUPE, ROBERT
BATT, and ATTORNEY GENERAL DOUG
PETERSON,

Defendants.

Case No.:

COMPLAINT

JURY DEMANDED

Notice "Constitutionality of Statutes
Challenged"

Plaintiffs submit the following Complaint against the Defendants:

INTRODUCTION

1. Plaintiffs respectfully request that this Court declare LB1120¹, known as the "Bottle Club Bill" unconstitutional.² The Bottle Club Bill is set to go into effect on July 17, 2018.
2. The Bottle Club Bill seeks to retroactively impose discriminatory, arbitrary, and unnecessary State regulations, restrictions, and fees upon Plaintiffs' private membership clubs where nude dancing takes place and impose fines and penalties upon Plaintiffs for taking action that was legal and permissible prior to the Bottle Club Bill's passage. The Bottle Club Bill further seeks to harass the Plaintiffs and their members by arbitrarily demanding that they maintain a list of all members and their residential addresses.

¹ *Laws of Nebraska 105th Leg 2d Session.*

² This Court has subject matter jurisdiction to issue a declaratory judgment pursuant to Neb. Rev. Stat. § 24-302 & Neb. Rev. Stat. §§ 25-21,149 *et seq.* The latter statute is the *Nebraska Declaratory Judgments Act*. An actual case and controversy exists and arises under an enactment of the Legislature through LB1120, which is now about to take effect. The controversy concerns, and calls into a question, LB1120's constitutional validity and applicability to Plaintiffs.

3. While the Bottle Club Bill was illegally and specifically designed to retaliate against and harm Plaintiffs and shut down their lawful establishments, under its plain and express language as drafted and codified, the Bottle Club Bill actually does not apply to Plaintiffs because they do not fall under the definition of a Bottle Club.

4. Defendants have engaged and continue to engage in intentional discrimination of Plaintiffs due to the nature of speech, expression, and assembly at Plaintiffs' clubs, Plaintiffs' association with the adult entertainment industry, and due to the fact that Plaintiffs' members, employees, and contractors consist of a high percentage of African-Americans, Latinos, Asians, (and other non-white members), females, as well as a high percentage of individuals who are members of the LGBT community.

5. The Bottle Club Bill initially failed to pass several times, including based upon the recognition by Nebraska Senators that it was unconstitutional. After failing to garner much support and being effectively dead, the Bottle Club Bill was eventually rushed through as an attachment to an unrelated bill regarding the Music Licensing Agency Act on the last day of the Legislative Session without an appropriate public hearing, notice, consideration, or debate.

6. The Bottle Club Bill was not passed for legitimate or rational reasons, but only in retaliation to the free speech rights of a third party, Shakers Gentlemen Club, who posted a billboard effectively mocking two Senators that were unable to garner much support for the Bottle Club Bill.

7. The Bottle Club Bill is procedurally and substantively unconstitutional and has caused and will continue to cause significant and irreparable harm to Plaintiffs, their members, and their employees, including the loss of lawful and successful businesses and well-paying jobs.

PARTIES

8. Plaintiff H & S Club Omaha, Inc. (“H & S Club”) is a Nebraska corporation and taxpayer of the State of Nebraska that owns and operates Club Omaha, Inc. in Douglas County, Nebraska.

9. Plaintiff Midwest Girls Club is a Nebraska corporation and taxpayer of the State of Nebraska.

10. Plaintiff Meltech, Inc. (“Meltech”) is a Nebraska corporation and taxpayer of the State of Nebraska.

11. Plaintiff Shane Harrington (“Harrington”) is an individual residing in Omaha, Douglas County, Nebraska and a taxpayer of the State of Nebraska.

12. Defendant the State of Nebraska is a State of the United States of America. Defendant the State of Nebraska, at all material times, was acting under color of state law, and the acts complained of and the wrongs committed were made possible by the State of Nebraska being granted power to act under the color of state law.

13. Defendant the Nebraska Unicameral Legislature is the lawmaking body of the Defendant State of Nebraska that created and voted upon the Bottle Club Bill. The Nebraska Unicameral Legislature, at all material times, was acting under color of state law, and the acts complained of and the wrongs committed were made possible by the Nebraska Unicameral Legislature being granted power to act under the color of state law. The Nebraska Unicameral Legislature has acted in concert with, in conjunction with, and conspired with its individual members and the other Defendants, to violate the constitutional rights of Plaintiffs.

14. Defendant the Nebraska Liquor Control Commission is tasked with enforcing the Bottle Club Bill. The Nebraska Liquor Control Commission, at all material times, was acting under color of state law, and the acts complained of and the wrongs committed were made possible by the Nebraska Liquor Control Commission being granted power to act under the color of state

law. The Nebraska Liquor Control Commission has acted in concert with, in conjunction with, and conspired with its individual members, the Senators of the Nebraska Unicameral Legislature, and the other Defendants, to violate the constitutional rights of Plaintiffs.

15. Defendant Pete Ricketts is the Governor of the State of Nebraska, who signed the Bottle Club Bill into law. Governor Ricketts, at all material times, was acting under color of state law, and the acts complained of and the wrongs committed were made possible by Governor Ricketts being granted power to act under the color of state law. Governor Ricketts has acted in concert with, in conjunction with, and conspired with the Senators of the Nebraska Unicameral Legislature and other Defendants, to violate the constitutional rights of Plaintiffs.

16. Defendant Don Stenberg is the Treasurer of the State of Nebraska, who has the duty to collect fees from Plaintiffs under the Bottle Club Bill. Treasurer Stenberg, at all material times, was acting under color of state law, and the acts complained of and the wrongs committed were made possible by Treasurer Stenberg being granted power to act under the color of state law. Treasurer Stenberg has acted in concert with, in conjunction with, and conspired with the Senators of the Nebraska Unicameral Legislature and other Defendants, to violate the constitutional rights of Plaintiffs.

17. Defendant Hobert Rupe is the Executive Director of the Nebraska Liquor Control Commission, tasked with interpreting the Bottle Club Bill and enforcing it against Plaintiffs. Executive Director Rupe, at all material times, was acting under color of state law, and the acts complained of and the wrongs committed were made possible by Executive Director Rupe being granted power to act under the color of state law. Executive Director Rupe has acted in concert with, in conjunction with, and conspired with the Senators of the Nebraska Unicameral Legislature and other Defendants, to violate the constitutional rights of Plaintiffs.

18. Defendant Robert Batt is the Chairman of the Nebraska Liquor Control Commission, tasked with interpreting the Bottle Club Bill and enforcing it against Plaintiffs. Chairman Batt, at all material times, was acting under color of state law, and the acts complained of and the wrongs committed were made possible by Chairman Batt being granted power to act under the color of state law. Chairman Batt has acted in concert with, in conjunction with, and conspired with the Senators of the Nebraska Unicameral Legislature and other Defendants, to violate the constitutional rights of Plaintiffs.

19. Defendant Doug Peterson is the Nebraska Attorney General. Attorney General Peterson has been named as a Defendant, will be served with a copy of these proceedings, and is entitled to be heard pursuant to Neb. Rev. Stat. § 25-21,159.

BACKGROUND

20. Harrington is a taxpayer of the State of Nebraska. Harrington is an officer of and has an ownership interest in H & S Club. Harrington is an officer of and has an ownership interest in Midwest Girls Club. Harrington is an officer of and has an ownership interest in Meltech.

21. Harrington has deep roots in Nebraska, including dozens of family members, children, and hundreds of friends, acquaintances, and connections throughout Nebraska. Harrington's family has resided in Nebraska for over a century.

22. In 2015, Plaintiffs created and implemented a novel idea and business plan to open members-only private clubs featuring nude dancing in Nebraska. Under laws and regulations in effect, no liquor license was required because Plaintiffs were not serving or selling any alcohol and the consumption of alcohol was not the reason or purpose for membership. Plaintiffs' members, of suitable age, could bring in their own alcohol for their own consumption if they desired.

23. In April 2015, Plaintiff Meltech opened Paradise City in Buffalo County, Nebraska after four years of operation under a prior owner. A Buffalo County ordinance specifically granted the club permission to operate.

24. Plaintiff Midwest Girls Club opened locations of the same name in Hastings, Nebraska in December 2015 and Grand Island, Nebraska in July 2016. Midwest Girls Club opened in Hastings after receipt of written permission by the Hastings City Attorney. Midwest Girls Club opened in Grand Island with the permission of the building inspector, fire marshal, and Grand Island City Attorney.

25. On or about March 1, 2017, Plaintiff H & S Club opened Club Omaha in the space previously owned and operated by the 20's Showgirls Gentlemen's Club for approximately 20 years. Plaintiff H & S Club entered into a 3-year lease for the property and building located at 7301 Farnam Street, Omaha, Nebraska, after receiving permission from the City of Omaha's attorney's office, the Omaha building department, and Omaha assistant fire marshal.

26. The Paradise City club, two Midwest Girls clubs, and Club Omaha will be referred to collectively as "the Clubs."

27. Motivated by differing religious and moral beliefs and based entirely upon rumor, innuendo, false and misleading speculation, ignorance, outdated, inaccurate, and sexist stereotypes, and discrimination, an extreme minority group of Nebraska Senators conspired to intentionally harm Harrington, chill and penalize speech, assembly, and expression, and shut down the Clubs under the false guise of the need for regulation to redress problems that do not and have never existed.

28. This minority group of Nebraska Senators first introduced LB632 on January 18, 2017. LB632 was entitled "Change provisions relating to the Nebraska Liquor Control Act and name

the Music Licensing Agency Act.” LB632 garnered very little support and was indefinitely postponed on April 18, 2018.

29. After the failure of LB632, the minority group of Nebraska Senators introduced LB747 entitled, “Provide for bottle clubs under the Nebraska Liquor Control Act,” on January 3, 2018. After a public hearing on February 26, 2018, LB747 failed to advance for lack of support.

30. After the previous attempts failed, on March 28, 2018, Senator Thibodeau attempted to attach the Bottle Club Bill to a completely unrelated sex trafficking bill. Without having any basis or evidentiary support whatsoever, Senator Thibodeau and Senator Brooks made all sorts of reckless, frivolous, malicious, and slanderous statements that the Clubs meet the definition of prostitution, the Clubs exploit females, the Clubs engage in sex trafficking, along with general inferences regarding pimps and “debt bondage.”

31. The level of paranoia, hysteria, disdain, and irrationality regarding Plaintiffs could no longer be disguised and ultimately boiled over as Senator Brooks made the following specious claim:

They’re talking about specific dates that they have the highest percentage of attendees, which is during the Berkshire (Hathaway meeting) days, and during the Omaha (College) World Series and during the Husker football games. It’s all exactly aligned to trafficking. This is despicable.

32. Plaintiffs, Berkshire Hathaway, the NCAA, College World Series, and the University of Nebraska are not sex traffickers.

33. Senator Brooks’ claims were rejected. It was correctly determined that the Bottle Club Bill was not germane to the sex-trafficking bill and that having a law involving multiple subjects was not constitutional and would not survive judicial review. It was correctly determined by another Senator that the Bottle Club Bill was overly broad and unconstitutional.

34. A few days later, on or about March 31, 2018, Shakers Gentlemen’s Club (“Shakers”) in

Waverly, in an exercise of free political speech, erected a sign saying “Senator Thibodeau Is Full Of Sh_t.” The other side of the sign was directed at Senator Brooks and said: “Patty Brooks See You In Court.”

35. According to Shakers, they erected the sign because:

We feel if she (Sen. Thibodeau) can openly lie and mislead the public to further her agenda, then we certainly have the right to post our opinion about the senator's false statements.

36. Plaintiffs have no ownership or affiliation with Shakers. Plaintiffs were not involved in and do not condone the erection of the sign by Shakers.

37. Shakers’ sign obviously angered not only the few minority Senators pushing the Bottle Club Bill, but the entire Nebraska Unicameral Legislature, including the overwhelming majority that refused to support it, advance it towards a vote, and correctly determined it to be both unnecessary and unconstitutional just days before.

38. Days after Shakers exercised its right to free speech, the Bottle Club Bill was fast-tracked as an Amendment to LB1120 entitled “Change provisions of the Nebraska Liquor Control Act and music licensing provisions” on April 3, 2018, as AM2784 (17-page amendment).

39. On April 4, 2018, the minority Senators held a press conference directly and publicly challenging Plaintiffs and other lawful business owners by stating, “Bring it on bottle clubs, we are ready.”

40. On April 5, 2018, just two days after AM2784 was passed, the minority Senators filed AM2835 (33-page amendment) to LB1120 which was adopted on April 9, 2018.

41. Defendants’ web site, www.nebraskalegislature.gov, states on its LB1120 page on April 23, 2018 “Provisions/portions of LB747 amended into LB1120 by AM2784,” when in fact AM2835 was the amendment adopted to LB1120.

42. Anger, spite, pettiness, and retaliation for the exercise of free speech or personal slights are not rational, valid, or legitimate reasons for passing legislation and effectively declaring war on private business and law-abiding citizens. Doing so is an arbitrary, punitive, and unconstitutional abuse of power.

43. The Bottle Club Bill passed through first round approval by a 41-0 vote, second round approval on April 9, 2018, by a 34-0 vote, and final approval on April 18, 2018 (the last day of the legislative session) on a 48-0 vote.

44. The Bottle Club Bill obtained unanimous passage (including by Senators acknowledging that it was overly broad and unconstitutional) even though nothing had materially changed from the week before, it was clearly not germane to the bill involving a completely different subject to which it was attached, and there was no public notice, hearing, debate, or comment on the portions of LB1120 that now suddenly pertained to the Bottle Club Bill.

45. Incredibly, the main reason cited by Senator Thibodeau for the sudden passage of a previously failed bill was to “ensure that prostitution and sex trafficking are not going on in these places.” If these purported reasons did not make them germane to the sex trafficking bill, they clearly were not germane and have absolutely nothing to do with “the Change provisions of the Nebraska Liquor Control Act and music licensing provisions.”

46. Prior to passing the Bottle Club Bill, Defendants did not conduct even the most basic of due diligence, research, study, analysis, or investigation. In passing the Bottle Club Bill, not one piece of actual evidence or testimony was obtained or presented that any of the Clubs has ever violated any law, posed a safety risk, resulted in a complaint or citation, or engaged in prostitution or sex trafficking.

47. In passing the Bottle Club Bill, not one piece of actual evidence or testimony was

presented or referenced in the legislative history regarding negative secondary effects caused by Plaintiffs, other private membership clubs, or clubs offering the same entertainment services as Plaintiffs.

48. Plaintiffs made continuous requests and invitations to the Nebraska Senators, Governor, and Attorney General to inspect and observe the Clubs and operations themselves and talk to the hardworking women supposedly being exploited and trafficked, along with the members, staff, and security personnel. All of Plaintiffs' invitations were ignored.

49. The Bottle Club Bill requires that private establishments obtain Bottle Club licenses or liquor licenses on or before July 17, 2018, pay fees, maintain membership lists for inspection by Defendants, subject themselves to "frequent" inspections by police officers or other unidentified agencies in uniform or undercover during all hours of operation without a warrant or probable cause, along with numerous other intrusive, unnecessary, and unconstitutional requirements designed to put the Clubs out of business.

50. The Bottle Club Bill will only harm Nebraska families by destroying lawful establishments and force women, who earn a very solid financial living to support their own families, to either be unemployed or work at public dance clubs that actually exploit them or permit drugs, abuse, trafficking and/or prostitution.

51. The passage of the Bottle Club Bill has already forced Plaintiffs to sell Paradise City and close the Midwest Girls club in Grand Island.

52. The Defendants knew that the Bottle Club Bill was unconstitutional, but passed it regardless out of spite, revenge, and retaliation against protected political speech.

PLAINTIFFS HAVE OPERATED WITHOUT INCIDENT SINCE 2015

53. There is not and there has never been any known criminal or illegal activity permitted at

the Clubs. The Clubs are lawful, clean, and well-run establishments filled with hardworking individuals looking to get away from the stress of everyday life and have a good time.

54. Since they opened, the Clubs have been overseen and regulated by the governments, laws, regulations, and ordinances of the jurisdictions where they are located. There is no need or legitimate interest for the State of Nebraska to involve itself in purely local matters.

55. The Clubs have been open collectively around 1,000 nights without receiving a single ticket or violation by any law enforcement or regulatory agency or submitting a claim on their liquor liability insurance policy for activities occurring at the Clubs.

56. The Buffalo County Sheriff's office has thanked Plaintiffs on multiple occasions for the lawful manner in which Paradise City has been operated since April of 2015.

57. The Clubs have collectively paid approximately \$100,000 in state and local sales taxes, over and above state and federal income taxes.

58. The Clubs have provided full-time and part-time jobs and contractor positions to dozens of people, many of which are females, minorities, and members of other protected classes.

59. The Clubs pose no safety risk and constitute some of the safest places for adult Nebraskans to congregate. Plaintiffs care deeply about the safety of the independent contractors, members, and women that some of the Senators ignorantly and falsely claim to be exploited or trafficked.

60. Plaintiffs have spent significant resources enacting many security measures and protocols to ensure that the Clubs are as safe as possible. All members provide copies of their identification and are bound by strict membership contracts. The establishments are not open to the public. Only members presenting identification are permitted. There are no drugs, underage consumption of alcohol, or illegal activities permitted. Each of the Clubs has high definition

security cameras, trained security personnel, and is covered by millions of dollars in insurance.

CLAIMS FOR RELIEF

I. THE BOTTLE CLUB BILL VIOLATES THE BILL OF ATTAINDER CLAUSES OF THE UNITED STATES AND NEBRASKA CONSTITUTIONS.

61. The Constitution of the United States, Article I, Section 9, provides, in pertinent part: “No Bill of Attainder...will be passed.”

62. The Constitution of Nebraska, Article I, Section 16, provides, in pertinent part, “No bill of attainder...shall be passed.”

63. The Bottle Club Bill (while ultimately flawed) was specifically designed to target the Plaintiffs for disparate treatment and punishment.

64. Defendants passed the Bottle Club Bill with the intention of harming Plaintiffs and legislating the Clubs out of business. The false and defamatory statements made by the Senators regarding the Clubs and the requirements of “frequent” searches by law enforcement and the retention of membership lists were designed to harm the reputation of the Clubs and their members, intimidate the Clubs and their members, discourage people from joining the Clubs, and spread fear, anger, and hatred of the Plaintiffs and their lawful establishments throughout Nebraska.

65. The minority Senators initially supporting the Bottle Club Bill have specifically and consistently referenced Plaintiffs and their Clubs in hearings, in the press, at press conferences, and in social media. Senator Thibodeau even posted pictures of Club Omaha when discussing the proposed Bottle Club Bill.

66. The Defendants assert that the Bottle Club Bill applies to Plaintiffs and intend to unlawfully enforce its provisions against Plaintiffs. In fact, the minority Senators also specifically and publically challenged Plaintiffs to file this lawsuit.

67. Consequently, the Bottle Club Bill violates the Bill of Attainder Clause and should be declared invalid, unconstitutional, and ultra vires.

II. THE BOTTLE CLUB BILL VIOLATES THE EX POST FACTO CLAUSES OF THE UNITED STATES AND NEBRASKA CONSTITUTIONS.

68. The Constitution of the United States, Article I, Section 9, provides, in pertinent part: “No...ex post facto Law will be passed.”

69. The Constitution of Nebraska, Article I, Section 16, provides, in pertinent part, “No...ex post facto law...shall be passed.”

70. In reliance upon the laws and regulations existing at the time, Plaintiffs spent hundreds of thousands of dollars and four years working with zoning experts, lawyers, accountants, contractors, and other experts building and developing their operations and a large membership base.

71. Plaintiffs have vested contractual rights, including property rights in the Cities of Omaha, Grand Island, Hastings, and the town of Elm Creek.

72. The Bottle Club Bill attempts to retroactively change the legal consequences and/or status of the actions that took place and the relationships that existed prior to its passage.

73. The Bottle Club Bill attempts to regulate, criminalize, and penalize actions that were legal and authorized prior to its passage and when committed and that the State of Nebraska had no power or authority to regulate.

74. The Bottle Club Bill does not include a “penalty” for violation or indicate whether a violation of the Bottle Club Bill is classified as an infraction, Misdemeanor, or Felony. The prior version of Neb. Rev. Stat. § 53-186.01(4) and (5) specified the penalties for violations.

75. The Bottle Club Bill retroactively deprives Plaintiffs of the use of their properties.

76. The Bottle Club Bill retroactively damages and interferes with the contractual rights of

Plaintiffs and their thousands of members.

77. The Bottle Club Bill retroactively violates Plaintiffs' constitutional rights.

78. Consequently, the Bottle Club Bill violates the Ex Post Facto Clause and should be declared invalid and ultra vires.

III. NEB. REV. STAT. §§ 53-116.01, 53-117, AND 53-123.08 ARE UNCONSTITUTIONAL.

79. Aside from being unconstitutional in its entirety for reasons discussed throughout this Complaint, there are numerous sections of the Bottle Club Bill that are further unconstitutional on their face, including the following:

53-116.01. Retail licensees; bottle club licensees; inspection of premises; suspend, cancel, or revoke license; when.

The commission and local governing bodies shall cause frequent inspection to be made on the premises of all retail licensees and bottle club licensees, and if it is found that any such licensee is violating any provision of the Nebraska Liquor Control Act or the rules and regulations of the commission adopted and promulgated under the act or is failing to observe in good faith the purposes of the act, the license may be suspended, canceled, or revoked after the licensee is given an opportunity to be heard in his or her defense.

53-117. Powers, functions, and duties.

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, boats, bottle clubs, and pedal-pub vehicles 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 club possessing any form of retail license or bottle club 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. The commission shall enter into an agreement with the Nebraska State Patrol in which the Nebraska State Patrol shall hire six new patrol officers and, from the entire Nebraska State Patrol, shall designate a minimum of six patrol officers who will spend a majority of their time in administration and enforcement of the Nebraska Liquor Control Act;

(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.

53-123.08. Bottle club license; rights of licensee.

(1) A bottle club may be operated 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 licensed premises which contains the names and residences of the members but shall not be subject to disclosure except as required by warrant, subpoena, or court order.

(2) A bottle club shall not operate on any day between the hours of 5 a.m. and 6 a.m.

(3) The holder of a bottle club license shall not simultaneously hold another license under the Nebraska Liquor Control Act.

(4) The holder of a bottle club license shall be subject to all provisions of the Nebraska Liquor Control Act and the rules and regulations adopted and promulgated under the act that govern the operation of retail licensees except as otherwise provided in subsection (2) of this section.

80. Neb. Rev. Stat. § 53-116.01 is vague, ambiguous, fails to provide operators or property owners with sufficient notice of their basic obligations under law, fails to inform operators or property owners of what the Defendants command or forbid, does not set forth adequate standards to prevent arbitrary enforcement and, in fact, permits arbitrary enforcement, illegally and improperly delegates the authority to make law to unidentified individuals and bodies, including in violation of Article II, § 1 of the Nebraska Constitution, provides unidentified individuals and bodies with unwarranted and unfettered discretion to determine whether a violation of law occurs, does not convey sufficiently definite warning as to the proscribed conduct when measured by common understanding or practice, affords inadequate due process, and expressly authorizes trespass, and warrantless searches and seizures in violation of the Fourth Amendment to the United States Constitution and Article I, § 7 of the Nebraska Constitution.

81. Neb. Rev. Stat. § 53-117 is vague, ambiguous, overly broad, fails to provide operators or property owners with sufficient notice of their basic obligations under law, fails to inform operators or property owners of what the Defendants command or forbid, does not set forth adequate standards to prevent arbitrary enforcement and, in fact, permits arbitrary enforcement, illegally and improperly delegates the authority to make law to unidentified individuals and bodies in violation of Article II, § 1 of the Nebraska Constitution, provides unidentified individuals and bodies with unwarranted and unfettered discretion to determine whether a violation of law occurs, does not convey sufficiently definite warning as to the proscribed

conduct when measured by common understanding or practice, affords inadequate due process, eliminates Plaintiffs' due process and other Constitutional rights, usurps the authority of the judiciary, eliminates Plaintiffs' rights to a jury of their peers, deprives operators and property owners of the presumption of innocence, shifts the burden of proof from the Defendants to operators and property owners in a matter where the penalties could include loss of liberty and forfeiture or seizure of property, forces operators and property owners to give evidence against themselves in violation of the Fifth Amendment to the United States Constitution and Article I, § 12 of the Nebraska Constitution, expressly authorizes trespass, and warrantless searches and seizures in violation of the Fourth Amendment to the United States Constitution and Article I, § 7 of the Nebraska Constitution, permits taking of private property without compensation in violation of the Fifth Amendment to the United States Constitution and Article I, § 21 of the Nebraska Constitution.

82. Neb. Rev. Stat. § 53-123.08(1) regarding maintaining a list of the members is arbitrary, under-inclusive, serves no legitimate State interest or valid purpose, violates the equal protection and due process rights of Plaintiffs and their members, invades the privacy of the Plaintiffs and their members, and is clearly designed to harass, intimidate, harm, and punish Plaintiffs and shut down the Clubs.

83. Plaintiffs' members have a right to confidentiality and privacy. If members are required to be on a list that can be acquired by the Defendants, law enforcement, or anyone else, they will not become members of the Clubs. There is no similar provision for gun clubs, religious clubs, political clubs, golf clubs, bridge clubs, tennis clubs, or any other clubs or similarly situated establishments that may have alcohol at their meetings, activities, or assemblies. There is no similar requirement for establishments in Nebraska that sell alcohol such as bars and restaurants.

84. The requirement that Plaintiffs maintain membership lists with private information has discouraged new members from joining and current members from retaining or renewing their memberships.

IV. THE BOTTLE CLUB BILL DOES NOT APPLY TO PLAINTIFFS BECAUSE THEY DO NOT OPERATE “BOTTLE CLUBS” AS DEFINED IN THE BILL.

85. The Clubs are not “Bottle Clubs” within the meaning of LB1120.

86. Section 3 of the Bottle Club Bill, to be codified as Neb. Rev. Stat. § 53-103.47, defines a Bottle Club as:

Bottle club 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 alcoholic liquor upon the payment of a fee or other consideration.

87. The Nebraska Liquor Control Commission through its website and frequently asked questions agrees and advertises to the public that no liquor license should be required for private events that are not open to the public.

88. Plaintiffs’ members do not and have never come to or joined the Clubs for the express purpose of consuming alcoholic liquor. There is no alcohol sold, stored, or allowed to be stored at any of the Clubs. Members are not required or even encouraged to bring alcohol into the Clubs. In fact, Plaintiffs have members that are under the legal age of consumption in Nebraska, members that do not consume alcohol ever, and members that choose not to bring their own alcohol into the Clubs.

89. Plaintiffs’ members do not and have never come to or joined the Clubs to congregate.

90. Plaintiffs’ members come to the Clubs for the express purpose of viewing live entertainment. Pursuant to Plaintiffs’ membership application, “All fees are expressly paid for live entertainment only.”

91. Plaintiffs' members do not pay a fee or any consideration for the express purpose of consuming alcohol. Plaintiffs' members pay a fee for "viewing live entertainment only," which includes watching naked women and listening to live disk jockeys. There is no additional fee or consideration charged to members who bring their own alcohol. Members who choose to bring their own alcohol are charged the same fee as members who choose not to, including members ages 18 – 20 who are prohibited from consuming alcohol in Nebraska and the Clubs.

92. Plaintiffs sell over \$1,000 per month in soft drinks and encourage members to consume any of the eight non-alcoholic beverages offered for sale at Club Omaha.

93. Aside from being inapplicable to Plaintiffs, the definition of "Bottle Club" is also overly broad and vague and would encompass country clubs, tennis clubs, bridge clubs, restaurants that allow patrons to bring their own alcohol and have to pay a corking fee, fraternities, sororities, churches, associations, swingers' clubs, and any other place in Nebraska where alcohol is consumed and any fees or consideration is paid.

94. Under the express and plain language of Neb. Rev. Stat. § 53-103.47, the Clubs are not Bottle Clubs, making the entire Bottle Club Bill inapplicable to Plaintiffs.

95. Plaintiffs seek a declaratory judgment declaring that the Clubs are not Bottle Clubs, pursuant to Neb. Rev. Stat. § 53-103.47, and that the Bottle Club Bill is not applicable to and may not be enforced against Plaintiffs.

V. THE BOTTLE CLUB BILL IS NOT GERMANE TO THE MUSIC LICENSING ACT.

96. Article III, § 14 of the Nebraska Constitution, provides in pertinent part: "No bill shall contain more than one subject, and the subject shall be clearly expressed in the title."

97. The Bottle Club Bill violates Article III, § 14 of the Nebraska Constitution. The Bottle Club Bill is not clearly expressed in the title of LB1120, which is "Change provisions of the

Nebraska Liquor Control Act and music licensing provisions.”

98. LB1120 was nothing more than two completely separate bills, involving two separate subjects, jumbled together at the last minute in retaliation to the sign erected by Shakers.

99. LB1120 contains 39 pages and multiple subjects, including the Bottle Club Bill and Music Licensing Act. Pages 33 – 39 of LB1120 constitute the “Music License Agency Act,” which is an entirely different and completely unrelated subject to the Bottle Club Bill.

100. The Bottle Club Bill was not included within the initial drafting or reading of LB1120. There was never any notice, hearing, debate, or comment on LB1120 as it related to the Bottle Club Bill.

101. The initial Bottle Club Bill was 2-pages that was introduced as LB747 on January 3, 2018 and abandoned on or about March 1, 2018.

102. In fact, the request to add the Bottle Club Bill to a sex-trafficking bill was specifically defeated because it would make the commingled bill overly broad and unconstitutional.

103. LB1120 should be declared unconstitutional because it involves more than one subject and the Bottle Club Bill is not clearly expressed in the title.

VI. NEB. REV. STAT. § 53.186.01 IS UNCONSTITUTIONAL BECAUSE ITS TITLE IS NOT INCLUDED IN LB1120.

104. Article III, § 14 of the Nebraska Constitution, provides in pertinent part, “No law shall be amended unless the new act contains the section or sections as amended and the section or sections so amended shall be repealed.”

105. LB1120 seeks to codify Neb. Rev. Stat. § 53-186.01, under the title of “Consumption of liquor in public places; license required; exception; violations; penalty.” That title is not mentioned in LB1120, nor in the repealed portion of the prior statute.

106. This critical defect by itself renders Neb. Rev. Stat. § 53-186.01 invalid and

unconstitutional.

107. Failure to include the statute's title also makes LB1120 ambiguous, overbroad, and arbitrary in its application as the prior statute applied only to "Consumption of liquor in public places."

108. The new title and its planned implementation have a particularly disparate impact upon Plaintiffs because their entire business model is based upon the strict application of Neb. Rev. Stat. § 53-186.01, which specifically states that a liquor license is only required for consumption of liquor in "public places."

109. Since Plaintiffs opened and operate "private" membership clubs that are not open to the public, they were not required to obtain a liquor license under Neb. Rev. Stat. § 53-186.01.

110. If LB1120 still only applies to "Consumption of liquor in public places," the addition of "bottle clubs" is irrational, contradictory, and ambiguous as Plaintiffs' bottle clubs are not open to the public.

111. If LB1120 was intended to apply to clubs both public and private, Article III, § 14 of the Nebraska Constitution requires that the distinction be clearly reflected by including the prior title of the statute with a line through it, indicating the language that was repealed and/or replaced.

VII. REGULATING PRIVATE CLUBS AS PUBLIC BARS IS

UNCONSTITUTIONAL.

112. The Clubs hold private events on private property and may not be regulated in the same manner as public bars that are open to the public.

113. The private membership Clubs are not prone to the problems occurring at typical bars and clubs in Nebraska where patrons' names and identities are unknown and they are subjected to less rigorous accountability for their actions.

114. Prior to being allowed access to membership benefits, Plaintiffs' members must sign an express, written contract agreeing to abide by rules of conduct and acknowledging that drugs, prostitution, and all other illegal activities are strictly prohibited. Plaintiffs' members provide a copy of their identification in front of high definition security cameras.

115. The Clubs utilize several high definition security cameras throughout the inside and outside of the properties, along with a trained security staff.

116. Quite contrary to creating a public or private nuisance or posing a danger to the community, Plaintiffs' clubs offer a public service that reduces negative secondary effects, especially prostitution.

117. The Clubs have had a positive impact on their communities and have helped to reduce crime in the surrounding areas of all four Clubs.

118. Plaintiffs monitor members for levels of intoxication and cut off members if they appear or may be on the verge of over-intoxication. Plaintiffs take a more active role in assisting members than do entities with liquor licenses, which are opened to the public.

119. Plaintiffs coordinate rides for members and provide taxi cabs, Ubers, and carpools to ensure that members get home safely.

120. Plaintiffs provide the female entertainers with a security escort to their cars to ensure their safety.

121. Unlike liquor licensed establishments that make more money the more patrons drink, Plaintiffs have no incentive for members to consume alcohol or drink excessively.

122. Defendants have no evidence establishing that the Clubs pose a problem, danger, or nuisance, nor have they identified a legitimate State interest behind the implementation of the Bottle Club Bill.

123. Defendants have furnished no evidence establishing why current local regulations are insufficient or why expansive and invasive regulation by the State of Nebraska is reasonable or necessary.

124. Defendants do not have the constitutional authority to regulate consumption of alcohol on private property.

125. LB1120 is premised upon Defendants' religious and moral objections to the activities that occur at Plaintiffs' Clubs, not for any legitimate State interest or safety reasons.

VIII. DEFENDANTS HAVE VIOLATED PLAINTIFFS' FIRST AMENDMENT RIGHTS.

126. The First Amendment to the Constitution of the United States reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

127. The Constitution of Nebraska, Article I, Section 5, reads:

Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty; and in all trials for libel, both civil and criminal, the truth when published with good motives, and for justifiable ends, shall be a sufficient defense.

128. Plaintiffs, their members, and their contract employees utilize the Clubs to exercise their constitutionally guaranteed rights of free speech, peaceful assembly, and free expression.

129. As a result of having different religious beliefs than Defendants, Plaintiffs, their members, and their contract employees have been persecuted, discriminated against, and denied due process, equal protection, and free expression and otherwise harmed and damaged by Defendants.

130. Defendants have engaged and continue to engage in discrimination of Plaintiffs' businesses because they have moral and religious objections to what occurs inside the Clubs,

including the rights of Plaintiffs, their members, and their contract employees to express themselves by viewing or engaging in live nude dancing.

131. Defendants, through the Bottle Club Bill, seek to impose certain religious and moral beliefs on Plaintiffs and others who do not share those beliefs.

132. The United States Supreme Court has previously determined that non-obscene nude and partially nude dancing is expressive conduct within the protection of the First Amendment.

133. The Bottle Club Bill was not passed for any legitimate State interest or due to any illegal conduct by Plaintiffs, but rather, because Defendants disapprove of the legal activities that occur inside the Clubs, which cannot be seen or heard by the general public or any businesses or neighbors in the surrounding community. Defendants actually have no idea what activities go on inside the Clubs because they ignored Plaintiffs' requests to come and see for themselves prior to rendering judgment.

134. Defendants' conduct does not have a secular purpose. Defendants are using the Bottle Club Bill to discriminate against Plaintiffs, promote their religious beliefs, abridge the freedom of speech, assembly, and expression of Plaintiffs, their members, and their contract employees, and to retaliate and punish Plaintiffs, their members, and their contract employees from exercising their freedom of speech, assembly, and expression, and for not sharing the same religious and moral beliefs of Defendants.

IX. DEFENDANTS HAVE VIOLATED PLAINTIFFS' FIFTH AND FOURTEENTH AMENDMENT RIGHTS AND ENGAGED IN AN UNLAWFUL TAKING.

135. The First Amendment to the Constitution of the United States reads, in pertinent part, "nor shall private property be taken for public use, without just compensation."

136. Neb. Const. Art. I, § 21, provides, "The property of no person shall be taken or damaged for public use without just compensation therefor."

137. Plaintiffs entered a 3-year lease for the property and building located at 7301 Farnam Street, Omaha, Nebraska for the purpose of operating Club Omaha after obtaining permission from all relevant authorities.
138. Plaintiffs acquired and own the property and land located at 1780 U.S. 183, Elm Creek, Nebraska for the purpose of operating a Paradise City Club.
139. Plaintiffs also committed to lease with options to purchase the land at 1104 West J Street, Hastings, Nebraska, and 370 North Walnut Street, Hastings, Nebraska for the purpose of operating Midwest Girls Clubs.
140. By targeting Plaintiffs' businesses for discrimination, Defendants have deprived Plaintiffs of the commercial benefit of their property.
141. Thousands of potential members of the Clubs have been discouraged from joining due to Defendants' conduct and the passage of the Bottle Club Bill.
142. Thousands of members of the Clubs have been discouraged from purchasing a full year membership or VIP Gold membership due to Defendants' conduct and the passage of the Bottle Club Bill.
143. The passage of the Bottle Club Bill has already forced Plaintiffs to sell Paradise City and close the Midwest Girls club in Grand Island.
144. Plaintiffs will lose more or all of their current members and revenue if the Bottle Club Bill is allowed to take effect.
145. The State of Nebraska possesses the power of eminent domain.
146. The State of Nebraska has failed to institute condemnation proceedings.
147. Defendants' actions constitute an effective and inverse taking and damage to the Plaintiffs' property and related property rights and interests for which no compensation has been

provided.

148. Under the circumstances, the State of Nebraska should be required to provide just compensation to the Plaintiffs for the property and/or property rights effectively taken, damaged, and/or diminished.

X. DEFENDANTS HAVE VIOLATED THE CONTRACTS CLAUSE OF THE UNITED STATES AND NEBRASKA CONSTITUTIONS.

149. The Constitution of the United States, Article I, § 9, provides, in pertinent part: “No State shall... pass any...Law impairing the Obligation of Contracts.”

150. The Constitution of Nebraska, Article I, Section 16, provides, in pertinent part, “No...law impairing the obligation of contracts...shall be passed.”

151. Plaintiffs entered a 3-year lease for the property located at 7301 Farnam Street, Omaha, Nebraska, on or about March 1, 2017.

152. Plaintiffs have entered into contracts with thousands of members to provide a private membership club with nude dancing in exchange for membership fees.

153. The Bottle Club Bill retroactively impairs the obligations of Plaintiffs’ membership contracts and lease and is therefore unconstitutional.

XI. DEFENDANTS HAVE VIOLATED PLAINTIFFS’ EQUAL PROTECTION RIGHTS.

154. The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part: “nor shall any state...deny to any person within its jurisdiction the equal protection of the laws.”

155. The Constitution of Nebraska, Article I, Section 3, provides, in pertinent part, “No person shall be...denied equal protection of the laws.”

156. Defendants have denied Plaintiffs equal protection of the law by specifically targeting

Plaintiffs and the Clubs for discriminatory treatment because of Plaintiffs' form of speech, expression, assembly, and due to the fact that Plaintiffs' members, employees, and contractors, are largely minorities and other protected class members, including women, African-Americans, Latinos, and Asians, along with a high percentage of members of the LGBT community.

157. The Bottle Club Bill was adopted by Defendants for the sole purpose of closing the Clubs and causing Plaintiffs' harm, without being applied to other businesses or individuals in Nebraska that allow the consumption of alcohol, including but not limited to Churches, fraternities and sororities, country clubs, tennis clubs, bridge clubs, hotels and motels, tailgating parties, and other private venues.

158. The Plaintiffs are intentionally being discriminated against and being treated differently than similarly situated businesses and entities, including establishments where alcohol is sold, other membership organizations, and other private clubs.

159. For example, the Bottle Club Bill requires Plaintiffs to maintain a list of their members' identities and home addresses.

160. The requirement is punitive and solely designed to prevent and dissuade new members from joining the Clubs or current members to continue or renew their memberships. The requirement has already led to the closure of two Clubs and the loss of significant revenue.

161. There is no similar provision for gun clubs, religious clubs, political clubs, golf clubs, bridge clubs, tennis clubs, or any other clubs that may have alcohol at their meetings or activities. There is no similar requirement for establishments in Nebraska that sell alcohol such as bars and restaurants.

162. The Bottle Club Bill also arbitrarily prevents the holder of a bottle club license from simultaneously holding a liquor license. This prohibition does not apply to similarly situated

individuals and establishments, but is designed to discriminate against Plaintiffs, who wish to apply for one or more liquor licenses in the future. This provision serves no rational purpose whatsoever.

163. Additionally, LB1120 requires Plaintiffs to close from 5:00 am – 6:00 am. Such a restriction is not imposed on any other business or entity in Nebraska, including Flying Timber, the Omaha axe-throwing bar approved for a liquor license by the Omaha City Council in June 2018.

164. The Clubs are places of assembly entitled to constitutional protection. Defendants allow religious institutions, professional associations, fraternities, sororities, and other clubs and entities to assemble peacefully with alcohol without harassment, frequent searches, and arbitrary limitations on hours.

DEMAND FOR JURY TRIAL

165. Plaintiffs hereby demand trial by jury on all claims so triable.

PRAYER FOR RELIEF

Plaintiffs pray for the following relief:

- A) A judgment against Defendants, jointly and severally, for all past, present, and future general and special damages, pre- and post-judgment interest, punitive damages, and statutory damages in an amount to be determined at trial.
- B) A declaratory judgment against the Defendants declaring LB1120 and/or the Bottle Club Bill unconstitutional, both on their face and as applied to Plaintiffs.
- C) A declaratory judgment against the Defendants declaring that the Clubs are not Bottle Clubs, pursuant to Neb. Rev. Stat. § 53-103.47, and that the Bottle Club Bill is not applicable to and may not be enforced against Plaintiffs.

- D) An order temporarily and permanently enjoining and restraining Defendants from acting pursuant to or enforcing LB1120 and/or the Bottle Club Bill.
- E) An order temporarily and permanently enjoining and restraining Defendants from further violating the rights of or discriminating against Plaintiffs.
- F) An order temporarily and permanently enjoining and restraining Defendants from entering Plaintiffs' properties at 7301 Farnam Street, Omaha, Nebraska, 370 North Walnut Street, Grand Island, Nebraska, 1104 West J Street, Hastings, Nebraska, and 1780 U.S. Highway 183, Elm Creek Nebraska, without a warrant.
- G) Attorneys' fees, appraisal fees, and costs as may be allowed by law.
- H) Such other and further relief as is just and necessary.

Respectfully Submitted,

By: /s/ Jason M. Bruno
Jason M. Bruno, #23062
Diana J. Vogt, #19387
SHERRETS BRUNO & VOGT LLC
260 Regency Parkway Drive, Suite 200
Omaha, NE 68114
Tele: (402) 390-1112
Fax: (402) 390-1163
law@sherrets.com
ATTORNEYS FOR PLAINTIFFS

VERIFICATION

STATE OF NEBRASKA)
).SS
COUNTY OF DOUGLAS)

I, Shane Harrington, being first duly sworn upon oath, depose and state, that I have read the foregoing Complaint and believe the same to be true and correct based upon my information and belief.



Shane Harrington

Subscribed and sworn before me, a General Notary for the State of Nebraska, by Shane Harrington on this 2nd day of July, 2018.





Notary Public