

ONE HUNDRED EIGHTH LEGISLATURE - SECOND SESSION - 2024
COMMITTEE STATEMENT (CORRECTED)
LB1204

Hearing Date: Monday February 05, 2024
Committee On: General Affairs
Introducer: Cavanaugh, J.
One Liner: Define rickhouse and authorize a holder of a manufacturer's license or microdistillery license to operate a rickhouse under the Nebraska Liquor Control Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Brewer, Cavanaugh, J., Day, Hardin, Holdcroft, Hughes, Lowe
Nay:		
Absent:	1	Senator Raybould
Present Not Voting:		

Testimony:

Proponents:

Senator John Cavanaugh, J.
Hobert Rupe
Vanessa Silke

Representing:

Opening Presenter
Nebraska Liquor Control Commission
Sideshow Spirits

Opponents:

Representing:

Neutral:

Representing:

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

LB 1204 is a bill to allow the holder of a microdistillery license to operate a rickhouse that meets the requirements for a distilled spirit plant pursuant to 26 U.S.C 5178, for the purpose of storing spirits in barrels for aging with the approval of the Liquor Control Commission.

Section 1: amends section 53-101 by adding section three (3) of this bill into the Liquor Control Act.

Section 2: amends section 53-103 by including the definitions found in section 3 of this bill into the Nebraska Liquor Control Act.

Section 3: creates a definition of Rickhouse for the act. Rickhouse means an offsite bonded warehouse which is kept and maintained for the purpose of storing spirits in barrels for aging in order to impart flavor from the barrel into the



spirits.

Section 4: amends section 53-123.01 by adding a new subsection three (3) to allow a holder of a manufacturer's license to manufacture spirits to operate a rickhouse that meets the federal requirements established in 26 U.S.C. 5178, included below, if the license holder receives authorization from the liquor control commission and notifies the commission of the location of the rickhouse as required.

Section 5: amends section 53-123.16 by adding the same new language found in section four (4) of the bill (above) to this section.

Section 6: is the repealer section. No sections are outright repealed.

Explanation of amendments:

LB 981 was amended into LB 1204 by AM 2640

LB 981 is a bill intended to simplify compliance requirements for Charitable Gaming Lottery and Raffle applicants in Nebraska. Organizations must be non-profits and must still meet accountability requirements and report receipts to the Department of Revenue Charitable Gaming Division quarterly and annually.

This bill also increases the dollar amount of gross proceeds of lotteries and raffles to which the act shall apply from one gross proceeds in excess of one thousand dollars to gross proceeds greater than fifteen thousand dollars. Exempted from this provision of law are Pickle Cards, Keno, and state lottery games.

Section 1: amends section 9-402 by adding raffles to the lotteries covered by this section. Additional new language increases the threshold over which the Nebraska Lottery and Raffle Act applies. Currently, this act applies to lotteries with gross proceeds greater than one thousand dollars, and certain raffles with gross proceeds greater than five thousand dollars. This section proposes to change this to lotteries and raffles with gross proceeds greater than fifteen thousand dollars.

Section 2: amends section 9-422 by adding the new language increasing the gross proceeds from excess of one thousand dollars to proceeds greater than fifteen thousand dollars.

Section 3: amends section 9-426. This section allows a licensed organization to obtain a special permit to conduct one raffle and one lottery, and this permit currently exempts the organization from subsections two (2) and three (3) of this section. New language makes it so permit holders are only exempt from subsection two (2) of this section.

Section 4: amends section 9-427 by striking the current subsection two (2) in this section. Subsection two (2) requires that not less than sixty five percent of the gross proceeds of any lottery be used for the awarding of prizes, and not more than ten percent of the gross proceeds can be used to pay the allowable expenses of operating such lottery or raffle. This requirement is stricken in the bill.

Section 5: amends section 9-429 by increasing the threshold for which the licensed organization conducting a lottery or raffle has to pay a tax of two percent of the gross proceeds of more than one thousand dollars to greater than fifteen thousand dollars.

Section 6: amends section 9-502 which currently allows qualifying nonprofit organizations to conduct lotteries with gross proceeds not greater than one thousand dollars or raffles with gross proceeds not greater than five thousand dollars subject to minimal regulation. This section is amended to read lotteries and raffles with gross proceeds not



greater than fifteen thousand dollars.

Section 7: amends section 9-511 by adding new language that allows a qualifying nonprofit organization to conduct one lottery per calendar month that has gross proceeds not greater than fifteen thousand dollars. Also included in this section is language allowing a qualifying non profit organization to conduct one or more raffles in a calendar month if the total gross proceeds from such raffles do not exceed fifteen thousand dollars, which is increased in this bill from five thousand dollars.

Section 8: amends section 28-1105.01 updates the language in the criminal code to reflect the changes made in the previous sections. The offense of gambling debt collection remains a Class III Felony.

Section 9: is a repealer section.

Section 10: is outright repealing section 9-510. This section currently states "Any qualifying nonprofit organization may conduct a lottery that has gross proceeds not greater than one thousand dollars. Each chance in such lottery shall have an equal likelihood of being a winning chance. The gross proceeds of the lottery shall be used solely for charitable or community betterment purposes, awarding of prizes, and expenses. No more than one lottery shall be conducted by any qualifying organization within any calendar month."

Committee Vote: 7 yea, 0 nay, 1 absent

Voting Yea: Senator Lowe, Senator Brewer, Senator J. Cavanaugh, Senator Day, Senator Hardin, Senator Holdcroft, Senator Hughes

Absent: Senator Raybould

LB 1000 was amended into LB 1204 by AM 2640.

LB1000 would provide lottery winners of a prize greater than \$250,000 the option to remain anonymous.

Section 1: amends section 9-823 by adding a new subsection (h) under subsection (5) of this section which prohibits the division and any lottery contractor from publicly disclosing the identity of any person awarded a prize of two hundred fifty thousand dollars or more without written authorization of the prize winner.

Section 2: amends section 84-712.05 by amending the public records act by adding the name of any prize winner awarded a prize of less than two hundred fifty thousand dollars as information that may be withheld from the public by the Lottery Division of the Department of Revenue.

Section 3: is the repealer section. No sections are outright repealed.

Committee Vote: 7 yea, 0 nay, 1 absent

Voting yea: Senator Lowe, Senator Brewer, Senator J. Cavanaugh, Senator Day, Senator Hardin, Senator Holdcroft, Senator Hughes

Absent: Senator Raybould.



LB 1296 was amended by AM 2561 and then amended into LB 1204 by AM 2640.

LB 1296 is a bill that will prohibit the sale of electronic nicotine delivery systems in the State of Nebraska that have not received marketing authorization approval, or has applied for such approval to the United States Food and Drug Administration. This bill also prohibits the online sale of electronic nicotine delivery systems. And creates a registry for the manufacturers of these products.

The committee amended LB 1296 with AM 2561. This amendment replaces the original green copy of the bill.

Section 1: amends section 28-1418.01 by adding sections six through nine of this bill to this section of Neb. Rev. Stat. §28-1418 to 28-1429.03, which deal with electronic nicotine delivery systems and alternative nicotine products.

New language creates a new subsection three (3) of this section which creates a new definition of Delivery sale. It means to sell, give, or furnish products (a) by mail or delivery service; (b) through the Internet or a computer network; (c) by telephone; or (d) through any other electronic method. Subsequent subsections are renumbered accordingly.

Additionally, in current subsection five (5) (renumbered subsection six (6)), language is stricken that allows a tobacco specialty store to allow an employee who is nineteen or twenty years of age to work in the store until January 1, 2022.

Section 2: amends section 28-1420 by striking the phrase "it shall be unlawful for any" and replacing it with "shall not" for this section to now read "A person, partnership, limited liability company, or corporation 'shall not'... in all three subsections of this section.

New language is added to create a new subsection four and five for this section.

Subsection four (4) prohibits a wholesaler or retailer from purchasing or receiving any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material for the purposes of resale if the manufacturer of these products does not hold a license or certification required by the Tobacco Products Act of the State of Nebraska at the time the products are purchased or received by the wholesaler or retailer.

Subsection five (5) prohibits a tobacco product manufacturer from selling or delivering any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material to any wholesaler or retailer that does not hold a valid tobacco license for the current year to sell these products at wholesale or retail at the time of the sale or delivery.

Section 3: Amends section 28-1422 by adding a new subsection (b) of section one (1) that requires every person, partnership, limited liability company, or corporation desiring a license under sections §28-1420 to 28-1429 to file an email address for contacting such person, partnership, limited liability company, or corporation as a part of their written application with the clerk of the finance department of the city, town, or village where the place of business is located, or with the clerk of the county where the place of business is located if it is outside of the limits of any city, town, or village.

New language creates a new section three (3) of this statute which requires the clerk or finance department who grants a license to notify the tax commissioner of the granting of the license and to transmit all applicable application materials received to the tax commissioner.



Section 4: amends section 28-1425 by adding sections six (6) through nine (9) of this act to this section, and adds a new provision limiting a new license from being issued until the expiration of the time period provided for in §28-1429.

Section 5: amends section 28-1429 by requiring revocation and forfeit of a license issued under sections 28-1420 to 28-1429 for five years after the date of the revocation and forfeiture for a violation of sections six (6) and seven (7) of this act.

New subsection two (2) requires that if a license issued under these sections is revoked and forfeited for any other violation of this act, including new sections eight (8) and nine (9) of this act, no new license will be issued to the licensee for one year after the date of the revocation and forfeiture, except as otherwise provided in section 28-1423.

Section 6: is new language creating an additional penalty of a revocation and forfeiture of a license held under this section, if the license holder sells, gives, or furnishes in any way to any person, or who allows any controlled substance or counterfeit substance as defined in section §28-401. The license holder is also subject to the penalties provided for in the Uniform Controlled Substances Act, at the discretion of the court.

Section 7: is also new language prohibiting a license holder under these sections to not sell, give, or furnish any person with any electronic nicotine delivery system by delivery sale, as is newly defined in section one (1) of this bill. A violation of this section is set at a Class I misdemeanor.

This section also makes it a Class I misdemeanor for any common carrier to knowingly transport any electronic nicotine delivery system in any form for a person who is in violation of subsection one (1) of this section.

Further, a violation of this section is deemed to be a deceptive trade practice under the Uniform Deceptive Trade Practices Act in addition to any other penalty, and is subject to any remedies or penalties available for a violation of that act.

Additionally, new language makes all electronic nicotine delivery systems that are sold, given, or furnished in violation of this section subject to seizure, forfeiture, and destruction, and the cost of this will be passed to the person from whom the products were sold.

Exemption language is included to provide this section does not apply to the shipment of electronic nicotine delivery systems to a foreign trade zone established under 19 U.S.C. 81 a et seq. and that is located in the state if the products are from outside of the country, ordered by a distributor in another state, and are not distributed in this state; government employees acting in the course of their official duties; or the shipment of electronic nicotine delivery systems to a university that is acquiring the systems to conduct basic and applied research, if those systems are exempt from federal excise tax under 26 U.S.C. 5704(a).

Section 8: is new language requiring a license holder under these sections to ensure that any e-liquid container for an electronic nicotine delivery system that is sold by them:

(a) meets any applicable packaging standards imposed by the federal Child Nicotine Poisoning Prevention Act of 2015, found in 15 U.W.C 1472a; and

(b) has a label that meets the nicotine addictiveness warning statement requirements set forth in 21 C.F.R. 1143.3.

Additional new language defines "e-liquid container" as a container holding any consumable material as defined in section 77-4003.01.



Section 9: is new language prohibiting a license holder under this act from marketing, advertising, selling, or causing to be sold an electronic nicotine delivery system if the container, packaging, or advertising any product that:

- (1) Depicts a cartoon-like fictional character that mimics a character primarily aimed at entertaining minors;
- (2) Imitates or mimics trademarks or trade dress of products that are or have been primarily marketed to minors;
- (3) Includes a symbol that is primarily used to market products to minors;
- (4) Includes an image of a celebrity; or
- (5) Is designed to disguise the fact that it is an electronic nicotine delivery system.

Section 10: amends section 59-1523 to give the commissioner the authority to revoke or suspend the licenses or certifications of any person for any violation of section 59-1520. This applies to anyone licensed under sections 28-1418 through 28-1429.03 and sections six (6) through nine (9) of this act and any license or certification of any person licensed under the Tobacco Products Tax Act.

Section 11: amends section 77-4001 to incorporate sections fifteen (15) and sixteen (16) of this act into the Tobacco Products Tax Act.

Section 12: amends section 77-4003 to add the word "certification" to the definition of "cancel".

Section 13: amends section 77-4005 to include "certification" under the definition of what can be "revoked".

Section 14: amends section 77-4006 to include "certification" under the definition of what can be "suspended".

Sections 15 through 19 contain all new language.

Section 15: requires each manufacturer of electronic nicotine delivery systems that are sold in Nebraska, to be certified as provided in this section. This is required regardless of how the systems are sold, whether directly or through a distributor, wholesaler, retailer, or similar intermediaries. The application for certification shall be created and provided by the Tax Commissioner.

The application must include the following: the name and address of the applicant, or each of the members of the firm, partnership, limited liability company, or association, or the name and address of each of the officers of a corporation and the address of its principal place of business; the location of the principal place of business to be licensed, a copy of the PACT Act registration form as required by the Bureau of Alcohol, Tobacco, Firearms and Explosives of the US Department of Justice, and attestation that the applicant is in compliance with, and will continue to comply with all applicable requirements of 15 U.S.C. 375 and 376; and an attestation that the applicant will comply with all applicable laws of Nebraska.

This section also requires each applicant to submit a list of each type or model of electronic nicotine delivery system of the manufacturer which is sold in this state, and a nonrefundable fee of two hundred fifty (\$250.00) dollars for each type or model of electronic nicotine delivery system which is sold in this state.

Section 16: is new language that requires a nonresident manufacturer of electronic nicotine delivery systems that has not registered to do business in Nebraska as a foreign corporation or business entity to appoint an agent in Nebraska to act as agent for the service of process on whom all process may be served.



Section 17: amends section 77-4012 by adding "certification" to the language allowing the tax commissioner to revoke, cancel, or suspend any license for a violation of the Tobacco Products Act.

Section 18: amends section 77-4013 by adding the term "certification" to what may be restored by the tax commissioner for licenses that have been revoked, cancelled, or suspended.

Section 19: amends section 77-4017 by requiring every person licensed or certified under the Tobacco Products Tax Act to keep complete and accurate records for all places of business. The records must be of sufficient detail to identify the manufacturer of each tobacco product held, purchased, manufactured, or brought in or caused to be brought into this state.

Section 20: amends section 77-4019 to change the language to include any person licensed or certified under the Tobacco Products Tax Act in this section, who can request a hearing after receiving notice that the Tax Commissioner intends to revoke, cancel, or suspend a license or certification.

Section 21: amends section 77-4020 to include "certified manufacturer" to the language which requires the tax commissioner to make a final decision within a reasonable time after the hearing provided for in section 77-4019 above.

Section 22: amends section 77-4025 by including the certification fees as revenue that is collected that gets credited to the Tobacco Products Administration Cash Fund.

Section 23: is the repealer section. No sections are outright repealed.

Committee Vote: 7 yeas, 0 nays, 1 absent

Yeas: Senator Lowe, Senator Brewer, Senator Cavanaugh, Senator Day, Senator Hardin, Senator Holdcroft, Senator Hughes.

Absent: Senator Raybould

John Lowe, Chairperson

