

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 404

Introduced by Vargas, 7.

Read first time January 12, 2023

Committee: General Affairs

1 A BILL FOR AN ACT relating to liquor; to amend sections 53-103,
2 53-103.14, 53-103.41, 53-201, 53-202, 53-204, 53-216, 53-217,
3 53-218, 53-220, 53-221, 53-222, and 53-223, Reissue Revised Statutes
4 of Nebraska, and section 53-101, Revised Statutes Cumulative
5 Supplement, 2022; to define and redefine terms; to change provisions
6 relating to agreements between wholesalers and suppliers for the
7 distribution of beer as prescribed; to harmonize provisions; and to
8 repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 53-101, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 53-101 Sections 53-101 to 53-1,122 and sections 4 and 5 of this act
4 shall be known and may be cited as the Nebraska Liquor Control Act.

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

7 53-103 For purposes of the Nebraska Liquor Control Act, the
8 definitions found in sections 53-103.01 to 53-103.49 and sections 4 and 5
9 of this act apply.

10 Sec. 3. Section 53-103.41, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 53-103.41 Wholesaler means a person importing or causing to be
13 imported into the state or purchasing or causing to be purchased within
14 the state alcoholic liquor for sale or resale to retailers licensed under
15 the Nebraska Liquor Control Act, whether the business of the wholesaler
16 is conducted under the terms of a franchise or any other form of an
17 agreement with a manufacturer or manufacturers, or a small producer
18 contract with a small producer, or who has caused alcoholic liquor to be
19 imported into the state or purchased in the state from a manufacturer or
20 manufacturers and was licensed to conduct such a business by the
21 commission on May 1, 1970, or has been so licensed since that date.

22 Wholesaler includes a distributor, distributorship, and jobber.

23 Sec. 4. Small producer means a manufacturer of beer that produces
24 at or below the maximum limit set forth in subsection (1) of section
25 53-124.04.

26 Sec. 5. Small producer contract means a contract between a small
27 producer and a wholesaler, which:

28 (1) Is freely negotiated;

29 (2) Is in writing, regardless of the term;

30 (3) Is executed by both parties;

31 (4) Identifies the geographic territory and specific brands to be

- 1 distributed by the wholesaler;
2 (5) Specifies termination and renewal provisions;
3 (6) Specifies a method of valuation in the event of a buyout; and
4 (7) Is filed with the commission within ten calendar days of
5 execution.

6 Sec. 6. Section 53-103.14, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 53-103.14 (1) Franchise or agreement, with reference to the
9 relationship between a manufacturer and wholesaler, includes one or more
10 of the following:

11 (a) ~~(1)~~ A commercial relationship of a definite duration or
12 continuing indefinite duration which is not required to be in writing;

13 (b) ~~(2)~~ A relationship by which the wholesaler is granted the right
14 to offer and sell the manufacturer's brands by the manufacturer;

15 (c) ~~(3)~~ A relationship by which the franchise, as an independent
16 business, constitutes a component of the manufacturer's distribution
17 system;

18 (d) ~~(4)~~ A relationship by which the operation of the wholesaler's
19 business is substantially associated with the manufacturer's brand,
20 advertising, or other commercial symbol designating the manufacturer; and

21 (e) ~~(5)~~ A relationship by which the operation of the wholesaler's
22 business is substantially reliant on the manufacturer for the continued
23 supply of beer.

24 (2) Franchise or agreement does not mean a small producer contract
25 entered into or renewed on or after January 31, 2024.

26 Sec. 7. Section 53-201, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 53-201 The purpose of sections 53-201 to 53-223 and sections 10 and
29 11 of this act is to provide fair, efficient, and competitive
30 distribution of beer by (1) regulating the termination, expiration, and
31 renewal of distribution agreements between beer suppliers and beer

1 wholesalers, (2) promoting a distribution system in which each beer
2 wholesaler will devote reasonable efforts and resources to sales,
3 distribution, and quality control of the beer it sells, (3) promoting the
4 continued availability of good quality beer for the consumers of Nebraska
5 through orderly marketing and vigorous interbrand competition, (4)
6 preventing a beer supplier from unfairly depriving a beer wholesaler of
7 the value of the investment the wholesaler made in its business in terms
8 of money, time, effort, and skill, and (5) controlling the sale of malt
9 beverages in this state and facilitating the lawful and orderly marketing
10 of malt beverages pursuant to the police powers of this state.

11 Sec. 8. Section 53-202, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 53-202 For purposes of sections 53-201 to 53-223 and sections 10 and
14 11 of this act, the definitions found in sections 53-203 to 53-215 and
15 sections 10 and 11 of this act shall be used.

16 Sec. 9. Section 53-204, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 53-204 (1) Agreement shall mean any agreement between a wholesaler
19 and a supplier, whether oral or written, by which a wholesaler is granted
20 the right to purchase and sell a brand or brands of beer sold by a
21 supplier.

22 (2) Agreement shall not include a small producer contract entered
23 into or renewed after January 31, 2024.

24 Sec. 10. Small producer has the same meaning as in section 4 of
25 this act.

26 Sec. 11. Small producer contract has the same meaning as section 5
27 of this act.

28 Sec. 12. Section 53-216, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 53-216 A supplier shall not:

31 (1) Fail to provide each wholesaler of the supplier's brand or

1 brands with a written agreement which contains the entire agreement with
2 the wholesaler and designates a specific, exclusive sales territory. Any
3 agreement which is in existence on April 18, 1989, shall be renewed in a
4 manner consistent with sections 53-201 to 53-223 and sections 10 and 11
5 of this act, and the provisions of such sections may be incorporated by
6 reference in the agreement. Nothing in such sections shall prevent a
7 supplier from making a one-time appointment, for a period not to exceed
8 ninety days, of a wholesaler to temporarily service a sales territory not
9 designated to another wholesaler until such time as a wholesaler is
10 appointed by the supplier. The wholesaler who is designated to service
11 the sales territory during the period of temporary service shall not be
12 in violation of such sections and, with respect to the temporary sales
13 territory, shall not have any of the rights provided under sections
14 53-218 and 53-220. The temporary service period may be extended beyond
15 ninety days by the Nebraska Liquor Control Commission if justifiable
16 circumstances exist as determined by the commission;

17 (2) Fix, maintain, establish, or unduly influence the price at which
18 a wholesaler shall be required to sell any beer;

19 (3) Enter into an additional agreement with any other wholesaler for
20 or to sell to any other wholesaler the same brand or brands of beer in
21 the same sales territory or any portion thereof or to sell directly to
22 any retailer in this state;

23 (4) Coerce or attempt to coerce any wholesaler to accept delivery of
24 any beer or other commodity which has not been ordered by the wholesaler,
25 except that a supplier may impose reasonable inventory requirements upon
26 a wholesaler if the requirements are made in good faith and are generally
27 applied to other similarly situated Nebraska wholesalers having an
28 agreement with the supplier;

29 (5) Coerce or attempt to coerce any wholesaler to accept delivery of
30 any beer or other commodity ordered by a wholesaler if the order was
31 canceled by the wholesaler in accordance with acceptable procedures;

1 (6) Coerce or attempt to coerce any wholesaler to do any illegal act
2 or to violate any law, rule, or regulation by threatening to amend,
3 modify, cancel, terminate, or refuse to renew any agreement existing
4 between the supplier and wholesaler;

5 (7) Require a wholesaler to assent to any condition, stipulation, or
6 provision limiting the wholesaler's right to sell the brand or brands of
7 beer or other products of any other supplier unless the acquisition of
8 the brand or brands or products of another supplier would materially
9 impair or adversely affect the wholesaler's quality of service, sales, or
10 ability to compete effectively in representing the brand or brands of the
11 supplier presently being sold by the wholesaler. The supplier shall have
12 the burden of proving that such acquisition of such other brand or brands
13 or products would have such effect;

14 (8) Require a wholesaler to purchase one or more brands of beer or
15 other products in order for the wholesaler to purchase another brand or
16 brands of beer for any reason. A wholesaler that has agreed to distribute
17 a brand or brands before April 18, 1989, shall continue to distribute the
18 brand or brands in conformance with sections 53-201 to 53-223 and
19 sections 10 and 11 of this act;

20 (9) Require a wholesaler to submit audited profit and loss
21 statements, audited balance sheets, or audited financial records as a
22 condition of renewal or continuation of an agreement. A supplier may
23 require profit and loss statements, balance sheets, or financial records
24 which are certified by the wholesaler or an officer thereof;

25 (10) Coerce, compel, or require a wholesaler to provide or divulge
26 specific information regarding the wholesaler's individual accounts or
27 customers or his or her exclusive relationship with them or coerce,
28 compel, or require a wholesaler to provide specific information
29 concerning competitive brands;

30 (11) Use the threat of losing or withholding its credit as a means
31 of compelling a wholesaler to standards of performance in any area of

1 business except that area directly relating to credit;

2 (12) Withhold delivery of beer ordered by a wholesaler or change a
3 wholesaler's quota of a brand or brands if the withholding or change is
4 not made in good faith;

5 (13) Require a wholesaler by any means directly to participate in or
6 contribute to any local or national advertising fund controlled, directly
7 or indirectly, by a supplier;

8 (14) Willfully discriminate, directly or indirectly, in price,
9 programs, or terms of sale offered to franchisees if the effect of such
10 discrimination may be to substantially lessen competition or to give to
11 one holder of a franchise any economic, business, or competitive
12 advantage not offered to all holders of the same or similar franchise.
13 This subdivision shall not govern dock prices;

14 (15) Take any action against a wholesaler who files a complaint
15 regarding an alleged violation by the supplier of a federal, state, or
16 local law, rule, or regulation in retaliation for such complaint;

17 (16) Restrict or inhibit, directly or indirectly, the right of free
18 association among wholesalers for any lawful purpose;

19 (17) Require or prohibit, without just cause, any change in the
20 manager or successor manager of any wholesaler who has been approved by
21 the supplier as of or subsequent to April 18, 1989. If a wholesaler
22 changes an approved manager or successor manager, a supplier shall not
23 require or prohibit the change unless the person selected by the
24 wholesaler fails to meet the reasonable qualifications for managers of
25 Nebraska wholesalers of the supplier, which reasonable qualifications
26 previously have been consistently applied to similarly situated Nebraska
27 wholesalers by the supplier. The supplier shall have the burden of
28 proving that such person fails to meet such reasonable qualifications and
29 that the qualifications have been consistently applied to similarly
30 situated Nebraska wholesalers;

31 (18) Upon written notice of intent to transfer the wholesaler's

1 business, interfere with, prevent, or unreasonably delay for a period of
2 sixty days or more the transfer of the wholesaler's business if the
3 proposed transferee is a designated member; or

4 (19) Upon written notice of intent to transfer the wholesaler's
5 business other than to a designated member, withhold consent to or
6 approval of, or unreasonably delay for a period of sixty days or more
7 after receipt of all material information reasonably requested of the
8 wholesaler a response to a request by the wholesaler for, any transfer of
9 a wholesaler's business if the proposed transferee meets the reasonable
10 qualifications required by the supplier for similarly situated Nebraska
11 wholesalers. The supplier shall have the burden of proving that the
12 proposed transferee fails to meet such reasonable qualifications and that
13 the qualifications have been consistently applied to similarly situated
14 Nebraska wholesalers.

15 Sec. 13. Section 53-217, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 53-217 A wholesaler shall not:

18 (1) Fail to devote such efforts as are required in the agreement
19 between the supplier and wholesaler within the supplier's designated
20 sales territory relating to the sale and distribution of the supplier's
21 brand or brands of beer which the wholesaler has been granted the right
22 to sell or distribute;

23 (2) Sell or deliver beer to a retail licensee located outside the
24 sales territory designated to the wholesaler by the supplier of a
25 particular brand or brands of beer, except that during a period of
26 temporary service interruption impacting a particular sales territory, a
27 wholesaler who normally services the impacted sales territory shall file
28 with the Nebraska Liquor Control Commission and give to the affected
29 supplier written notice designating the specific wholesaler or
30 wholesalers, not disapproved by the supplier, who will service the sales
31 territory during the period of temporary service interruption and the

1 approximate length of time of the service interruption. Each wholesaler
2 designated to temporarily service a sales territory shall be a wholesaler
3 who has a current agreement with a supplier for the brand or brands
4 affected. When the temporary service interruption is over, the wholesaler
5 who normally services the sales territory shall notify the commission,
6 the supplier, and the wholesaler or wholesalers servicing the sales
7 territory on a temporary basis of this fact in writing, and any
8 wholesaler servicing the sales territory on a temporary basis shall cease
9 servicing the sales territory upon receipt of the notice. A wholesaler
10 who is designated to service a sales territory during a period of
11 temporary service shall not be in violation of sections 53-201 to 53-223
12 and sections 10 and 11 of this act and, with respect to the sales
13 territory, shall not have any of the rights provided under sections
14 53-218 and 53-220; or

15 (3) Transfer his or her business without giving the supplier written
16 notice of intent to transfer the business and, when required by sections
17 53-201 to 53-223, receiving the supplier's approval for the proposed
18 transfer. Consent or approval from the supplier shall not be required for
19 any transfer of the wholesaler's business to a designated member or any
20 transfer of less than control of the wholesaler's business. The
21 wholesaler shall give the supplier written notice of any change in
22 ownership of the wholesaler.

23 Sec. 14. Section 53-218, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 53-218 (1) Notwithstanding any agreement and except as otherwise
26 provided for in sections 53-201 to 53-223 and sections 10 and 11 of this
27 act, a supplier shall not amend or modify an agreement, cause a
28 wholesaler to resign from an agreement, or cancel, terminate, fail to
29 renew, or refuse to continue under an agreement unless the supplier has:

30 (a) Satisfied the applicable notice requirements of subsection (3)
31 of this section;

1 (b) Acted in good faith; and

2 (c) Good cause for the amendment, modification, forced resignation,
3 cancellation, termination, nonrenewal, or discontinuance.

4 (2) For each amendment, modification, cancellation, termination,
5 nonrenewal, or discontinuance, the supplier shall have the burden of
6 proving that it has acted in good faith, that the notice requirements
7 under this section have been complied with, and that there was good cause
8 for the amendment, modification, cancellation, termination, nonrenewal,
9 or discontinuance.

10 (3) Notwithstanding any agreement and except as to new products and
11 as otherwise provided in this section and in addition to the time limits
12 set forth in subdivision (4)(e) of this section, the supplier shall
13 furnish written notice of the amendment, modification, cancellation,
14 termination, nonrenewal, or discontinuance of an agreement to the
15 wholesaler not less than thirty days before the effective date of the
16 amendment, modification, cancellation, termination, nonrenewal, or
17 discontinuance. The notice shall be sent by certified mail and shall
18 contain:

19 (a) A statement of intention to amend, modify, cancel, terminate,
20 not renew, or discontinue the agreement;

21 (b) A statement of the reason for the amendment, modification,
22 cancellation, termination, nonrenewal, or discontinuance; and

23 (c) The date on which the amendment, modification, cancellation,
24 termination, nonrenewal, or discontinuance shall take effect.

25 (4) Notwithstanding any agreement, good cause shall exist for the
26 purposes of a cancellation, termination, nonrenewal, or discontinuance
27 under subdivision (1)(c) of this section when:

28 (a) There is a failure by the wholesaler to comply with a provision
29 of the agreement which is both reasonable and of material significance to
30 the business relationship between the wholesaler and the supplier;

31 (b) The supplier first acquired knowledge of the failure described

1 in subdivision (a) of this subsection not more than twenty-four months
2 before the date notification was given pursuant to subsection (3) of this
3 section;

4 (c) The wholesaler was given notice by the supplier of failure to
5 comply with the agreement within twenty-four months of such failure;

6 (d) The wholesaler was afforded a reasonable opportunity to assert
7 good faith efforts to comply with the agreement within the time limits
8 provided for in subdivision (e) of this subsection; and

9 (e) The wholesaler has been afforded thirty days in which to submit
10 a plan of corrective action to comply with the agreement and an
11 additional ninety days to cure such noncompliance in accordance with the
12 plan.

13 (5) Notwithstanding subsections (1) and (3) of this section, a
14 supplier may cancel, terminate, fail to renew, or discontinue an
15 agreement immediately upon written notice given in the manner and
16 containing the information required by subsection (3) of this section if:

17 (a) The wholesaler becomes insolvent, files or has filed against it
18 a petition under any bankruptcy or receivership law, makes an assignment
19 for the benefit of creditors, or is dissolved or liquidated and such
20 action materially affects the wholesaler's ability to remain in business;

21 (b) The wholesaler's state or federal license is revoked or
22 suspended by the appropriate regulatory agency and the wholesaler cannot
23 service the wholesaler's sales territory for more than sixty-one days;

24 (c) The wholesaler or a partner, a member, or an individual who owns
25 ten percent or more of the partnership, the limited liability company, or
26 the stock of a corporate wholesaler has been convicted of a felony under
27 the United States Code or the laws of any state which reasonably may
28 adversely affect the goodwill or interest of the wholesaler or supplier.
29 An existing stockholder, partner, or member or a designated member shall
30 have, subject to the provisions of sections 53-201 to 53-223 and sections
31 10 and 11 of this act, the right to purchase the partnership interest,

1 the limited liability company member interest, or the stock of the
2 offending partner or stockholder, and if the sale is completed prior to
3 conviction, the provisions of this subdivision shall not apply; or

4 (d) The supplier and wholesaler agree to a termination.

5 (6) Notwithstanding subsections (1), (3), and (4) of this section,
6 upon not less than fifteen days' written notice given in the manner and
7 containing the information required by subsection (3) of this section, a
8 supplier may cancel, terminate, fail to renew, or discontinue an
9 agreement if:

10 (a) There was intentional fraudulent conduct relating to a material
11 matter on the part of the wholesaler in dealings with the supplier or its
12 producers. The supplier shall have the burden of proving intentional
13 fraudulent conduct relating to a material matter on the part of the
14 wholesaler;

15 (b) The wholesaler failed to confine its sales of a brand or brands
16 to retailers in its designated sales territory. This subdivision shall
17 not apply if there is a dispute between two or more wholesalers as to the
18 boundaries of the assigned territory and the boundaries cannot be
19 determined by a reading of the description contained in the agreements
20 between the supplier and the wholesalers;

21 (c) A wholesaler who has failed to pay for beer ordered and
22 delivered in accordance with established terms with the supplier fails to
23 make full payment within two business days after receipt of written
24 notice of the delinquency and demand for immediate payment from the
25 supplier;

26 (d) A wholesaler intentionally has made a transfer of the
27 wholesaler's business, other than a transfer to a designated member or
28 pursuant to a loan agreement or debt instrument, without prior written
29 notice to the supplier and has failed, within thirty days from the
30 receipt of written notice from the supplier of its intent to terminate on
31 the ground of such transfer, to reverse the transfer of the wholesaler's

1 business;

2 (e) A wholesaler intentionally has made a transfer of his or her
3 business, other than a transfer to a designated member, although the
4 wholesaler has prior to the transfer received from the supplier a timely
5 notice of disapproval of the transfer in accordance with sections 53-201
6 to 53-223 and sections 10 and 11 of this act; or

7 (f) The wholesaler intentionally ceases or ceases for a period of
8 more than thirty-one days to carry on business with respect to any of the
9 supplier's brand or brands previously serviced by a wholesaler in its
10 sales territory designated by the supplier unless such cessation is due
11 to a force beyond the control of the wholesaler or to a labor dispute and
12 the wholesaler has made good faith efforts to overcome such events. This
13 subdivision shall affect only that brand or brands with respect to which
14 the wholesaler ceased to carry on business.

15 (7) Notwithstanding subsections (1), (3), (5), and (6) of this
16 section, a supplier may cancel, terminate, not renew, or discontinue an
17 agreement upon not less than thirty days' written notice if the supplier
18 discontinues production or discontinues distribution in this state of all
19 the brands sold by the supplier to the wholesaler. Nothing in this
20 section shall prohibit a supplier from (a) upon not less than thirty
21 days' written notice, discontinuing the distribution of any particular
22 brand or package of beer or (b) conducting test marketing of a new brand
23 of beer or of a brand of beer which is not currently being sold in this
24 state if the supplier has notified the Nebraska Liquor Control Commission
25 in writing of its plans to test market. The notice to the commission
26 shall describe the market area in which the test will be conducted, the
27 name or names of the wholesaler or wholesalers who will be selling the
28 beer, the name or names of the brand of beer being tested, and the period
29 of time, not to exceed eighteen months, during which the testing will
30 take place.

31 (8) Each wholesaler who sells beer to a retailer in this state shall

1 service for the purpose of quality control all the beer it sells to that
2 retailer. Each wholesaler shall, to the extent permitted by the Nebraska
3 Liquor Control Act and the rules and regulations adopted and promulgated
4 pursuant to such act:

5 (a) Rotate the beer it sold to a retailer no less frequently than
6 may be specified from time to time by the brand owner so that beer
7 produced first will be sold first;

8 (b) Clean and maintain tap equipment and provide related services as
9 may be specified from time to time by the brand owner;

10 (c) Remove and replace with the same kind of beer any beer it sold
11 to a retailer which has not been resold to a consumer within the time
12 limits specified by the brand owner; and

13 (d) Provide whatever additional quality control services and comply
14 with whatever additional quality control requirements are specified in
15 writing from time to time by the brand owner, subject to the conditions
16 that those services and requirements are reasonable and are reasonably
17 related to promotion of quality control and that the wholesaler has
18 received written notice of the services to be provided and the
19 requirements to be satisfied and has been granted a reasonable time
20 within which to comply.

21 (9) Except in the event of a temporary service interruption, a
22 wholesaler shall not sell beer (a) to a retailer who does not have a
23 location within the wholesaler's sales territory at which the retailer is
24 entitled to resell beer to consumers or who the wholesaler knows or
25 reasonably should know does not have a location within the wholesaler's
26 sales territory at which the retailer is entitled to resell beer or (b)
27 to any person who the wholesaler has reason to believe will sell or
28 supply all or part of such beer to any retailer who does not have a
29 location within the wholesaler's sales territory at which the retailer is
30 entitled to resell beer. During a period of temporary service
31 interruption impacting a particular wholesaler's sales territory, the

1 wholesaler who normally services the sales territory shall file with the
2 Nebraska Liquor Control Commission and serve on his or her suppliers a
3 written notice stating that a temporary service interruption has occurred
4 and indicating the anticipated duration of the temporary service
5 interruption. After receiving such notice the supplier may designate
6 another wholesaler or wholesalers to service the sales territory during
7 the period of temporary service interruption. After the temporary service
8 interruption, the wholesaler who normally services the sales territory
9 shall file with the commission and serve on each wholesaler providing
10 temporary service and each supplier a written notice stating that the
11 temporary service interruption has ended. Each wholesaler providing
12 temporary service shall cease servicing the sales territory after
13 receiving such notice.

14 Sec. 15. Section 53-220, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 53-220 A supplier that, in violation of section 53-218 or 53-219,
17 (1) has amended, modified, canceled, terminated, or refused to renew any
18 agreement, (2) has caused a wholesaler to resign from an agreement, or
19 (3) has interfered with, prevented, or unreasonably delayed or, when
20 required by sections 53-201 to 53-223 and sections 10 and 11 of this act,
21 has unreasonably withheld or unreasonably delayed consent to or approval
22 of any assignment or transfer of a wholesaler's business shall pay the
23 wholesaler reasonable compensation for the diminished value of the
24 wholesaler's business, including any ancillary business which has been
25 negatively affected by the act of the supplier. The value of the
26 wholesaler's business or ancillary business shall include, but not be
27 limited to, any goodwill. Nothing in such sections shall give rise to a
28 claim against the supplier or wholesaler by any proposed purchaser of the
29 wholesaler's business.

30 Sec. 16. Section 53-221, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 53-221 A wholesaler may not waive any of the rights granted in
2 sections 53-201 to 53-223 and sections 10 and 11 of this act, and the
3 provisions of any agreement which would have such an effect shall be null
4 and void. Nothing in such sections shall be construed to limit or
5 prohibit good faith dispute settlements voluntarily entered into by the
6 parties.

7 Sec. 17. Section 53-222, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 53-222 (1) Sections 53-201 to 53-223 and sections 10 and 11 of this
10 act shall apply to agreements in existence on April 18, 1989, and
11 agreements entered into or renewed after such date but shall not apply to
12 small producer contracts entered into or renewed after January 31, 2024,
13 except as expressly provided in sections 53-201 to 53-223 and sections 10
14 and 11 of this act.

15 (2) A transferee of a wholesaler that continues in business as a
16 wholesaler shall have the benefit of and be bound by all terms and
17 conditions of the agreement or the small producer contract entered into
18 or renewed after January 31, 2024, with the supplier in effect on the
19 date of the transfer. A transfer of a wholesaler's business which
20 requires the supplier's consent or approval but is disapproved by the
21 supplier shall be null and void.

22 (3) A successor to a supplier that continues in business as a
23 supplier shall be bound by all terms and conditions of each distribution
24 agreement or each small producer contract entered into or renewed after
25 January 31, 2024, that the predecessor was a party to at the time of
26 transfer with respect to each brand the successor continues to make
27 available for sale in this state.

28 (4) On or after January 31, 2024, a wholesaler shall only be granted
29 the right to purchase and sell a brand or brands of beer sold by a small
30 producer through a small producer contract. A copy of a small producer
31 contract shall be filed with the Nebraska Liquor Control Commission by

1 the wholesaler within ten days after execution of such contract.

2 Sec. 18. Section 53-223, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 53-223 (1) If a supplier engages in conduct prohibited under
5 sections 53-201 to 53-223 and sections 10 and 11 of this act, a
6 wholesaler with whom the supplier has an agreement may maintain a civil
7 action against the supplier to recover actual damages reasonably incurred
8 as the result of the prohibited conduct. If a wholesaler engages in
9 conduct prohibited under such sections, a supplier with whom the
10 wholesaler has an agreement may maintain a civil action against the
11 wholesaler to recover actual damages reasonably incurred as the result of
12 the prohibited conduct.

13 (2) A supplier who violates any provision of such sections shall be
14 liable for all actual damages, all court costs, and, in the court's
15 discretion, reasonable attorney's fees incurred by a wholesaler as a
16 result of the violation. A wholesaler who violates any provision of such
17 sections shall be liable for all actual damages, all court costs, and, in
18 the court's discretion, reasonable attorney's fees incurred by the
19 supplier as a result of the violation.

20 (3) A supplier or wholesaler may bring an action for declaratory
21 judgment for determination of any controversy arising pursuant to such
22 sections.

23 (4) Upon proper application to the court, a supplier or wholesaler
24 may obtain injunctive relief against any violation of such sections. If
25 the court grants injunctive relief or issues a temporary restraining
26 order, bond shall be posted.

27 (5) The remedies provided by such sections are not exclusive, and
28 nothing contained in such sections shall abolish any cause of action or
29 remedy available to the supplier or the wholesaler existing on April 18,
30 1989.

31 (6) Any legal action taken under such sections or relating to a

1 dispute arising out of an agreement or breach thereof or over the
2 provisions of an agreement shall be filed in a state or federal court
3 located in Nebraska, which state court is located in, or which federal
4 court has jurisdiction and venue of, the county in which the wholesaler
5 maintains its principal place of business in this state.

6 Sec. 19. Original sections 53-103, 53-103.14, 53-103.41, 53-201,
7 53-202, 53-204, 53-216, 53-217, 53-218, 53-220, 53-221, 53-222, and
8 53-223, Reissue Revised Statutes of Nebraska, and section 53-101, Revised
9 Statutes Cumulative Supplement, 2022, are repealed.