

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 441

FINAL READING

Introduced by McDonald, 41; Dierks, 40; Heidemann, 1; Hudkins, 21;
Rogert, 16; Wightman, 36; Mines, 18

Read first time January 16, 2007

Committee: General Affairs

A BILL

1 FOR AN ACT relating to alcoholic liquor; to amend sections
2 53-123.15 and 53-304, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to shippers'
4 license fees; to provide an excise tax on grapes; to
5 define terms; to provide powers and duties; to provide
6 a penalty; to harmonize provisions; and to repeal the
7 original sections.

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

1 Section 1. Section 53-123.15, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 53-123.15 (1) No person shall order or receive alcoholic
4 liquor in this state which has been shipped directly to him or her
5 from outside this state by any person other than a holder of a
6 shipping license issued by the commission, except that a licensed
7 wholesaler may receive not more than three gallons of wine in any
8 calendar year from any person who is not a holder of a shipping
9 license.

10 (2) The commission may issue a shipping license to
11 a manufacturer. Such license shall allow the licensee to ship
12 alcoholic liquor only to a licensed wholesaler, except that a
13 licensed wholesaler may, without a shipping license and for the
14 purposes of subdivision (2) of section 53-161, receive beer in
15 this state which has been shipped from outside the state by a
16 manufacturer in accordance with the Nebraska Liquor Control Act to
17 the wholesaler, then transported by the wholesaler to another state
18 for retail distribution, and then returned by the retailer to such
19 wholesaler.

20 (3) The commission may issue a shipping license to
21 any person who deals with vintage wines, which shipping license
22 shall allow the licensee to distribute such wines to a licensed
23 wholesaler in the state. For purposes of distributing vintage
24 wines, a licensed shipper must utilize a designated wholesaler if
25 the manufacturer has a designated wholesaler. For purposes of this

1 section, vintage wine shall mean a wine verified to be ten years
2 of age or older and not available from a primary American source
3 of supply.

4 (4) The commission may issue a shipping license to any
5 person who sells and ships alcoholic liquor from another state
6 directly to a consumer in this state. A person who receives a
7 license pursuant to this subsection shall pay the fee required in
8 subdivision (11) of section 53-124. Until April 30, 2012, such fee
9 shall be collected by the commission and remitted to the State
10 Treasurer for credit to the Winery and Grape Producers Promotional
11 Fund.

12 (5) The application for a shipping license shall be
13 in such form as the commission prescribes. The application shall
14 contain all provisions the commission deems proper and necessary to
15 effectuate the purpose of any section of the act and the rules and
16 regulations of the commission that apply to manufacturers and shall
17 include, but not be limited to, provisions that the applicant, in
18 consideration of the issuance of such shipping license, agrees:

19 (a) To comply with and be bound by section 53-164.01 in
20 making and filing reports, paying taxes, penalties, and interest,
21 and keeping records;

22 (b) To permit and be subject to all of the powers granted
23 by section 53-164.01 to the commission or its duly authorized
24 employees or agents for inspection and examination of the
25 applicant's premises and records and to pay the actual expenses,

1 excluding salary, reasonably attributable to such inspections and
2 examinations made by duly authorized employees of the commission
3 if within the United States; and

4 (c) That if the applicant violates any of the provisions
5 of the application or the license, any section of the act, or
6 any of the rules and regulations of the commission that apply to
7 manufacturers, the commission may revoke or suspend such shipping
8 license for such period of time as it may determine.

9 Sec. 2. For purposes of sections 2 to 5 of this act:

10 (1) Commercial channels means the sale or delivery of
11 grapes for any use, except grapes intended for ultimate consumption
12 as table grapes, to any commercial buyer, dealer, processor, or
13 cooperative or to any person, public or private, who resells any
14 grapes or product produced from grapes;

15 (2) Delivered or delivery means receiving grapes for
16 utilization or as a result of sale in the State of Nebraska but
17 excludes receiving grapes for storage;

18 (3) First purchaser means any person, public or private
19 corporation, association, partnership, or limited liability company
20 buying, accepting for shipment, or otherwise acquiring the property
21 in or to grapes from a grower;

22 (4) Grower means any landowner personally engaged in
23 growing grapes, a tenant of the landowner personally engaged
24 in growing grapes, and both the owner and tenant jointly and
25 includes a person, a partnership, a limited liability company, an

1 association, a corporation, a cooperative, a trust, or any other
2 business unit, device, or arrangement; and

3 (5) Table grapes means grapes intended for ultimate
4 consumption as produce in fresh, unprocessed form and not intended
5 for wine production, juice production, or drying.

6 Sec. 3. (1) Except as provided in subsection (2) of this
7 section, an excise tax of one cent per pound is levied upon all
8 grapes sold through commercial channels in Nebraska or delivered in
9 Nebraska. The excise tax shall be paid by the grower at the time
10 of sale or delivery and shall be collected by the first purchaser.
11 Grapes shall not be subject to the excise tax imposed by this
12 section more than once.

13 (2) The excise tax imposed by this section shall not
14 apply to the sale of grapes to the federal government for the
15 ultimate use or consumption by the people of the United States when
16 the State of Nebraska is prohibited from imposing such excise tax
17 by the United States Constitution and the laws enacted pursuant
18 thereto.

19 Sec. 4. (1) The first purchaser, at the time of
20 settlement, shall deduct the excise tax imposed by section 3
21 of this act. The excise tax shall be deducted whether the grapes
22 are stored in this state or any other state. The first purchaser
23 shall maintain the necessary records of the excise tax for each
24 purchase or delivery of grapes on the settlement form or check
25 stub showing payment to the grower for each purchase or delivery.

1 Such records maintained by the first purchaser shall provide the
2 following information:

- 3 (a) The name and address of the grower and seller;
4 (b) The date of the purchase or delivery;
5 (c) The number of pounds of grapes purchased; and
6 (d) The amount of excise taxes collected on each purchase
7 or delivery.

8 Such records shall be open for inspection during normal
9 business hours observed by the first purchaser.

10 (2) The first purchaser shall render and have on file
11 with the Department of Agriculture by the last day of January
12 and July of each year, on forms prescribed by the department, a
13 statement of the number of pounds of grapes purchased in Nebraska.
14 At the time the statement is filed, such first purchaser shall pay
15 and remit to the department the excise tax imposed by section 3 of
16 this act.

17 (3) All excise taxes collected by the department pursuant
18 to this section shall be remitted to the State Treasurer for credit
19 to the Winery and Grape Producers Promotional Fund. The department
20 shall remit the excise tax collected to the State Treasurer within
21 ten days after receipt.

22 Sec. 5. For each fiscal year beginning with FY2007-08,
23 the Department of Agriculture shall calculate its costs in
24 collecting and enforcing the excise tax imposed by section 3
25 of this act and shall report such costs to the Department of

1 Administrative Services within thirty days after the end of the
2 calendar quarter. Sufficient funds to cover such costs shall be
3 transferred from the Winery and Grape Producers Promotional Fund
4 to the Management Services Expense Revolving Fund at the end of
5 each calendar quarter. Funds shall be transferred upon the receipt
6 by the Department of Administrative Services of a report of costs
7 incurred by the Department of Agriculture for the previous calendar
8 quarter.

9 Sec. 6. Any person violating sections 2 to 4 of this act
10 shall be guilty of a Class III misdemeanor.

11 Sec. 7. Section 53-304, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 53-304 Each Nebraska winery shall pay to the Nebraska
14 Liquor Control Commission twenty dollars for every one hundred
15 sixty gallons of juice produced or received by its facility.
16 Gifts, grants, or bequests may be received for the support of
17 the Nebraska Grape and Winery Board. Funds paid pursuant to the
18 charge imposed by this section and funds received pursuant to
19 subsection (4) of section 53-123.15 and from gifts, grants, or
20 bequests shall be remitted to the State Treasurer for credit to
21 the Winery and Grape Producers Promotional Fund which is hereby
22 created. For administrative purposes, the fund shall be located in
23 the Department of Agriculture. All revenue credited to the fund
24 pursuant to the charge imposed by this section and excise taxes
25 collected pursuant to section 4 of this act and any funds received

1 as gifts, grants, or bequests and credited to the fund shall be
2 used by the department, at the direction of and in cooperation with
3 the board, to develop and maintain programs for the research and
4 advancement of the growing, selling, marketing, and promotion of
5 grapes, fruits, berries, honey, and other agricultural products and
6 their byproducts grown and produced in Nebraska for use in the wine
7 industry. Such expenditures may include, but are not limited to,
8 all necessary funding for the employment of experts in the fields
9 of viticulture and enology, as deemed necessary by the board,
10 and programs aimed at improving the promotion of all varieties
11 of wines, grapes, fruits, berries, honey, and other agricultural
12 products and their byproducts grown and produced in Nebraska for
13 use in the wine industry.

14 Funds credited to the fund shall be used for no other
15 purposes than those stated in this section and any transfers
16 authorized pursuant to section 5 of this act. Any funds not
17 expended during a fiscal year may be maintained in the fund for
18 distribution or expenditure during subsequent fiscal years. Any
19 money in the fund available for investment shall be invested by the
20 state investment officer pursuant to the Nebraska Capital Expansion
21 Act and the Nebraska State Funds Investment Act.

22 Sec. 8. Original sections 53-123.15 and 53-304, Reissue
23 Revised Statutes of Nebraska, are repealed.