

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 824**

Final Reading

Introduced by Karpisek, 32.

Read first time January 05, 2012

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend  
2 sections 53-103, 53-103.03, 53-103.38, 53-160, and  
3 53-164.01, Reissue Revised Statutes of Nebraska, and  
4 section 53-101, Revised Statutes Supplement, 2011; to  
5 define and redefine terms; to change provisions relating  
6 to beer, spirits, the gallonage tax, and reports  
7 involving the gallonage tax; to harmonize provisions; to  
8 repeal the original sections; and to declare an  
9 emergency.

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

1           Section 1. Section 53-101, Revised Statutes Supplement,  
2   2011, is amended to read:

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

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

8           53-103 For purposes of the Nebraska Liquor Control Act,  
9 the definitions found in sections 53-103.01 to 53-103.42 and section  
10 4 of this act apply.

11          Sec. 3. Section 53-103.03, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13          53-103.03 Beer means a beverage obtained by alcoholic  
14 fermentation of an infusion or concoction of barley or other grain,  
15 malt, and hops in water and includes, but is not limited to, beer,  
16 ale, stout, lager beer, porter, ~~and near beer,~~ and flavored malt  
17 beverage.

18          Sec. 4. Flavored malt beverage means a beer that derives  
19 not more than forty-nine percent of its total alcohol content from  
20 flavors or flavorings containing alcohol obtained by distillation,  
21 except that in the case of a malt beverage with an alcohol content of  
22 more than six percent by volume, not more than one and one-half  
23 percent of the volume of the malt beverage may consist of alcohol  
24 derived from flavors, flavorings, or other nonbeverage ingredients  
25 containing alcohol obtained by distillation.

1                   Sec. 5. Section 53-103.38, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   53-103.38 Spirits means any beverage which contains  
4 alcohol obtained by distillation, mixed with water or other substance  
5 in solution. Spirits, ~~and~~ includes brandy, rum, whiskey, gin, or  
6 other spirituous liquors and such liquors when rectified, blended, or  
7 otherwise mixed with alcohol or other substances. Spirits does not  
8 include flavored malt beverages.

9                   Sec. 6. Section 53-160, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11                   53-160 (1) For the purpose of raising revenue, a tax is  
12 imposed upon the privilege of engaging in business as a manufacturer  
13 or a wholesaler at a rate of thirty-one cents per gallon on all beer;  
14 ninety-five cents per gallon for wine, except for wines produced and  
15 released from bond in farm wineries; six cents per gallon for wine  
16 produced and released from bond in farm wineries; and three dollars  
17 and seventy-five cents per gallon on alcohol and spirits manufactured  
18 and sold by such manufacturer or shipped for sale in this state by  
19 such wholesaler in the course of such business. The gallonage tax  
20 imposed by this subsection shall be imposed only on alcoholic liquor  
21 upon which a federal excise tax is imposed.

22                   (2) Manufacturers or wholesalers of alcoholic liquor  
23 shall be exempt from the payment of the gallonage tax on such  
24 alcoholic liquor upon satisfactory proof, including bills of lading  
25 furnished to the commission by affidavit or otherwise as the

1 commission may require, that such alcoholic liquor was manufactured  
2 in this state but shipped out of the state for sale and consumption  
3 outside this state.

4 (3) Dry wines or fortified wines manufactured or shipped  
5 into this state solely and exclusively for sacramental purposes and  
6 uses shall not be subject to the gallonage tax.

7 (4) The gallonage tax shall not be imposed upon any  
8 alcoholic liquor, whether manufactured in or shipped into this state,  
9 when sold to a licensed nonbeverage user for use in the manufacture  
10 of any of the following when such products are unfit for beverage  
11 purposes: Patent and proprietary medicines and medicinal, antiseptic,  
12 and toilet preparations; flavoring extracts, syrups, food products,  
13 and confections or candy; scientific, industrial, and chemical  
14 products, except denatured alcohol; or products for scientific,  
15 chemical, experimental, or mechanical purposes.

16 (5) The gallonage tax shall not be imposed upon the  
17 privilege of engaging in any business in interstate commerce or  
18 otherwise, which business may not, under the Constitution and  
19 statutes of the United States, be made the subject of taxation by  
20 this state.

21 (6) The gallonage tax shall be in addition to all other  
22 occupation or privilege taxes imposed by this state or by any  
23 municipal corporation or political subdivision thereof.

24 (7) The commission shall collect the gallonage tax and  
25 shall account for and remit to the State Treasurer at least once each

1 week all money collected pursuant to this section. If any alcoholic  
2 liquor manufactured in or shipped into this state is sold to a  
3 licensed manufacturer or wholesaler of this state to be used solely  
4 as an ingredient in the manufacture of any beverage for human  
5 consumption, the tax imposed upon such manufacturer or wholesaler  
6 shall be reduced by the amount of the taxes which have been paid as  
7 to such alcoholic liquor so used under the Nebraska Liquor Control  
8 Act. The net proceeds of all revenue arising under this section shall  
9 be credited to the General Fund.

10           Sec. 7. Section 53-164.01, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           53-164.01 Payment of the tax provided for in section  
13 53-160 on alcoholic liquor shall be paid by the manufacturer or  
14 wholesaler as follows:

15           (1)(a) All manufacturers or wholesalers, except farm  
16 winery producers, whether inside or outside this state shall, on or  
17 before the twenty-fifth day of each calendar month following the  
18 month in which shipments were made, submit a report to the commission  
19 upon forms furnished by the commission showing the total amount of  
20 alcoholic liquor in gallons or fractional parts thereof shipped by  
21 such manufacturer or wholesaler, whether inside or outside this  
22 state, during the preceding calendar month;

23           (b) All beer wholesalers shall, on or before the twenty-  
24 fifth day of each calendar month following the month in which  
25 shipments were made, submit a report to the commission upon forms

1 furnished by the commission showing the total amount of beer in  
2 gallons or fractional parts thereof shipped by all manufacturers,  
3 whether inside or outside this state, during the preceding calendar  
4 month to such wholesaler;

5 (c)(i) Except as provided in subdivision (ii) of this  
6 subdivision, farm winery producers which paid less than one thousand  
7 dollars of excise taxes pursuant to section 53-160 for the previous  
8 calendar year and which will pay less than one thousand dollars of  
9 excise taxes pursuant to section 53-160 for the current calendar year  
10 shall, on or before the twenty-fifth day of the calendar month  
11 following the end of the year in which wine was packaged ~~or bottled~~  
12 ~~for sale, and released from bond,~~ submit a report to the commission  
13 upon forms furnished by the commission showing the total amount of  
14 wine in gallons or fractional parts thereof packaged ~~or bottled and~~  
15 released from bond by such producer during the preceding calendar  
16 year; and

17 (ii) Farm winery producers which paid one thousand  
18 dollars or more of excise taxes pursuant to section 53-160 for the  
19 previous calendar year or which become liable for one thousand  
20 dollars or more of excise taxes pursuant to section 53-160 during the  
21 current calendar year shall, on or before the twenty-fifth day of  
22 each calendar month following the month in which wine was packaged ~~or~~  
23 ~~bottled for sale, and released from bond,~~ submit a report to the  
24 commission upon forms furnished by the commission showing the total  
25 amount of wine in gallons or fractional parts thereof packaged ~~or~~

1 ~~bottled and released from bond~~ by such producer during the preceding  
2 calendar month. A farm winery producer which becomes liable for one  
3 thousand dollars or more of excise taxes pursuant to section 53-160  
4 during the current calendar year shall also pay such excise taxes  
5 immediately;

6 (d) A craft brewery shall, on or before the twenty-fifth  
7 day of each calendar month following the month in which the beer was  
8 ~~produced~~ released from bond for sale, submit a report to the  
9 commission on forms furnished by the commission showing the total  
10 amount of beer in gallons or fractional parts thereof produced for  
11 sale by the craft brewery during the preceding calendar month;

12 (e) A microdistillery shall, on or before the twenty-  
13 fifth day of each calendar month following the month in which the  
14 distilled liquor was ~~produced~~ released from bond for sale, submit a  
15 report to the commission on forms furnished by the commission showing  
16 the total amount of distilled liquor in gallons or fractional parts  
17 thereof produced for sale by the microdistillery during the preceding  
18 calendar month; and

19 (f) Reports submitted pursuant to subdivision (a), (b),  
20 or (c) of this subdivision shall also contain a statement of the  
21 total amount of alcoholic liquor, except beer, in gallons or  
22 fractional parts thereof shipped to licensed retailers inside this  
23 state and such other information as the commission may require;

24 (2) The wholesaler or farm winery producer shall at the  
25 time of the filing of the report pay to the commission the tax due on

1 alcoholic liquor, except beer, shipped to licensed retailers inside  
2 this state at the rate fixed in accordance with section 53-160. The  
3 tax due on beer shall be paid by the wholesaler on beer shipped from  
4 all manufacturers;

5 (3) The tax imposed pursuant to section 53-160 shall be  
6 due on the date the report is due less a discount of one percent of  
7 the tax on alcoholic liquor for submitting the report and paying the  
8 tax in a timely manner. The discount shall be deducted from the  
9 payment of the tax before remittance to the commission and shall be  
10 shown in the report to the commission as required in this section. If  
11 the tax is not paid within the time provided in this section, the  
12 discount shall not be allowed and shall not be deducted from the tax;

13 (4) If the report is not submitted by the twenty-fifth  
14 day of the calendar month or if the tax is not paid to the commission  
15 by the twenty-fifth day of the calendar month, the following  
16 penalties shall be assessed on the amount of the tax: One to five  
17 days late, three percent; six to ten days late, six percent; and over  
18 ten days late, ten percent. In addition, interest on the tax shall be  
19 collected at the rate of one percent per month, or fraction of a  
20 month, from the date the tax became due until paid;

21 (5) No tax shall be levied or collected on alcoholic  
22 liquor manufactured inside this state and shipped or transported  
23 outside this state for sale and consumption outside this state;

24 (6) In order to insure the payment of all state taxes on  
25 alcoholic liquor, together with interest and penalties, persons

1 required to submit reports and payment of the tax shall, at the time  
2 of application for a license under sections 53-124 and 53-124.01,  
3 enter into a surety bond with corporate surety, both the bond form  
4 and surety to be approved by the commission. Subject to the  
5 limitations specified in this subdivision, the amount of the bond  
6 required of any taxpayer shall be fixed by the commission and may be  
7 increased or decreased by the commission at any time. In fixing the  
8 amount of the bond, the commission shall require a bond equal to the  
9 amount of the taxpayer's estimated maximum monthly excise tax  
10 ascertained in a manner as determined by the commission. Nothing in  
11 this section shall prevent or prohibit the commission from accepting  
12 and approving bonds which run for a term longer than the license  
13 period. The amount of a bond required of any one taxpayer shall not  
14 be less than one thousand dollars. The bonds required by this section  
15 shall be filed with the commission; and

16 (7) When a manufacturer or wholesaler sells and delivers  
17 alcoholic liquor upon which the tax has been paid to any  
18 instrumentality of the armed forces of the United States engaged in  
19 resale activities as provided in section 53-160.01, the manufacturer  
20 or wholesaler shall be entitled to a credit in the amount of the tax  
21 paid in the event no tax is due on such alcoholic liquor as provided  
22 in such section. The amount of the credit, if any, shall be deducted  
23 from the tax due on the following monthly report and subsequent  
24 reports until liquidated.

25 Sec. 8. Original sections 53-103, 53-103.03, 53-103.38,

1 53-160, and 53-164.01, Reissue Revised Statutes of Nebraska, and  
2 section 53-101, Revised Statutes Supplement, 2011, are repealed.

3           Sec. 9. Since an emergency exists, this act takes effect  
4 when passed and approved according to law.