

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 230
Final Reading

Introduced by Karpisek, 32.

Read first time January 15, 2013

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 sections 53-124, 53-124.01, 53-162, and 53-304, Reissue
3 Revised Statutes of Nebraska, and section 53-123.15,
4 Revised Statutes Cumulative Supplement, 2012; to provide
5 for and change provisions relating to shipping licenses;
6 to provide for fees and taxes; to harmonize provisions;
7 and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 53-123.15, Revised Statutes Cumulative
2 Supplement, 2012, 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 a
11 manufacturer. Such license shall allow the licensee to ship alcoholic
12 liquor only to a licensed wholesaler, except that a licensed
13 wholesaler may, without a shipping license and for the purposes of
14 subdivision (2) of section 53-161, receive beer in this state which
15 has been shipped from outside the state by a manufacturer in
16 accordance with the Nebraska Liquor Control Act to the wholesaler,
17 then transported by the wholesaler to another state for retail
18 distribution, and then returned by the retailer to such wholesaler. A
19 person who receives a license pursuant to this subsection shall pay
20 the fee required in sections 53-124 and 53-124.01 for a
21 manufacturer's shipping license. Such fee shall be collected by the
22 commission and be remitted to the State Treasurer for credit to the
23 General Fund.

24 (3) The commission may issue a shipping license to any
25 person who deals with vintage wines, which shipping license shall

1 allow the licensee to distribute such wines to a licensed wholesaler
2 in the state. For purposes of distributing vintage wines, a licensed
3 shipper must utilize a designated wholesaler if the manufacturer has
4 a designated wholesaler. For purposes of this section, vintage wine
5 shall mean a wine verified to be ten years of age or older and not
6 available from a primary American source of supply. A person who
7 receives a license pursuant to this subsection shall pay the fee
8 required in sections 53-124 and 53-124.01 for a vintage wine dealer's
9 shipping license. Such fee shall be collected by the commission and
10 be remitted to the State Treasurer for credit to the General Fund.

11 (4) The commission may issue a shipping license to any
12 ~~person-manufacturer~~ who sells and ships alcoholic liquor from another
13 state directly to a consumer in this state if the manufacturer
14 satisfies the requirements of subsections (7) through (9) of this
15 section. A ~~person-manufacturer~~ who receives a license pursuant to
16 this subsection shall pay the fee required in sections 53-124 and
17 53-124.01 for a manufacture direct sales shipping license. Such fee
18 shall be collected by the commission and remitted to the State
19 Treasurer for credit to the Winery and Grape Producers Promotional
20 Fund.

21 (5) The commission may issue a shipping license to any
22 retailer who is licensed within or outside Nebraska, who is
23 authorized to sell alcoholic liquor at retail in the state of
24 domicile of the retailer, and who is not a manufacturer if such
25 retailer satisfies the requirements of subsections (7) through (9) of

1 this section to ship alcoholic liquor from another state directly to
2 a consumer in this state. A retailer who receives a license pursuant
3 to this subsection shall pay the fee required in sections 53-124 and
4 53-124.01 for a retail direct sales shipping license. Such fee shall
5 be collected by the commission and remitted to the State Treasurer
6 for credit to the Winery and Grape Producers Promotional Fund.

7 ~~(5)~~(6) The application for a shipping license under
8 subsection (2) or (3) of this section shall be in such form as the
9 commission prescribes. The application shall contain all provisions
10 the commission deems proper and necessary to effectuate the purpose
11 of any section of the act and the rules and regulations of the
12 commission that apply to manufacturers and shall include, but not be
13 limited to, provisions that the applicant, in consideration of the
14 issuance of such shipping license, agrees:

15 (a) To comply with and be bound by ~~section~~sections
16 53-162 and 53-164.01 in making and filing reports, paying taxes,
17 penalties, and interest, and keeping records;

18 (b) To permit and be subject to all of the powers granted
19 by section 53-164.01 to the commission or its duly authorized
20 employees or agents for inspection and examination of the applicant's
21 premises and records and to pay the actual expenses, excluding
22 salary, reasonably attributable to such inspections and examinations
23 made by duly authorized employees of the commission if within the
24 United States; and

25 (c) That if the applicant violates any of the provisions

1 of the application or the license, any section of the act, or any of
2 the rules and regulations of the commission that apply to
3 manufacturers, the commission may ~~revoke or suspend, cancel, or~~
4 revoke such shipping license for such period of time as it may
5 determine.

6 (7) The application for a shipping license under
7 subsection (4) or (5) of this section shall be in such form as the
8 commission prescribes. The application shall require an applicant
9 which is a manufacturer, a craft brewery, a craft distillery, or a
10 farm winery to identify the brands of alcoholic liquor that the
11 applicant is requesting the authority to ship either into or within
12 Nebraska. For all applicants, unless otherwise provided in this
13 section, the application shall contain all provisions the commission
14 deems proper and necessary to effectuate the purpose of any section
15 of the act and the rules and regulations of the commission that apply
16 to manufacturers or retailers and shall include, but not be limited
17 to, provisions that the applicant, in consideration of the issuance
18 of such shipping license, agrees:

19 (a) To comply with and be bound by sections 53-162 and
20 53-164.01 in making and filing reports, paying taxes, penalties, and
21 interest, 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 applicant's
25 premises and records and to pay the actual expenses, excluding

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

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

10 (d) That the applicant agrees to notify the commission of
11 any violations in the state in which he or she is domiciled and any
12 violations of the direct shipping laws of any other states. Failure
13 to notify the commission within thirty days after such a violation
14 may result in a hearing before the commission pursuant to which the
15 license may be suspended, canceled, or revoked; and

16 (e) That the applicant, if a manufacturer, craft brewery,
17 craft distillery, or farm winery, agrees to notify any wholesaler
18 licensed in Nebraska that has been authorized to distribute such
19 brands that the application has been filed for a shipping license.
20 The notice shall be in writing and in a form prescribed by the
21 commission. The commission may adopt and promulgate rules and
22 regulations as it reasonably deems necessary to implement this
23 subdivision, including rules and regulations that permit the holder
24 of a shipping license under this subdivision to amend the shipping
25 license by, among other things, adding or deleting any brands of

1 alcoholic liquor identified in the shipping license.

2 (8) Any manufacturer or retailer who is granted a
3 shipping license under subsection (4) or (5) of this section shall:

4 (a) Only ship the brands of alcoholic liquor identified
5 on the application;

6 (b) Only ship alcoholic liquor that is owned by the
7 holder of the shipping license;

8 (c) Only ship alcoholic liquor that is properly
9 registered with the Alcohol and Tobacco Tax and Trade Bureau of the
10 United States Department of the Treasury;

11 (d) Not ship any alcoholic liquor products that the
12 manufacturers or wholesalers licensed in Nebraska have voluntarily
13 agreed not to bring into Nebraska at the request of the commission;

14 (e) Not ship more than nine liters of alcoholic liquor
15 per month to any person in Nebraska to whom alcoholic beverages may
16 be lawfully sold. All such sales and shipments shall be for personal
17 consumption only and not for resale; and

18 (f) Cause the direct shipment of alcoholic liquor to be
19 by approved common carrier only. The commission shall adopt and
20 promulgate rules and regulations pursuant to which common carriers
21 may apply for approval to provide common carriage of alcoholic liquor
22 shipped by a holder of a shipping license issued pursuant to
23 subsection (4) or (5) of this section. The rules and regulations
24 shall include provisions that require (i) the recipient to
25 demonstrate, upon delivery, that he or she is at least twenty-one

1 years of age, (ii) the recipient to sign an electronic or paper form
2 or other acknowledgement of receipt as approved by the commission,
3 and (iii) the commission-approved common carrier to submit to the
4 commission such information as the commission may prescribe. The
5 commission-approved common carrier shall refuse delivery when the
6 proposed recipient appears to be under the age of twenty-one years
7 and refuses to present valid identification. All holders of shipping
8 licenses shipping alcoholic liquor pursuant to this subdivision shall
9 affix a conspicuous notice in sixteen-point type or larger to the
10 outside of each package of alcoholic liquor shipped within or into
11 the State of Nebraska, in a conspicuous location, stating: CONTAINS
12 ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AT LEAST 21 YEARS OF AGE
13 REQUIRED FOR DELIVERY. Any delivery of alcoholic beverages to a minor
14 by a common carrier shall constitute a violation by the common
15 carrier. The common carrier and the holder of the shipping license
16 shall be liable only for their independent acts.

17 (9) For purposes of sections 53-160, 77-2703, and
18 77-27,142, each shipment of alcoholic liquor by the holder of a
19 shipping license under subsection (3), (4), or (5) of this section
20 shall constitute a sale in Nebraska by establishing a nexus in the
21 state. The holder of the shipping license shall collect all the taxes
22 due to the State of Nebraska and any political subdivision and remit
23 any excise taxes monthly to the commission and any sales taxes to the
24 Department of Revenue.

25 (10) By July 1, 2014, the commission shall report to the

1 General Affairs Committee of the Legislature the number of shipping
2 licenses issued for license years 2013-14 and 2014-15. The report
3 shall be made electronically.

4 Sec. 2. Section 53-124, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 53-124 (1) At the time application is made to the
7 commission for a license of any type, the applicant shall pay the fee
8 provided in section 53-124.01 and, if the applicant is an individual,
9 provide the applicant's social security number. The commission shall
10 issue the types of licenses described in this section.

11 (2) There shall be an airline license, a boat license,
12 and a railroad license. The commission shall charge one dollar for
13 each duplicate of an airline license or a railroad license.

14 (3)(a) There shall be a manufacturer's license for
15 alcohol and spirits, for beer, and for wine. The annual fee for a
16 manufacturer's license for beer shall be based on the barrel daily
17 capacity as follows:

18 (i) 1 to 100 barrel daily capacity, or any part thereof,
19 tier one;

20 (ii) 100 to 150 barrel daily capacity, tier two;

21 (iii) 150 to 200 barrel daily capacity, tier three;

22 (iv) 200 to 300 barrel daily capacity, tier four;

23 (v) 300 to 400 barrel daily capacity, tier five;

24 (vi) 400 to 500 barrel daily capacity, tier six;

25 (vii) 500 barrel daily capacity, or more, tier seven.

1 (b) For purposes of this subsection, daily capacity means
2 the average daily barrel production for the previous twelve months of
3 manufacturing operation. If no such basis for comparison exists, the
4 manufacturing licensee shall pay in advance for the first year's
5 operation a fee of five hundred dollars.

6 (4) There shall be five classes of nonbeverage users'
7 licenses: Class 1, Class 2, Class 3, Class 4, and Class 5.

8 (5) In lieu of a manufacturer's, a retailer's, or a
9 wholesaler's license, there shall be a license to operate issued for
10 a craft brewery, a farm winery, or a microdistillery.

11 (6)(a) There shall be five classes of retail licenses:

12 (i) Class A: Beer only, for consumption on the premises;

13 (ii) Class B: Beer only, for consumption off the
14 premises, sales in the original packages only;

15 (iii) Class C: Alcoholic liquor, for consumption on the
16 premises and off the premises, sales in original packages only. If a
17 Class C license is held by a nonprofit corporation, it shall be
18 restricted to consumption on the premises only. A Class C license may
19 have a sampling designation restricting consumption on the premises
20 to sampling, but such designation shall not affect sales for
21 consumption off the premises under such license;

22 (iv) Class D: Alcoholic liquor, including beer, for
23 consumption off the premises, sales in the original packages only,
24 except as provided in subsection (2) of section 53-123.04; and

25 (v) Class I: Alcoholic liquor, for consumption on the

1 premises.

2 (b) All applicable license fees shall be paid by the
3 applicant or licensee directly to the city or village treasurer in
4 the case of premises located inside the corporate limits of a city or
5 village and directly to the county treasurer in the case of premises
6 located outside the corporate limits of a city or village.

7 (7) There shall be ~~three~~four types of shipping licenses
8 as described in section 53-123.15: Manufacturers, vintage wines, ~~and~~
9 manufacture direct sales, and retail direct sales.

10 (8) There shall be two types of wholesale licenses:
11 Alcoholic liquor and beer only. The annual fee shall be paid for the
12 first and each additional wholesale place of business operated in
13 this state by the same licensee and wholesaling the same product.

14 (9) The license year, unless otherwise provided in the
15 Nebraska Liquor Control Act, shall commence on May 1 of each year and
16 shall end on the following April 30, except that the license year for
17 a Class C license shall commence on November 1 of each year and shall
18 end on the following October 31. During the license year, no license
19 shall be issued for a sum less than the amount of the annual license
20 fee as fixed in section 53-124.01, regardless of the time when the
21 application for such license has been made, except that (a) when
22 there is a purchase of an existing licensed business and a new
23 license of the same class is issued or (b) upon the issuance of a new
24 license for a location which has not been previously licensed, the
25 license fee and occupation taxes shall be prorated on a quarterly

1 basis as of the date of issuance.

2 Sec. 3. Section 53-124.01, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 53-124.01 (1) The fees for annual licenses finally issued
5 by the commission shall be as provided in this section and section
6 53-124.

7 (2) Airline license ... \$100

8 (3) Boat license ... \$50

9 (4) Manufacturer's license:

10 Class	Fee - In Dollars
11 Alcohol and spirits	1,000
12 Beer - tier one	100
13 Beer - tier two	200
14 Beer - tier three	350
15 Beer - tier four	500
16 Beer - tier five	650
17 Beer - tier six	700
18 Beer - tier seven	800
19 Wine	250

20 (5) Nonbeverage user's license:

21 Class	Fee - In Dollars
22 Class 1	5
23 Class 2	25

1	Class 3	50
2	Class 4	100
3	Class 5	250
4	(6) Operator's license:	
5	Class	Fee - In Dollars
6	Craft brewery	250
7	Farm winery	250
8	Microdistillery	250
9	(7) Railroad license ...	\$100
10	(8) Retail license:	
11	Class	Fee - In Dollars
12	Class A	100
13	Class B	100
14	Class C	300
15	Class D	200
16	Class I	250
17	(9) Shipping license:	
18	Class	Fee - In Dollars
19	Manufacturer	1,000
20	Vintage wines	1,000
21	Direct <u>Manufacture direct sales</u>	500
22	<u>Retail direct sales</u>	<u>500</u>

1 (10) Wholesale license:

2 Class	Fee - In Dollars
3 Alcoholic liquor	750
4 Beer	500

5 Sec. 4. Section 53-162, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 53-162 For the purpose of raising revenue, a tax is
8 imposed upon persons holding a shipping license issued pursuant to
9 subsection (4) or (5) of section 53-123.15 who ship alcoholic liquor
10 to individuals pursuant to section 53-192 and for which the required
11 taxes in the state of purchase or this state have not been paid. The
12 tax, if due, shall be paid by the holder of the shipping license
13 issued pursuant to subsection (4) or (5) of section 53-123.15. The
14 amount of the tax shall be imposed as provided in section 53-160. The
15 tax shall be collected by the commission, except that the tax shall
16 not be due until December 31 of the year in which the purchase was
17 made. The tax shall be delinquent if unpaid within twenty-five days
18 after December 31. The revenue from the tax shall be credited to the
19 General Fund. The commission shall adopt and promulgate rules and
20 regulations to carry out this section.

21 Sec. 5. Section 53-304, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 53-304 Each Nebraska winery shall pay to the Nebraska
24 Liquor Control Commission twenty dollars for every one hundred sixty
25 gallons of juice produced or received by its facility. Gifts, grants,

1 or bequests may be received for the support of the Nebraska Grape and
2 Winery Board. Funds paid pursuant to the charge imposed by this
3 section and funds received pursuant to subsection (4) or (5) of
4 section 53-123.15 and from gifts, grants, or bequests shall be
5 remitted to the State Treasurer for credit to the Winery and Grape
6 Producers Promotional Fund which is hereby created. For
7 administrative purposes, the fund shall be located in the Department
8 of Agriculture. All revenue credited to the fund pursuant to the
9 charge imposed by this section and excise taxes collected pursuant to
10 section 2-5603 and any funds received as gifts, grants, or bequests
11 and credited to the fund shall be used by the department, at the
12 direction of and in cooperation with the board, to develop and
13 maintain programs for the research and advancement of the growing,
14 selling, marketing, and promotion of grapes, fruits, berries, honey,
15 and other agricultural products and their byproducts grown and
16 produced in Nebraska for use in the wine industry. Such expenditures
17 may include, but are not limited to, all necessary funding for the
18 employment of experts in the fields of viticulture and enology, as
19 deemed necessary by the board, and programs aimed at improving the
20 promotion of all varieties of wines, grapes, fruits, berries, honey,
21 and other agricultural products and their byproducts grown and
22 produced in Nebraska for use in the wine industry.

23 Funds credited to the fund shall be used for no other
24 purposes than those stated in this section and any transfers
25 authorized pursuant to section 2-5604. Any funds not expended during

1 a fiscal year may be maintained in the fund for distribution or
2 expenditure during subsequent fiscal years. Any money in the fund
3 available for investment shall be invested by the state investment
4 officer pursuant to the Nebraska Capital Expansion Act and the
5 Nebraska State Funds Investment Act.

6 Sec. 6. Original sections 53-124, 53-124.01, 53-162, and
7 53-304, Reissue Revised Statutes of Nebraska, and section 53-123.15,
8 Revised Statutes Cumulative Supplement, 2012, are repealed.