

LEGISLATIVE BILL 230

Approved by the Governor April 24, 2013

Introduced by Karpisek, 32.

FOR AN ACT relating to the Nebraska Liquor Control Act; to amend sections 53-124, 53-124.01, 53-162, and 53-304, Reissue Revised Statutes of Nebraska, and section 53-123.15, Revised Statutes Cumulative Supplement, 2012; to provide for and change provisions relating to shipping licenses; to provide for fees and taxes; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 53-123.15, Revised Statutes Cumulative Supplement, 2012, is amended to read:

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

(2) The commission may issue a shipping license to a manufacturer. Such license shall allow the licensee to ship alcoholic liquor only to a licensed wholesaler, except that a licensed wholesaler may, without a shipping license and for the purposes of subdivision (2) of section 53-161, receive beer in this state which has been shipped from outside the state by a manufacturer in accordance with the Nebraska Liquor Control Act to the wholesaler, then transported by the wholesaler to another state for retail distribution, and then returned by the retailer to such wholesaler. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a manufacturer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.

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

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

(5) The commission may issue a shipping license to any retailer who is licensed within or outside Nebraska, who is authorized to sell alcoholic liquor at retail in the state of domicile of the retailer, and who is not a manufacturer if such retailer satisfies the requirements of subsections (7) through (9) of this section to ship alcoholic liquor from another state directly to a consumer in this state. A retailer who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a retail direct sales shipping license. Such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

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

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

and keeping records;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Cause the direct shipment of alcoholic liquor to be by approved common carrier only. The commission shall adopt and promulgate rules and regulations pursuant to which common carriers may apply for approval to

provide common carriage of alcoholic liquor shipped by a holder of a shipping license issued pursuant to subsection (4) or (5) of this section. The rules and regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he or she is at least twenty-one years of age, (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the commission, and (iii) the commission-approved common carrier to submit to the commission such information as the commission may prescribe. The commission-approved common carrier shall refuse delivery when the proposed recipient appears to be under the age of twenty-one years and refuses to present valid identification. All holders of shipping licenses shipping alcoholic liquor pursuant to this subdivision shall affix a conspicuous notice in sixteen-point type or larger to the outside of each package of alcoholic liquor shipped within or into the State of Nebraska, in a conspicuous location, stating: CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AT LEAST 21 YEARS OF AGE REQUIRED FOR DELIVERY. Any delivery of alcoholic beverages to a minor by a common carrier shall constitute a violation by the common carrier. The common carrier and the holder of the shipping license shall be liable only for their independent acts.

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

(10) By July 1, 2014, the commission shall report to the General Affairs Committee of the Legislature the number of shipping licenses issued for license years 2013-14 and 2014-15. The report shall be made electronically.

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

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

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

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

- (i) 1 to 100 barrel daily capacity, or any part thereof, tier one;
- (ii) 100 to 150 barrel daily capacity, tier two;
- (iii) 150 to 200 barrel daily capacity, tier three;
- (iv) 200 to 300 barrel daily capacity, tier four;
- (v) 300 to 400 barrel daily capacity, tier five;
- (vi) 400 to 500 barrel daily capacity, tier six;
- (vii) 500 barrel daily capacity, or more, tier seven.

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

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

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

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

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

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

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

(iv) Class D: Alcoholic liquor, including beer, for consumption off the premises, sales in the original packages only, except as provided in

subsection (2) of section 53-123.04; and

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

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

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

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

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

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

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

- (2) Airline license ... \$100
- (3) Boat license ... \$50
- (4) Manufacturer's license:

Class	Fee - In Dollars
Alcohol and spirits	1,000
Beer - tier one	100
Beer - tier two	200
Beer - tier three	350
Beer - tier four	500
Beer - tier five	650
Beer - tier six	700
Beer - tier seven	800
Wine	250

(5) Nonbeverage user's license:

Class	Fee - In Dollars
Class 1	5
Class 2	25
Class 3	50
Class 4	100

Class 5 250
 (6) Operator's license:

Class	Fee - In Dollars
Craft brewery	250
Farm winery	250
Microdistillery	250
(7) Railroad license ...	\$100
(8) Retail license:	

Class	Fee - In Dollars
Class A	100
Class B	100
Class C	300
Class D	200
Class I	250
(9) Shipping license:	

Class	Fee - In Dollars
Manufacturer	1,000
Vintage wines	1,000
Direct <u>Manufacture direct sales</u>	500
<u>Retail direct sales</u>	<u>500</u>
(10) Wholesale license:	

Class	Fee - In Dollars
Alcoholic liquor	750
Beer	500

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

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

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

53-304 Each Nebraska winery shall pay to the Nebraska Liquor Control Commission twenty dollars for every one hundred sixty gallons of juice produced or received by its facility. Gifts, grants, or bequests may be received for the support of the Nebraska Grape and Winery Board. Funds paid pursuant to the charge imposed by this section and funds received pursuant to subsection (4) or (5) of section 53-123.15 and from gifts, grants, or bequests shall be remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund which is hereby created. For administrative purposes, the fund shall be located in the Department of Agriculture. All revenue credited to the fund pursuant to the charge imposed by this section and excise taxes collected pursuant to section 2-5603 and any funds received as gifts, grants, or bequests and credited to the fund shall be used by the department, at the direction of and in cooperation with the board, to develop and maintain programs for the research and advancement of the growing, selling, marketing, and promotion of grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry. Such expenditures may include, but are not limited to, all necessary funding for the employment of experts in the fields of viticulture and enology, as deemed necessary by the board, and programs aimed at improving the promotion of all varieties of wines, grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry.

Funds credited to the fund shall be used for no other purposes than those stated in this section and any transfers authorized pursuant to section 2-5604. Any funds not expended during a fiscal year may be maintained in the fund for distribution or expenditure during subsequent fiscal years. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

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