

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1056

FINAL READING

Introduced by Lowe, 37.

Read first time January 21, 2020

Committee: General Affairs

1 A BILL FOR AN ACT relating to regulated activities; to amend sections
2 9-426, 9-429, and 9-431, Reissue Revised Statutes of Nebraska,
3 sections 53-123.12, 53-129, and 53-134, Revised Statutes Cumulative
4 Supplement, 2018, and section 53-123.11, Revised Statutes
5 Supplement, 2019; to change provisions regarding special permits,
6 remittance of taxes on gross proceeds, and sales of raffle tickets
7 or stubs pursuant to the Nebraska Lottery and Raffle Act; to provide
8 for temporary expansion of licensed premises under the Nebraska
9 Liquor Control Act; to harmonize provisions; to repeal the original
10 sections; and to declare an emergency.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 9-426, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 9-426 (1) A licensed organization may obtain from the department a
4 special permit to conduct one raffle and one lottery. The cost of the
5 special permit shall be ten dollars. The special permit shall exempt the
6 licensed organization from subsections (2) and (3) of section 9-427 and
7 from section 9-430. The organization shall comply with all other
8 requirements of the Nebraska Lottery and Raffle Act.

9 (2) The special permit shall be valid for one year ~~three calendar~~
10 ~~months~~ and shall be issued by the department upon the proper application
11 by the licensed organization. The special permit shall become invalid
12 upon termination, revocation, or cancellation of the organization's
13 license to conduct a lottery or raffle. The application shall be in such
14 form and contain such information as the department may prescribe. ~~No~~
15 ~~licensed organization may obtain more than one special permit for each~~
16 ~~twelve-month period commencing October 1 of each year or such other date~~
17 ~~as the department may prescribe by rule and regulation.~~

18 (3) No licensed organization conducting a raffle or lottery pursuant
19 to a special permit shall pay persons selling tickets or stubs for the
20 raffle or lottery, except that nothing in this subsection shall prohibit
21 the awarding of prizes to such persons based on ticket or stub sales.

22 Sec. 2. Section 9-429, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 9-429 Any licensed organization or any other organization or person
25 conducting a lottery or raffle activity required to be licensed pursuant
26 to the Nebraska Lottery and Raffle Act shall pay to the department a tax
27 of two percent of the gross proceeds of each lottery having gross
28 proceeds of more than one thousand dollars or raffle having gross
29 proceeds of more than five thousand dollars. Such tax shall be remitted
30 annually by September 30 each year ~~quarterly, within thirty days of the~~
31 ~~end of the quarter,~~ on forms approved and provided by the department. The

1 department shall remit the tax to the State Treasurer for credit to the
2 Charitable Gaming Operations Fund. All deficiencies of the tax imposed by
3 this section shall accrue interest and be subject to a penalty as
4 provided for sales and use taxes in the Nebraska Revenue Act of 1967.

5 Sec. 3. Section 9-431, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 9-431 Each licensed organization conducting a lottery or raffle
8 conducted pursuant to the Nebraska Lottery and Raffle Act shall have its
9 name and identification number clearly printed on each lottery or raffle
10 ticket or stub used in such lottery or raffle. No such ticket or stub
11 shall be sold unless such name and identification number is so printed
12 thereon. In addition, all lottery or raffle tickets or stubs shall bear a
13 number, which numbers shall be in sequence and clearly printed on the
14 ticket or stub.

15 Each ticket or stub shall have an equal chance of being chosen in
16 the drawing. Each ticket or stub shall be constructed of the same
17 material, shall have the same surface, and shall be substantially the
18 same shape, size, form and weight.

19 Each licensed organization conducting a lottery or raffle shall keep
20 a record of all locations where its tickets or stubs are sold. In
21 addition to other authorized sales, a licensed organization conducting a
22 raffle conducted pursuant to the Nebraska Lottery and Raffle Act may also
23 sell tickets or stubs for such raffles on its web site and at events, and
24 such tickets or stubs may be purchased using a debit card online on the
25 web site and at events in addition to other authorized methods of
26 payment.

27 Sec. 4. Section 53-123.11, Revised Statutes Supplement, 2019, is
28 amended to read:

29 53-123.11 (1) A farm winery license shall entitle the holder to:

30 (a) Sell wines produced at the farm winery onsite at wholesale and
31 retail and to sell wines produced at the farm winery at off-premises

1 sites holding the appropriate retail license;

2 (b) Sell wines produced at the farm winery at retail for consumption
3 on the premises as designated pursuant to section 53-123.12;

4 (c) Permit a customer to remove one unsealed bottle of wine for
5 consumption off the premises. The licensee or his or her agent shall (i)
6 securely reseal such bottle and place the bottle in a bag designed so
7 that it is visibly apparent that the resealed bottle of wine has not been
8 opened or tampered with and (ii) provide a dated receipt to the customer
9 and attach to such bag a copy of the dated receipt for the resealed
10 bottle of wine. If the resealed bottle of wine is transported in a motor
11 vehicle, it must be placed in the trunk of the motor vehicle or the area
12 behind the last upright seat of such motor vehicle if the area is not
13 normally occupied by the driver or a passenger and the motor vehicle is
14 not equipped with a trunk;

15 (d) Ship wines produced at the farm winery by common carrier and
16 sold at retail to recipients in and outside the State of Nebraska, if the
17 output of such farm winery for each calendar year as reported to the
18 commission by December 31 of each year does not exceed thirty thousand
19 gallons. In the event such amount exceeds thirty thousand gallons, the
20 farm winery shall be required to use a licensed wholesaler to distribute
21 its wines for the following calendar year, except that this requirement
22 shall not apply to wines produced and sold onsite at the farm winery
23 pursuant to subdivision (1)(a) of this section;

24 (e) Allow sampling and sale of the wine at the farm winery and at
25 four branch outlets in the state in reasonable amounts;

26 (f) Sell wines produced at the farm winery to other Nebraska farm
27 winery licensees, in bulk, bottled, labeled, or unlabeled, in accordance
28 with 27 C.F.R. 24.308, 27 C.F.R. 24.309, and 27 C.F.R. 24.314, as such
29 regulations existed on January 1, 2008;

30 (g) Purchase distilled spirits from licensed microdistilleries in
31 Nebraska, in bulk or bottled, made entirely from Nebraska-licensed farm

1 winery wine to be used in the production of fortified wine at the
2 purchasing licensed farm winery; and

3 (h) Store and warehouse products produced at the farm winery in a
4 designated, secure, offsite storage facility if the holder of the farm
5 winery license notifies the commission of the location of the facility
6 and maintains, at the farm winery and at the facility, a separate
7 perpetual inventory of the product stored at the facility. Consumption of
8 alcoholic liquor at the facility is strictly prohibited.

9 (2) No farm winery shall manufacture wine in excess of fifty
10 thousand gallons per year.

11 (3) A farm winery may manufacture and sell hard cider on its
12 licensed premises. A farm winery shall not otherwise distribute the hard
13 cider it manufactures except by sale to a wholesaler licensed under the
14 Nebraska Liquor Control Act.

15 (4) A holder of a farm winery license may obtain a special
16 designated license pursuant to section 53-124.11.

17 (5) A holder of a farm winery license may obtain an annual catering
18 license pursuant to section 53-124.12.

19 Sec. 5. Section 53-123.12, Revised Statutes Cumulative Supplement,
20 2018, is amended to read:

21 53-123.12 (1) Any person desiring to obtain a new license to operate
22 a farm winery shall:

23 (a) File an application with the commission in triplicate original
24 upon such forms as the commission from time to time prescribes;

25 (b) Pay the license fee to the commission under sections 53-124 and
26 53-124.01, which fee shall be returned to the applicant if the
27 application is denied; and

28 (c) Pay the nonrefundable application fee to the commission in the
29 sum of four hundred dollars.

30 (2) To renew a farm winery license, a farm winery licensee shall
31 file an application with the commission, pay the license fee under

1 sections 53-124 and 53-124.01, and pay the renewal fee of forty-five
2 dollars.

3 (3) License fees, application fees, and renewal fees may be paid to
4 the commission by certified or cashier's check of a bank within this
5 state, personal or business check, United States post office money order,
6 or cash in the full amount of such fees.

7 (4) For a new license, the commission shall then notify the
8 municipal clerk of the city or incorporated village where such license is
9 sought or, if the license is not sought within a city or incorporated
10 village, the county clerk of the county where such license is sought of
11 the receipt of the application and shall include with such notice one
12 copy of the application. No such license shall then be issued by the
13 commission until the expiration of at least forty-five days from the date
14 of receipt by mail or electronic delivery of such application from the
15 commission. Within thirty-five days from the date of receipt of such
16 application from the commission, the local governing bodies of nearby
17 cities or villages or the county may make and submit to the commission
18 recommendations relative to the granting of or refusal to grant such
19 license to the applicant.

20 (5)(a) A farm winery licensee may apply to the local governing body
21 for a temporary expansion of the licensed premises to an immediately
22 adjacent area owned or leased by the licensee or to an immediately
23 adjacent street, parking lot, or alley, not to exceed fifty days for
24 calendar year 2020 and, for each calendar year thereafter, not to exceed
25 fifteen days per calendar year. The temporary area shall comply with the
26 Nebraska Liquor Control Act for consumption on the premises and shall be
27 subject to the following conditions: (i) The temporary area shall be
28 enclosed during the temporary expansion by a temporary fence or other
29 means approved by the county, city, or village; (ii) the temporary area
30 shall have easily identifiable entrances and exits; and (iii) the
31 licensee shall ensure that the area meets all sanitation requirements for

1 a licensed premises. The local governing body shall electronically notify
2 the commission within five days after the authorization of any temporary
3 expansion pursuant to this subsection.

4 (b) The licensee shall file an application with the local governing
5 body which shall contain (i) the name of the applicant, (ii) the premises
6 for which a temporary expansion is requested, identified by street and
7 number if practicable and, if not, by some other appropriate description
8 which definitely locates the premises, (iii) the name of the owner or
9 lessee of the premises for which the temporary expansion is requested,
10 (iv) sufficient evidence that the licensee will carry on the activities
11 and business authorized by the license for himself, herself, or itself
12 and not as the agent of any other person, group, organization, or
13 corporation, for profit or not for profit, (v) a statement of the type of
14 activity to be carried on during the time period for which a temporary
15 expansion is requested, and (vi) sufficient evidence that the temporary
16 expansion will be supervised by persons or managers who are agents of and
17 directly responsible to the licensee.

18 (c) No temporary expansion provided for by this subsection shall be
19 granted without the approval of the local governing body. The local
20 governing body may establish criteria for approving or denying a
21 temporary expansion. The local governing body may designate an agent to
22 determine whether a temporary expansion is to be approved or denied. Such
23 agent shall follow criteria established by the local governing body in
24 making the determination. The determination of the agent shall be
25 considered the determination of the local governing body unless otherwise
26 provided by the local governing body.

27 (d) For purposes of this section, the local governing body shall be
28 that of the city or village within which the premises for which the
29 temporary expansion is requested are located or, if such premises are not
30 within the corporate limits of a city or village, then the local
31 governing body shall be that of the county within which the premises for

1 which the temporary expansion is requested are located.

2 (e) The decision of the local governing body shall be final. If the
3 applicant does not qualify for a temporary expansion, the temporary
4 expansion shall be denied by the local governing body.

5 (f) The city, village, or county clerk shall deliver confirmation of
6 the temporary expansion to the licensee upon receipt of any fee or tax
7 imposed by such city, village, or county.

8 Sec. 6. Section 53-129, Revised Statutes Cumulative Supplement,
9 2018, is amended to read:

10 53-129 (1) Except as otherwise provided in subsection (3) of this
11 section, retail ~~Retail~~, bottle club, craft brewery, and microdistillery
12 licenses issued under the Nebraska Liquor Control Act apply only to that
13 part of the premises described in the application approved by the
14 commission and in the license issued on the application. For retail,
15 bottle club, and microdistillery licenses, only one location shall be
16 described in each license. For craft brewery licenses, up to five
17 separate physical locations may be described in each license.

18 (2) After such license has been granted for the particular premises,
19 the commission, with the approval of the local governing body and upon
20 proper showing, may endorse upon the license permission to add to, delete
21 from, or abandon the premises described in such license and, if
22 applicable, to move from the premises to other premises approved by the
23 local governing body. In it, ~~but in~~ order to obtain such approval, the
24 retail, bottle club, craft brewery, or microdistillery licensee shall
25 file with the local governing body a request in writing and a statement
26 under oath which shows that the premises, as added to or deleted from or
27 to which such move is to be made, comply in all respects with the
28 requirements of the act. No such addition, deletion, or move shall be
29 made by any such licensee until the license has been endorsed to that
30 effect in writing by the local governing body and by the commission and
31 the licensee furnishes proof of payment of the renewal fee prescribed in

1 subsection (4) of section 53-131.

2 (3)(a) A retail, bottle club, craft brewery, or microdistillery
3 licensee may apply to the local governing body for a temporary expansion
4 of its licensed premises to an immediately adjacent area owned or leased
5 by the licensee or to an immediately adjacent street, parking lot, or
6 alley, not to exceed fifty days for calendar year 2020 and, for each
7 calendar year thereafter, not to exceed fifteen days per calendar year.
8 The temporary area shall otherwise comply with all requirements of the
9 Nebraska Liquor Control Act.

10 (b) The licensee shall file an application with the local governing
11 body which shall contain (i) the name of the applicant, (ii) the premises
12 for which a temporary expansion is requested, identified by street and
13 number if practicable and, if not, by some other appropriate description
14 which definitely locates the premises, (iii) the name of the owner or
15 lessee of the premises for which the temporary expansion is requested,
16 (iv) sufficient evidence that the licensee will carry on the activities
17 and business authorized by the license for himself, herself, or itself
18 and not as the agent of any other person, group, organization, or
19 corporation, for profit or not for profit, (v) a statement of the type of
20 activity to be carried on during the time period for which a temporary
21 expansion is requested, and (vi) sufficient evidence that the temporary
22 expansion will be supervised by persons or managers who are agents of and
23 directly responsible to the licensee.

24 (c) No temporary expansion provided for by this subsection shall be
25 granted without the approval of the local governing body. The local
26 governing body may establish criteria for approving or denying a
27 temporary expansion. The local governing body may designate an agent to
28 determine whether a temporary expansion is to be approved or denied. Such
29 agent shall follow criteria established by the local governing body in
30 making the determination. The determination of the agent shall be
31 considered the determination of the local governing body unless otherwise

1 provided by the local governing body.

2 (d) For purposes of this section, the local governing body shall be
3 that of the city or village within which the premises for which the
4 temporary expansion is requested are located or, if such premises are not
5 within the corporate limits of a city or village, then the local
6 governing body shall be that of the county within which the premises for
7 which the temporary expansion is requested are located.

8 (e) The decision of the local governing body shall be final. If the
9 applicant does not qualify for a temporary expansion, the temporary
10 expansion shall be denied by the local governing body.

11 (f) The city, village, or county clerk shall deliver confirmation of
12 the temporary expansion to the licensee upon receipt of any fee or tax
13 imposed by such city, village, or county.

14 Sec. 7. Section 53-134, Revised Statutes Cumulative Supplement,
15 2018, is amended to read:

16 53-134 The local governing body of any city or village with respect
17 to licenses within its corporate limits and the local governing body of
18 any county with respect to licenses not within the corporate limits of
19 any city or village but within the county shall have the following
20 powers, functions, and duties with respect to retail, bottle club, craft
21 brewery, microdistillery, and entertainment district licenses:

22 (1) To cancel or revoke for cause retail, craft brewery,
23 microdistillery, or entertainment district licenses to sell or dispense
24 alcoholic liquor or bottle club licenses, issued to persons for premises
25 within its jurisdiction, subject to the right of appeal to the
26 commission;

27 (2) To enter or to authorize any law enforcement officer to enter at
28 any time upon any premises licensed under the Nebraska Liquor Control Act
29 to determine whether any provision of the act, any rule or regulation
30 adopted and promulgated pursuant to the act, or any ordinance,
31 resolution, rule, or regulation adopted by the local governing body has

1 been or is being violated and at such time examine the premises of such
2 licensee in connection with such determination. Any law enforcement
3 officer who determines that any provision of the act, any rule or
4 regulation adopted and promulgated pursuant to the act, or any ordinance,
5 resolution, rule, or regulation adopted by the local governing body has
6 been or is being violated shall report such violation in writing to the
7 executive director of the commission (a) within thirty days after
8 determining that such violation has occurred, (b) within thirty days
9 after the conclusion of an ongoing police investigation, or (c) within
10 thirty days after the verdict in a prosecution related to such an ongoing
11 police investigation if the prosecuting attorney determines that
12 reporting such violation prior to the verdict would jeopardize such
13 prosecution, whichever is later;

14 (3) To receive a signed complaint from any citizen within its
15 jurisdiction that any provision of the act, any rule or regulation
16 adopted and promulgated pursuant to the act, or any ordinance,
17 resolution, rule, or regulation relating to alcoholic liquor has been or
18 is being violated and to act upon such complaints in the manner provided
19 in the act;

20 (4) To receive retail license fees, bottle club license fees, craft
21 brewery license fees, and microdistillery license fees as provided in
22 sections 53-124 and 53-124.01 and entertainment district license fees as
23 provided in section 53-123.17 and pay the same, after the license has
24 been delivered to the applicant, to the city, village, or county
25 treasurer;

26 (5) To examine or cause to be examined any applicant or any retail
27 licensee, bottle club licensee, craft brewery licensee, microdistillery
28 licensee, or entertainment district licensee upon whom notice of
29 cancellation or revocation has been served as provided in the act, to
30 examine or cause to be examined the books and records of any applicant or
31 licensee except as otherwise provided for bottle club licensees in

1 section 53-123.08, and to hear testimony and to take proof for its
2 information in the performance of its duties. For purposes of obtaining
3 any of the information desired, the local governing body may authorize
4 its agent or attorney to act on its behalf;

5 (6) To cancel or revoke on its own motion any license if, upon the
6 same notice and hearing as provided in section 53-134.04, it determines
7 that the licensee has violated any of the provisions of the act or any
8 valid and subsisting ordinance, resolution, rule, or regulation duly
9 enacted, adopted, and promulgated relating to alcoholic liquor. Such
10 order of cancellation or revocation may be appealed to the commission
11 within thirty days after the date of the order by filing a notice of
12 appeal with the commission. The commission shall handle the appeal in the
13 manner provided for hearing on an application in section 53-133;~~and~~

14 (7) Upon receipt from the commission of the notice and copy of
15 application as provided in section 53-131, to fix a time and place for a
16 hearing at which the local governing body shall receive evidence, either
17 orally or by affidavit from the applicant and any other person, bearing
18 upon the propriety of the issuance of a license. Notice of the time and
19 place of such hearing shall be published in a legal newspaper in or of
20 general circulation in such city, village, or county one time not less
21 than seven and not more than fourteen days before the time of the
22 hearing. Such notice shall include, but not be limited to, a statement
23 that all persons desiring to give evidence before the local governing
24 body in support of or in protest against the issuance of such license may
25 do so at the time of the hearing. Such hearing shall be held not more
26 than forty-five days after the date of receipt of the notice from the
27 commission, and after such hearing the local governing body shall cause
28 to be recorded in the minute record of their proceedings a resolution
29 recommending either issuance or refusal of such license. The clerk of
30 such city, village, or county shall mail to the commission by first-class
31 mail, postage prepaid, a copy of the resolution which shall state the

1 cost of the published notice, except that failure to comply with this
2 provision shall not void any license issued by the commission. If the
3 commission refuses to issue such a license, the cost of publication of
4 notice shall be paid by the commission from the security for costs; and -

5 (8) To review and authorize an application by a retail, bottle club,
6 craft brewery, farm winery, or microdistillery licensee for a temporary
7 expansion of its licensed premises within the jurisdiction of the local
8 governing body to an immediately adjacent area owned or leased by the
9 licensee or to an immediately adjacent street, parking lot, or alley, not
10 to exceed fifty days for calendar year 2020 and, for each calendar year
11 thereafter, not to exceed fifteen days per calendar year, as provided in
12 sections 53-123.12 and 53-129.

13 Sec. 8. Original sections 9-426, 9-429, and 9-431, Reissue Revised
14 Statutes of Nebraska, sections 53-123.12, 53-129, and 53-134, Revised
15 Statutes Cumulative Supplement, 2018, and section 53-123.11, Revised
16 Statutes Supplement, 2019, are repealed.

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