

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1056

Introduced by Lowe, 37.

Read first time January 21, 2020

Committee: General Affairs

1 A BILL FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 sections 53-123.12, 53-129, and 53-134, Revised Statutes Cumulative
3 Supplement, 2018, and section 53-123.11, Revised Statutes
4 Supplement, 2019; to change provisions related to farm wineries; to
5 provide for temporary expansion of licensed premises as prescribed;
6 to provide powers and duties; and to repeal the original sections.

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

1 Section 1. Section 53-123.11, Revised Statutes Supplement, 2019, is
2 amended to read:

3 53-123.11 (1) A farm winery license shall entitle the holder to:

4 (a) Sell wines produced at the farm winery onsite at wholesale and
5 retail and to sell wines produced at the farm winery at off-premises
6 sites holding the appropriate retail license;

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

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

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

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

31 (f) Sell wines produced at the farm winery to other Nebraska farm

1 winery licensees, in bulk, bottled, labeled, or unlabeled, in accordance
2 with 27 C.F.R. 24.308, 27 C.F.R. 24.309, and 27 C.F.R. 24.314, as such
3 regulations existed on January 1, 2008;

4 (g) Purchase distilled spirits from licensed microdistilleries in
5 Nebraska, in bulk or bottled, made entirely from Nebraska-licensed farm
6 winery wine to be used in the production of fortified wine at the
7 purchasing licensed farm winery; and

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

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

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

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

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

24 Sec. 2. Section 53-123.12, Revised Statutes Cumulative Supplement,
25 2018, is amended to read:

26 53-123.12 (1) Any person desiring to obtain a new license to operate
27 a farm winery shall:

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

30 (b) Pay the license fee to the commission under sections 53-124 and
31 53-124.01, which fee shall be returned to the applicant if the

1 application is denied; and

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

4 (2) To renew a farm winery license, a farm winery licensee shall
5 file an application with the commission, pay the license fee under
6 sections 53-124 and 53-124.01, and pay the renewal fee of forty-five
7 dollars.

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

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

25 (5)(a) A farm winery licensee may apply to the county, city, or
26 village in which the premises authorized under subdivision (1)(b) of
27 section 53-123.11 are located for a temporary expansion of the licensed
28 premises to an immediately adjacent area owned or leased by the licensee
29 or to an immediately adjacent street, parking lot, or alley, not to
30 exceed fifteen days per calendar year. The temporary area shall comply
31 with the Nebraska Liquor Control Act for consumption on the premises and

1 shall be subject to the following conditions: (i) The temporary area
2 shall be enclosed during the temporary expansion by a temporary fence or
3 other means approved by the county, city, or village; (ii) the temporary
4 area shall have easily identifiable entrances and exits; and (iii) the
5 licensee shall ensure that the area meets all sanitation requirements for
6 a licensed premises. The county, city, or village shall electronically
7 notify the commission within five days after the authorization of any
8 temporary expansion pursuant to this subsection.

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

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

1 local governing body shall be the city or village within which the
2 premises for which the special designated license is requested are
3 located or, if such premises are not within the corporate limits of a
4 city or village, then the local governing body shall be the county within
5 which the premises for which the temporary expansion is requested are
6 located.

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

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

13 Sec. 3. Section 53-129, Revised Statutes Cumulative Supplement,
14 2018, is amended to read:

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

23 (2) After such license has been granted for the particular premises,
24 the commission, with the approval of the local governing body and upon
25 proper showing, may endorse upon the license permission to add to, delete
26 from, or abandon the premises described in such license and, if
27 applicable, to move from the premises to other premises approved by the
28 local governing body. In it, ~~but in~~ order to obtain such approval, the
29 retail, bottle club, craft brewery, or microdistillery licensee shall
30 file with the local governing body a request in writing and a statement
31 under oath which shows that the premises, as added to or deleted from or

1 to which such move is to be made, comply in all respects with the
2 requirements of the act. No such addition, deletion, or move shall be
3 made by any such licensee until the license has been endorsed to that
4 effect in writing by the local governing body and by the commission and
5 the licensee furnishes proof of payment of the renewal fee prescribed in
6 subsection (4) of section 53-131.

7 (3)(a) A retail, bottle club, craft brewery, or microdistillery
8 licensee may apply to the local governing body in which the licensed
9 premises are located for a temporary expansion of its licensed premises
10 within the jurisdiction of the local governing body to an immediately
11 adjacent area owned or leased by the licensee or to an immediately
12 adjacent street, parking lot, or alley, not to exceed fifteen days per
13 calendar year. The temporary area shall otherwise comply with all
14 requirements of the Nebraska Liquor Control Act.

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

29 (c) No temporary expansion provided for by this subsection shall be
30 granted without the approval of the local governing body. The local
31 governing body may establish criteria for approving or denying a

1 temporary expansion. The local governing body may designate an agent to
2 determine whether a temporary expansion is to be approved or denied. Such
3 agent shall follow criteria established by the local governing body in
4 making the determination. The determination of the agent shall be
5 considered the determination of the local governing body unless otherwise
6 provided by the local governing body. For purposes of this section, the
7 local governing body shall be the city or village within which the
8 premises for which the special designated license is requested are
9 located or, if such premises are not within the corporate limits of a
10 city or village, then the local governing body shall be the county within
11 which the premises for which the temporary expansion is requested are
12 located.

13 (d) The decision of the local governing body shall be final. If the
14 applicant does not qualify for a temporary expansion, the temporary
15 expansion shall be denied by the local governing body.

16 (e) The city, village, or county clerk shall deliver confirmation of
17 the temporary expansion to the licensee upon receipt of any fee or tax
18 imposed by such city, village, or county.

19 Sec. 4. Section 53-134, Revised Statutes Cumulative Supplement,
20 2018, is amended to read:

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

27 (1) To cancel or revoke for cause retail, craft brewery,
28 microdistillery, or entertainment district licenses to sell or dispense
29 alcoholic liquor or bottle club licenses, issued to persons for premises
30 within its jurisdiction, subject to the right of appeal to the
31 commission;

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

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

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

31 (5) To examine or cause to be examined any applicant or any retail

1 licensee, bottle club licensee, craft brewery licensee, microdistillery
2 licensee, or entertainment district licensee upon whom notice of
3 cancellation or revocation has been served as provided in the act, to
4 examine or cause to be examined the books and records of any applicant or
5 licensee except as otherwise provided for bottle club licensees in
6 section 53-123.08, and to hear testimony and to take proof for its
7 information in the performance of its duties. For purposes of obtaining
8 any of the information desired, the local governing body may authorize
9 its agent or attorney to act on its behalf;

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

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

1 commission, and after such hearing the local governing body shall cause
2 to be recorded in the minute record of their proceedings a resolution
3 recommending either issuance or refusal of such license. The clerk of
4 such city, village, or county shall mail to the commission by first-class
5 mail, postage prepaid, a copy of the resolution which shall state the
6 cost of the published notice, except that failure to comply with this
7 provision shall not void any license issued by the commission. If the
8 commission refuses to issue such a license, the cost of publication of
9 notice shall be paid by the commission from the security for costs; and -

10 (8) To review and authorize an application by a retail, bottle club,
11 craft brewery, farm winery, or microdistillery licensee for a temporary
12 expansion of its licensed premises within the jurisdiction of the local
13 governing body to an immediately adjacent area owned or leased by the
14 licensee or to an immediately adjacent street, parking lot, or alley, not
15 to exceed fifteen days per calendar year, subject to the following
16 conditions: (a) The temporary area shall be enclosed during the temporary
17 expansion by a temporary fence or other means approved by the local
18 governing body; (b) the temporary area shall have easily identifiable
19 entrances and exits; and (c) the licensee shall ensure that the area
20 meets all sanitation requirements for a licensed premises. The local
21 governing body shall electronically notify the commission within five
22 days after the authorization of any temporary expansion pursuant to this
23 subdivision.

24 Sec. 5. Original sections 53-123.12, 53-129, and 53-134, Revised
25 Statutes Cumulative Supplement, 2018, and section 53-123.11, Revised
26 Statutes Supplement, 2019, are repealed.