

LEGISLATIVE BILL 1236

Approved by the Governor April 18, 2022

Introduced by Lowe, 37.

A BILL FOR AN ACT relating to the Nebraska Liquor Control Act; to amend sections 53-123.14, 53-123.16, 53-124.11, 53-129, 53-169, and 53-171, Reissue Revised Statutes of Nebraska; to change provisions relating to certain sales, self-distribution, and storage by craft brewery licensees; to provide for rules and regulations; to change provisions relating to microdistillery licenses and special designated licenses; to change a fee; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 53-123.14, Reissue Revised Statutes of Nebraska, is amended to read:

53-123.14 (1) Any person who operates a craft brewery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a craft brewery shall permit the production of a maximum of twenty thousand barrels of beer per year in the aggregate from all physical locations comprising the licensed premises. A craft brewery may also sell to beer wholesalers for sale and distribution to licensed retailers. A craft brewery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of beer for consumption on or off the licensed premises, except that the sale of any beer other than beer manufactured by the craft brewery licensee, wine, or alcoholic liquor by the drink for consumption on the licensed premises shall require the appropriate retail license. Any license held by the operator of a craft brewery shall be subject to the act. A holder of a craft brewery license may obtain an annual catering license pursuant to section 53-124.12, a special designated license pursuant to section 53-124.11, an entertainment district license pursuant to section 53-123.17, or a promotional farmers market special designated license pursuant to section 53-124.16. For purposes of this section, licensed premises may include up to five separate physical locations.

(2)(a) A holder of a craft brewery license may directly sell for resale up to two hundred fifty barrels per calendar year of beer produced at its licensed premises directly to retail licensees located in the State of Nebraska which hold the appropriate retail license if the holder of the craft brewery license:

(i) Only self-distributes its beer in a territory in which the craft brewery licensee has not entered into a distribution agreement with a licensed Nebraska wholesaler for the territory where such retail licensee is located;

(ii) Self-distributes its beer utilizing only persons exclusively and solely employed by the craft brewery licensee in vehicles exclusively and solely owned or leased by the craft brewery licensee; and

(iii) Complies with all relevant statutes, rules, and regulations that apply to Nebraska beer wholesalers regarding distribution of such beer.

(b) A holder of a craft brewery license self-distributing beer in accordance with subdivision (2)(a) of this section may only self-distribute beer brewed at its licensed brewery premises and shall not distribute beer produced by any other licensee.

(3) A holder of a craft brewery license may store and warehouse tax-paid products produced on such licensee's licensed premises in a designated, secure, offsite storage facility if the holder of the craft brewery license receives authorization from the commission and notifies the commission of the location of the storage facility and maintains, at the craft brewery and at the storage facility, a separate perpetual inventory of the product stored at the storage facility. Consumption of alcoholic liquor at the storage facility is strictly prohibited.

(4) The commission may adopt and promulgate rules and regulations pertaining to distribution rights of craft brewery licensees.

Sec. 2. Section 53-123.16, Reissue Revised Statutes of Nebraska, is amended to read:

53-123.16 Any person who operates a microdistillery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a microdistillery shall permit the licensee to produce ~~on the premises~~ a maximum of one hundred thousand gallons of liquor per year in the aggregate from all physical locations comprising the licensed premises. For purposes of this section, licensed premises may include up to five separate physical locations. A microdistillery may also sell to licensed wholesalers for sale and distribution to licensed retailers. A microdistillery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of microdistilled product for consumption on or off the licensed premises, except that the sale of any beer, wine, or alcoholic liquor, other than microdistilled product manufactured by the microdistillery licensee, by the drink for consumption on the microdistillery premises shall require the appropriate retail license. Any license held by the operator of a microdistillery shall be subject to the act. A holder of a microdistillery license may obtain an annual catering license

pursuant to section 53-124.12, a special designated license pursuant to section 53-124.11, an entertainment district license pursuant to section 53-123.17, or a promotional farmers market special designated license pursuant to section 53-124.16. The commission may, upon the conditions it determines, grant to any microdistillery licensed under this section a special license authorizing the microdistillery to purchase and to import, from such persons as are entitled to sell the same, wines or spirits to be used solely as ingredients and for the sole purpose of blending with and flavoring microdistillery products as a part of the microdistillation process.

Sec. 3. Section 53-124.11, Reissue Revised Statutes of Nebraska, is amended to read:

53-124.11 (1) The commission may issue a special designated license for sale or consumption of alcoholic liquor at a designated location to a retail licensee, a craft brewery licensee, a microdistillery licensee, a farm winery licensee, the holder of a manufacturer's license issued pursuant to subsection (2) of section 53-123.01, a municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, a political organization which has been exempted from the payment of federal income taxes, or any other nonprofit corporation the purpose of which is fraternal, charitable, or public service and which has been exempted from the payment of federal income taxes, under conditions specified in this section. The applicant shall demonstrate meeting the requirements of this subsection.

(2)(a) ~~(2)~~ No retail licensee, craft brewery licensee, microdistillery licensee, farm winery licensee, holder of a manufacturer's license issued pursuant to subsection (2) of section 53-123.01, organization, or corporation enumerated in subsection (1) of this section may be issued a special designated license under this section for more than six calendar days in any one calendar year. Only one special designated license shall be required for any application for two or more consecutive days. ~~This subsection shall not apply to any holder of a catering license.~~

~~(b) A municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, a political organization which has been exempted from the payment of federal income taxes, or any other nonprofit corporation the purpose of which is fraternal, charitable, or public service and which has been exempted from the payment of federal income taxes, may apply for special designated licenses for the same location in a single application. The application shall include all dates and times for which a special designated license is being requested at such location.~~

~~(c) This subsection shall not apply to any holder of a catering license.~~

(3) Except for any special designated license issued to a holder of a catering license or to an organization or corporation as provided in subdivision (2)(b) of this section, there shall be a fee of forty dollars for each day identified in the special designated license. For a special designated license issued to an organization or corporation as provided in subdivision (2)(b) of this section, there shall be a fee of forty dollars for the initial special designated license and ten dollars for each additional day beyond the first at the same location in such application. Such fee shall be submitted with the application for the special designated license, collected by the commission, and remitted to the State Treasurer for credit to the General Fund. The applicant shall be exempt from the provisions of the Nebraska Liquor Control Act requiring an application or renewal fee and the provisions of the act requiring the expiration of forty-five days from the time the application is received by the commission prior to the issuance of a license, if granted by the commission. The retail licensees, craft brewery licensees, microdistillery licensees, farm winery licensees, holders of manufacturer's licenses issued pursuant to subsection (2) of section 53-123.01, municipal corporations, organizations, and nonprofit corporations enumerated in subsection (1) of this section seeking a special designated license shall file an application on such forms as the commission may prescribe. Such forms shall contain, along with other information as required by the commission, (a) the name of the applicant, (b) the premises for which a special designated license is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (c) the name of the owner or lessee of the premises for which the special designated license is requested, (d) sufficient evidence that the holder of the special designated license, if issued, will carry on the activities and business authorized by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (e) a statement of the type of activity to be carried on during the time period for which a special designated license is requested, and (f) sufficient evidence that the activity will be supervised by persons or managers who are agents of and directly responsible to the holder of the special designated license.

(4) No special designated license provided for by this section shall be issued by the commission without the approval of the local governing body. The local governing body may establish criteria for approving or denying a special designated license. The local governing body may designate an agent to determine whether a special designated license is to be approved or denied. Such agent shall follow criteria established by the local governing body in making his or her determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body. For purposes of this section, the local

governing body shall be the city or village within which the premises for which the special designated license is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be the county within which the premises for which the special designated license is requested are located.

(5) If the applicant meets the requirements of this section, a special designated license shall be granted and issued by the commission for use by the holder of the special designated license. All statutory provisions and rules and regulations of the commission that apply to a retail licensee shall apply to the holder of a special designated license with the exception of such statutory provisions and rules and regulations of the commission so designated by the commission and stated upon the issued special designated license, except that the commission may not designate exemption of sections 53-180 to 53-180.07. The decision of the commission shall be final. If the applicant does not qualify for a special designated license, the application shall be denied by the commission.

(6) A special designated license issued by the commission shall be mailed or delivered electronically to the city, village, or county clerk who shall deliver such license to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

Sec. 4. Section 53-129, Reissue Revised Statutes of Nebraska, is amended to read:

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

(2) After such license has been granted for the particular premises, the commission, with the approval of the local governing body and upon proper showing, may endorse upon the license permission to add to, delete from, or abandon the premises described in such license and, if applicable, to move from the premises to other premises approved by the local governing body. In order to obtain such approval, the retail, bottle club, craft brewery, or microdistillery licensee shall file with the local governing body a request in writing and a statement under oath which shows that the premises, as added to or deleted from or to which such move is to be made, comply in all respects with the requirements of the act. No such addition, deletion, or move shall be made by any such licensee until the license has been endorsed to that effect in writing by the local governing body and by the commission and the licensee furnishes proof of payment of the renewal fee prescribed in subsection (4) of section 53-131.

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

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

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

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

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

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

such city, village, or county.

Sec. 5. Section 53-169, Reissue Revised Statutes of Nebraska, is amended to read:

53-169 (1) Except as provided in subsection (2) of this section, no manufacturer or wholesaler shall directly or indirectly: (a) Pay for any license to sell alcoholic liquor at retail or advance, furnish, lend, or give money for payment of such license; (b) purchase or become the owner of any note, mortgage, or other evidence of indebtedness of such licensee or any form of security therefor; (c) be interested in the ownership, conduct, or operation of the business of any licensee authorized to sell alcoholic liquor at retail; or (d) be interested directly or indirectly or as owner, part owner, lessee, or lessor thereof in any premises upon which alcoholic liquor is sold at retail.

(2) This section does not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 and the holder of a manufacturer's license shall have the privileges and duties listed in section 53-123.01 with respect to the manufacture, distribution, and retail sale of beer, and except as provided in subsection (2) of section 53-123.14, the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license or of a manufacturer's license issued pursuant to section 53-123.01 to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

Sec. 6. Section 53-171, Reissue Revised Statutes of Nebraska, is amended to read:

53-171 No person licensed as a wholesaler of alcoholic liquor shall be permitted to receive any retail license at the same time. No person licensed as a manufacturer shall be permitted to receive any retail license at the same time except as set forth in subsection (2) of section 53-123.01 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a manufacturer's license issued pursuant to such subsection to engage in the wholesale distribution of alcoholic liquor. No person licensed as a retailer of alcoholic liquor shall be permitted to receive any manufacturer's or wholesale license at the same time. This section shall not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 with respect to the manufacture, distribution, and retail sale of beer, and except as provided in subsection (2) of section 53-123.14, the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

Sec. 7. Original sections 53-123.14, 53-123.16, 53-124.11, 53-129, 53-169, and 53-171, Reissue Revised Statutes of Nebraska, are repealed.