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

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

Be it enacted by the people of the State of Nebraska,
Section 1. Section 53-123.11, Revised Statutes Supplement, 2019, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5)(a) A farm winery licensee may apply to the county, city, or village in which the premises authorized under subdivision (1)(b) of section 53-123.11 are located for a temporary expansion of the 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 fifteen days per calendar year. The temporary area shall comply with the Nebraska Liquor Control Act for consumption on the premises and
shall be subject to the following conditions: (i) The temporary area shall be enclosed during the temporary expansion by a temporary fence or other means approved by the county, city, or village; (ii) the temporary area shall have easily identifiable entrances and exits; and (iii) the licensee shall ensure that the area meets all sanitation requirements for a licensed premises. The county, city, or village shall electronically notify the commission within five days after the authorization of any temporary expansion pursuant to this subsection.

(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. 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 temporary expansion is requested are
located.

(d) 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.

(e) 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. 3. Section 53-129, Revised Statutes Cumulative Supplement,
2018, 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,
bottle club, and microdistillery licenses, only one location shall be
described in each license. For craft brewery 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 it, but 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 in which the licensed premises are located for a temporary expansion of its licensed premises within the jurisdiction of the local governing body to an immediately adjacent area owned or leased by the licensee or to an immediately adjacent street, parking lot, or alley, 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. 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 temporary expansion is requested are
located.

(d) 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.

(e) 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. 4. Section 53-134, Revised Statutes Cumulative Supplement,
2018, is amended to read:

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

(1) To cancel or revoke for cause retail, craft brewery,
microdistillery, or entertainment district licenses to sell or dispense
alcoholic liquor or bottle club licenses, issued to persons for premises
within its jurisdiction, subject to the right of appeal to the commission;
(2) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated and at such time examine the premises of such licensee in connection with such determination. Any law enforcement officer who determines that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated shall report such violation in writing to the executive director of the commission (a) within thirty days after determining that such violation has occurred, (b) within thirty days after the conclusion of an ongoing police investigation, or (c) within thirty days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later;

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

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

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

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

(7) Upon receipt from the commission of the notice and copy of application as provided in section 53-131, to fix a time and place for a hearing at which the local governing body shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in such city, village, or county one time not less than seven and not more than fourteen days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the local governing body in support of or in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than forty-five days after the date of receipt of the notice from the
commission, and after such hearing the local governing body shall cause
to be recorded in the minute record of their proceedings a resolution
recommending either issuance or refusal of such license. The clerk of
such city, village, or county shall mail to the commission by first-class
mail, postage prepaid, a copy of the resolution which shall state the
cost of the published notice, except that failure to comply with this
provision shall not void any license issued by the commission. If the
commission refuses to issue such a license, the cost of publication of
notice shall be paid by the commission from the security for costs; and (8)

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

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