

AMENDMENTS TO LB376

Introduced by General Affairs.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 53-101, Revised Statutes Cumulative Supplement,
4 2022, is amended to read:

5 53-101 Sections 53-101 to 53-1,122 and sections 3 to 7 of this act
6 shall be known and may be cited as the Nebraska Liquor Control Act.

7 Sec. 2. Section 53-103, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 53-103 For purposes of the Nebraska Liquor Control Act, the
10 definitions found in sections 53-103.01 to 53-103.49 and sections 3 and 4
11 of this act apply.

12 Sec. 3. Channel pricing means a pricing strategy that differentiates
13 the price charged for a product based upon the type of license held by
14 the retailer and the primary use of the premises on which the retailer
15 operates.

16 Sec. 4. (1) Primary source of supply in the United States means:

17 (a) The manufacturer, producer, or owner of any alcoholic liquor at
18 the time it becomes a marketable product in the United States;

19 (b) The bottler of any alcoholic liquor in the United States;

20 (c) The exclusive agent within the United States or any of the
21 states of any manufacturer, producer, owner, or bottler of any alcoholic
22 liquor outside the United States; or

23 (d) A licensed Nebraska craft brewery, farm winery, microdistillery,
24 or manufacturer.

25 (2) To be the primary source of supply in the United States, the
26 licensee causing such alcoholic liquor to be imported into Nebraska must
27 be the first source, such as the manufacturer or the source closest to

1 the manufacturer, in the channel of commerce from which the product can
2 be secured by Nebraska licensed wholesalers.

3 Sec. 5. (1)(a) Beginning July 1, 2024, prior to the sale or
4 shipment of any alcoholic liquor into the State of Nebraska, each
5 licensed manufacturer, licensed wholesaler, or holder of a shipping
6 license shall submit to the commission, along with any applicable fee set
7 by the commission not to exceed thirty dollars, a report on a form
8 prescribed and furnished by the commission, which shall include:

9 (i) The licensee's name and license number;

10 (ii) The designated Nebraska licensed wholesaler for such product,
11 if applicable;

12 (iii) The name of the primary source of supply in the United States;

13 (iv) The products to be imported, including the brand name, class or
14 type of product, and fanciful name if applicable;

15 (v) Evidence of compliance with federal label requirements pursuant
16 to the Federal Alcohol Administration Act 27 U.S.C. chapter 8, and rules
17 and regulations adopted pursuant to such act, as such act and regulations
18 existed on January 1, 2023, or a sample of the actual label if federal
19 approval is not required; and

20 (vi) Any other information the commission may require related to
21 such sale or shipment.

22 (b) If the licensed manufacturer, licensed wholesaler, or holder of
23 a shipping license is not the product manufacturer, such licensee shall
24 also include with such form a separate letter from the product
25 manufacturer designating such licensee as the primary source of supply in
26 the United States or the sole source of supply in Nebraska. A separate
27 letter is required for each primary source.

28 (2) If the primary source of supply in the United States for such
29 alcoholic liquor changes, the new licensed manufacturer, licensed
30 wholesaler, or holder of a shipping license importing such alcoholic
31 liquor shall submit the information required pursuant to subsection (1)

1 of this section at least thirty days prior to the shipment of such
2 alcoholic liquor into this state. The licensed manufacturer, licensed
3 wholesaler, or holder of a shipping license shall also remit to the
4 commission any applicable fee set by the commission not to exceed thirty
5 dollars.

6 (3) Nothing in this section shall restrict or prohibit the
7 importation of alcoholic liquor to a Nebraska licensed wholesaler from an
8 affiliated wholesaler if (a) the report required by this section has
9 previously been submitted for the alcoholic liquor product being
10 imported, (b) the report designates the Nebraska licensed wholesaler for
11 such product, and (c) the product was obtained by the affiliated
12 wholesaler from the same primary source of supply identified on the
13 report.

14 (4) The commission shall remit any fees collected pursuant to this
15 section to the State Treasurer for credit to the Nebraska Liquor Control
16 Commission Rule and Regulation Cash Fund.

17 (5) The commission may adopt and promulgate rules and regulations to
18 carry out this section.

19 Sec. 6. (1) For purposes of this section, alcoholic product means a
20 particular brand of alcoholic liquor in a designated size container or a
21 mix of brands and containers when sold on a combined basis, as
22 established by the wholesaler.

23 (2) A wholesaler may employ channel pricing to sell such
24 wholesaler's alcoholic product to retail licensees at a different price
25 than the wholesaler sells alcoholic product to other retail licensees. If
26 a wholesaler employs channel pricing, such pricing shall be made equally
27 available to similarly situated retail licensees.

28 (3) Whether an establishment is similarly situated to another
29 licensee is to be determined by the type of license held by the retailer
30 and the primary use of the premises.

31 (4) A wholesaler may also provide discounts on the alcoholic product

1 to retailers that are otherwise similarly situated if those discounts are
2 based on the volume of the alcoholic product being purchased.

3 (5) A wholesaler may also provide discounts on the alcoholic product
4 to retailers that are otherwise similarly situated if those discounts are
5 based on the electronic ordering of the alcoholic product being
6 purchased.

7 Sec. 7. (1) A manufacturer, a wholesaler, or any agent of a
8 manufacturer or wholesaler may enter into a sponsorship or advertising
9 agreement with (a) the holder of a special designated license pursuant to
10 section 53-124.11 that is a municipal corporation, a fine arts museum
11 incorporated as a nonprofit corporation, a religious nonprofit
12 corporation exempted from payment of federal income taxes, a political
13 organization exempted from payment of federal income taxes, or any other
14 nonprofit corporation the purpose of which is fraternal, charitable, or
15 public service and which has been exempted from payment of federal income
16 taxes, (b) a political subdivision of the State of Nebraska, or (c) an
17 operator of property owned by a political subdivision of the State of
18 Nebraska, to sponsor and advertise for events held by such organization,
19 licensee, or political subdivision.

20 (2) The commission may adopt and promulgate rules and regulations to
21 carry out this section.

22 Sec. 8. Section 53-117.06, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 53-117.06 Any money collected by the commission pursuant to section
25 53-117.05 or 53-167.02 or section 5 of this act shall be credited to the
26 Nebraska Liquor Control Commission Rule and Regulation Cash Fund, which
27 fund is hereby created. The purpose of the fund shall be to cover any
28 administrative costs, including salary and benefits, incurred by the
29 commission in producing or distributing the material referred to in such
30 sections and to defray the costs associated with electronic regulatory
31 transactions, industry education events, enforcement training, and

1 equipment for regulatory work. Transfers may be made from the fund to the
2 General Fund at the direction of the Legislature. Any money in the
3 Nebraska Liquor Control Commission Rule and Regulation Cash Fund
4 available for investment shall be invested by the state investment
5 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
6 State Funds Investment Act.

7 Sec. 9. Section 53-123.11, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 53-123.11 (1) A farm winery license shall entitle the holder to:

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

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

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

26 (d) Ship wines produced at the farm winery by common carrier and
27 sold at retail to recipients in and outside the State of Nebraska, if the
28 output of such farm winery for each calendar year as reported to the
29 commission by December 31 of each year does not exceed thirty thousand
30 gallons. In the event such amount exceeds thirty thousand gallons, the
31 farm winery shall be required to use a licensed wholesaler to distribute

1 its wines for the following calendar year, except that this requirement
2 shall not apply to wines produced and sold onsite at the farm winery
3 pursuant to subdivision (1)(a) of this section;

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

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

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

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

20 (i) Sell alcoholic liquor authorized under a farm winery license not
21 in its original package, such as sangria or wine slushies, to a person
22 twenty-one years of age or older for consumption off the premises if (i)
23 the alcoholic liquor is (A) not partially consumed and (B) in a labeled
24 and sealed container with a tamper-evident lid, cap, or seal, as approved
25 by the commission, and (ii) for alcoholic liquor transported in a motor
26 vehicle, the alcoholic liquor is placed in the trunk of the motor vehicle
27 or the area behind the last upright seat of such motor vehicle if the
28 area is not normally occupied by the driver or a passenger and the motor
29 vehicle is not equipped with a trunk. A farm winery which sells alcoholic
30 liquor authorized under a farm winery license not in its original package
31 for consumption off the premises shall provide notice to the commission

1 during a farm winery licensee's initial licensure or at the time of the
2 annual renewal of such license regarding such sales.

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

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

9 (4) A holder of a farm winery license may sell beer or other
10 alcoholic liquor not produced by the farm winery at retail for
11 consumption on the premises if the holder is also issued the appropriate
12 retail license for such sales at such location.

13 ~~(5)~~ (4) A holder of a farm winery license may obtain a special
14 designated license pursuant to section 53-124.11.

15 ~~(6)~~ (5) A holder of a farm winery license may obtain an annual
16 catering license pursuant to section 53-124.12.

17 ~~(7)~~ (6) A holder of a farm winery license may obtain a promotional
18 farmers market special designated license pursuant to section 53-124.16.

19 Sec. 10. Section 53-124.11, Revised Statutes Cumulative Supplement,
20 2022, is amended to read:

21 53-124.11 (1) The commission may issue a special designated license
22 for sale or consumption of alcoholic liquor at a designated location to a
23 retail licensee, a craft brewery licensee, a microdistillery licensee, a
24 farm winery licensee, the holder of a manufacturer's license issued
25 pursuant to subsection (2) of section 53-123.01, a municipal corporation,
26 a fine arts museum incorporated as a nonprofit corporation, a religious
27 nonprofit corporation which has been exempted from the payment of federal
28 income taxes, a political organization which has been exempted from the
29 payment of federal income taxes, or any other nonprofit corporation the
30 purpose of which is fraternal, charitable, or public service and which
31 has been exempted from the payment of federal income taxes, under

1 conditions specified in this section. The applicant shall demonstrate
2 meeting the requirements of this subsection.

3 (2)(a) No retail licensee, craft brewery licensee, microdistillery
4 licensee, farm winery licensee, holder of a manufacturer's license issued
5 pursuant to subsection (2) of section 53-123.01, organization, or
6 corporation enumerated in subsection (1) of this section may be issued a
7 special designated license under this section for more than six calendar
8 days in any one calendar year, except that a nonprofit corporation, the
9 purpose of which is fraternal, charitable, or public service and which
10 has been exempted from the payment of federal income taxes, may be issued
11 a special designated license for up to twelve calendar days in any one
12 calendar year. Only one special designated license shall be required for
13 any application for two or more consecutive days.

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

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

26 (3) Except for any special designated license issued to a holder of
27 a catering license or to an organization or corporation as provided in
28 subdivision (2)(b) of this section, there shall be a fee of forty dollars
29 for each day identified in the special designated license. For a special
30 designated license issued to an organization or corporation as provided
31 in subdivision (2)(b) of this section, there shall be a fee of forty

1 dollars for the initial special designated license and ten dollars for
2 each additional day beyond the first at the same location in such
3 application. Such fee shall be submitted with the application for the
4 special designated license, collected by the commission, and remitted to
5 the State Treasurer for credit to the General Fund. The applicant shall
6 be exempt from the provisions of the Nebraska Liquor Control Act
7 requiring an application or renewal fee and the provisions of the act
8 requiring the expiration of forty-five days from the time the application
9 is received by the commission prior to the issuance of a license, if
10 granted by the commission. The retail licensees, craft brewery licensees,
11 microdistillery licensees, farm winery licensees, holders of
12 manufacturer's licenses issued pursuant to subsection (2) of section
13 53-123.01, municipal corporations, organizations, and nonprofit
14 corporations enumerated in subsection (1) of this section seeking a
15 special designated license shall file an application on such forms as the
16 commission may prescribe. Such forms shall contain, along with other
17 information as required by the commission, (a) the name of the applicant,
18 (b) the premises for which a special designated license is requested,
19 identified by street and number if practicable and, if not, by some other
20 appropriate description which definitely locates the premises, (c) the
21 name of the owner or lessee of the premises for which the special
22 designated license is requested, (d) sufficient evidence that the holder
23 of the special designated license, if issued, will carry on the
24 activities and business authorized by the license for himself, herself,
25 or itself and not as the agent of any other person, group, organization,
26 or corporation, for profit or not for profit, (e) a statement of the type
27 of activity to be carried on during the time period for which a special
28 designated license is requested, and (f) sufficient evidence that the
29 activity will be supervised by persons or managers who are agents of and
30 directly responsible to the holder of the special designated license.

31 (4) No special designated license provided for by this section shall

1 be issued by the commission without the approval of the local governing
2 body. The local governing body may establish criteria for approving or
3 denying a special designated license. The local governing body may
4 designate an agent to determine whether a special designated license is
5 to be approved or denied. Such agent shall follow criteria established by
6 the local governing body in making his or her determination. The
7 determination of the agent shall be considered the determination of the
8 local governing body unless otherwise provided by the local governing
9 body. For purposes of this section, the local governing body shall be the
10 city or village within which the premises for which the special
11 designated license is requested are located or, if such premises are not
12 within the corporate limits of a city or village, then the local
13 governing body shall be the county within which the premises for which
14 the special designated license is requested are located.

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

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

31 Sec. 11. Section 53-168, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 53-168 (1) It shall be unlawful for any person having a retail
3 license to sell beer to accept credit for the purchase of beer from any
4 manufacturer or wholesaler of beer and for any person having a retail
5 license to sell alcoholic liquor or any officer, associate, member,
6 representative, or agent of such licensee to accept, receive, or borrow
7 money or anything else of value or to accept or to receive credit, other
8 than merchandising credit in the ordinary course of business for a period
9 not to exceed thirty days, directly or indirectly, from (a) any person,
10 partnership, limited liability company, or corporation engaged in
11 manufacturing or wholesaling such liquor, (b) any person connected with
12 or in any way representing such manufacturer or wholesaler, (c) any
13 member of the family of such manufacturer or wholesaler, (d) any
14 stockholders in any corporation engaged in manufacturing or wholesaling
15 such liquor, or (e) any officer, manager, agent, member, or
16 representative of such manufacturer or wholesaler.

17 (2) It shall be unlawful for any manufacturer or wholesaler to give
18 or lend money or otherwise loan or extend credit, except the
19 merchandising credit referred to in subsection (1) of this section,
20 directly or indirectly, to any such licensee or to the manager,
21 representative, agent, member, officer, or director of such licensee. It
22 shall be unlawful for any wholesaler to participate in any manner in a
23 merchandising and coupon plan of any manufacturer involving alcoholic
24 liquor and the redemption in cash. The redemption of any merchandising
25 and coupon plan involving cash shall be made by the manufacturer to the
26 consumer.

27 (3) If any holder of a license to sell alcoholic liquor at retail or
28 wholesale violates subsection (1) or (2) of this section, such license
29 shall be suspended or revoked by the commission in the manner provided by
30 the Nebraska Liquor Control Act.

31 (4) It shall not be a violation of subsection (1) or (2) of this

1 section for a manufacturer or wholesaler to sell or provide alcoholic
2 liquor exclusively or in minimum quantities in containers bearing a
3 private label or to sell or provide alcoholic liquor in containers
4 bearing a generic label to a wholesaler or retailer.

5 (5) It shall not be a violation of subsection (1) or (2) of this
6 section for a wholesaler or retailer to accept or purchase from a
7 manufacturer or wholesaler alcoholic liquor exclusively or in minimum
8 quantities in containers bearing a private label or for a wholesaler or
9 retailer to accept or purchase from a manufacturer or wholesaler
10 alcoholic liquor in containers bearing a generic label.

11 (6) It shall not be a violation of subsection (1) or (2) of this
12 section for a wholesaler or manufacturer or the agent of a wholesaler or
13 manufacturer to enter into a sponsorship or advertising agreement with a
14 licensee, organization, or political subdivision of the State of Nebraska
15 pursuant to section 7 of this act.

16 Sec. 12. Section 53-169, Revised Statutes Cumulative Supplement,
17 2022, is amended to read:

18 53-169 (1) Except as provided in subsection (2) or (3) of this
19 section, no manufacturer or wholesaler shall directly or indirectly: (a)
20 Pay for any license to sell alcoholic liquor at retail or advance,
21 furnish, lend, or give money for payment of such license; (b) purchase or
22 become the owner of any note, mortgage, or other evidence of indebtedness
23 of such licensee or any form of security therefor; (c) be interested in
24 the ownership, conduct, or operation of the business of any licensee
25 authorized to sell alcoholic liquor at retail; or (d) be interested
26 directly or indirectly or as owner, part owner, lessee, or lessor thereof
27 in any premises upon which alcoholic liquor is sold at retail.

28 (2) This section does not apply to the holder of a farm winery
29 license. The holder of a craft brewery license shall have the privileges
30 and duties listed in section 53-123.14 and the holder of a manufacturer's
31 license shall have the privileges and duties listed in section 53-123.01

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

11 (3) It shall not be a violation of this section for a wholesaler or
12 manufacturer or the agent of a wholesaler or manufacturer to enter into a
13 sponsorship or advertising agreement with a licensee, organization, or
14 political subdivision of the State of Nebraska pursuant to section 7 of
15 this act.

16 Sec. 13. Original sections 53-103, 53-117.06, 53-123.11, and 53-168,
17 Reissue Revised Statutes of Nebraska, and sections 53-101, 53-124.11, and
18 53-169, Revised Statutes Cumulative Supplement, 2022, are repealed.