

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1120

Introduced by Larson, 40.

Read first time January 18, 2018

Committee: General Affairs

1 A BILL FOR AN ACT relating to government regulation; to amend sections
2 53-118, 53-168, 53-1,115, 59-1401, 59-1403, 59-1404, 59-1405, and
3 59-1406, Reissue Revised Statutes of Nebraska, and sections
4 53-123.15, 53-124.11, 53-134.01, 53-135, 53-1,100, 53-1,104, and
5 53-504, Revised Statutes Cumulative Supplement, 2016; to provide
6 procedures regarding overdue accounts; to change provisions relating
7 to taxation of beer and use of a fund; to require annual reports by
8 third-party shippers as prescribed; to change requirements for the
9 sale of beer by certain licensees; to require automatic renewal of
10 retail licenses as prescribed; to change penalty and enforcement
11 provisions of the Nebraska Liquor Control Act; to name the Music
12 Licensing Agency Act; to define and redefine terms; to eliminate
13 obsolete references; to provide duties; to require music licensing
14 agencies to register with the Secretary of State; to change
15 penalties; to harmonize provisions; to provide operative dates; to
16 provide severability; to repeal the original sections; and to
17 declare an emergency.
18 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 53-118, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 53-118 The commission shall adopt and promulgate rules and
4 regulations to carry out the Nebraska Liquor Control Act. The rules and
5 regulations shall include, among such other things as the commission may
6 determine, provisions: (1) Prescribing conditions as to the issuance of
7 duplicate licenses in lieu of those lost or destroyed; (2) determining
8 for which violations of the rules and regulations licenses shall be
9 suspended, canceled, or revoked; (3) establishing standards of purity,
10 sanitation, honest advertising, and representation; (4) establishing
11 procedures for overdue accounts described in section 53-168; and (5) and
12 ~~(4)~~ covering any and all the other details which are necessary or
13 convenient to the enforcement of the intent, purpose, and requirements of
14 the act.

15 Sec. 2. Section 53-123.15, Revised Statutes Cumulative Supplement,
16 2016, is amended to read:

17 53-123.15 (1) No person shall order or receive alcoholic liquor in
18 this state which has been shipped directly to him or her from outside
19 this state by any person other than a holder of a shipping license issued
20 by the commission, except that a licensed wholesaler may receive not more
21 than three gallons of wine in any calendar year from any person who is
22 not a holder of a shipping license.

23 (2) The commission may issue a shipping license to a manufacturer.
24 Such license shall allow the licensee to ship alcoholic liquor only to a
25 licensed wholesaler. A person who receives a license pursuant to this
26 subsection shall pay the fee required in sections 53-124 and 53-124.01
27 for a manufacturer's shipping license. Such fee shall be collected by the
28 commission and be remitted to the State Treasurer for credit ~~— Fees~~
29 ~~remitted prior to July 1, 2016, shall be credited to the General Fund,~~
30 except that the fee received for a shipping license issued to a beer
31 manufacturer pursuant to this subsection ~~— Fees remitted beginning on~~

1 ~~July 1, 2016,~~ shall be credited to the Nebraska Beer Industry Promotional
2 Fund.

3 (3) The commission may issue a shipping license to any person who
4 deals with vintage wines, which shipping license shall allow the licensee
5 to distribute such wines to a licensed wholesaler in the state. For
6 purposes of distributing vintage wines, a licensed shipper must utilize a
7 designated wholesaler if the manufacturer has a designated wholesaler.
8 For purposes of this section, vintage wine shall mean a wine verified to
9 be ten years of age or older and not available from a primary American
10 source of supply. A person who receives a license pursuant to this
11 subsection shall pay the fee required in sections 53-124 and 53-124.01
12 for a vintage wine dealer's shipping license. Such fee shall be collected
13 by the commission and be remitted to the State Treasurer for credit to
14 the General Fund.

15 (4) The commission may issue a shipping license to any manufacturer
16 who sells and ships alcoholic liquor from another state directly to a
17 consumer in this state if the manufacturer satisfies the requirements of
18 subsections (7) through (9) of this section. A manufacturer who receives
19 a license pursuant to this subsection shall pay the fee required in
20 sections 53-124 and 53-124.01 for a manufacture direct sales shipping
21 license. Such fee shall be collected by the commission and remitted to
22 the State Treasurer for credit to the Winery and Grape Producers
23 Promotional Fund.

24 (5) The commission may issue a shipping license to any retailer who
25 is licensed within or outside Nebraska, who is authorized to sell
26 alcoholic liquor at retail in the state of domicile of the retailer, and
27 who is not a manufacturer if such retailer satisfies the requirements of
28 subsections (7) through (9) of this section to ship alcoholic liquor from
29 another state directly to a consumer in this state. A retailer who
30 receives a license pursuant to this subsection shall pay the fee required
31 in sections 53-124 and 53-124.01 for a retail direct sales shipping

1 license. Such fee shall be collected by the commission and remitted to
2 the State Treasurer for credit to the Winery and Grape Producers
3 Promotional Fund.

4 (6) The application for a shipping license under subsection (2) or
5 (3) of this section shall be in such form as the commission prescribes.
6 The application shall contain all provisions the commission deems proper
7 and necessary to effectuate the purpose of any section of the act and the
8 rules and regulations of the commission that apply to manufacturers and
9 shall include, but not be limited to, provisions that the applicant, in
10 consideration of the issuance of such shipping license, agrees:

11 (a) To comply with and be bound by sections 53-162 and 53-164.01 in
12 making and filing reports, paying taxes, penalties, and interest, and
13 keeping records;

14 (b) To permit and be subject to all of the powers granted by section
15 53-164.01 to the commission or its duly authorized employees or agents
16 for inspection and examination of the applicant's premises and records
17 and to pay the actual expenses, excluding salary, reasonably attributable
18 to such inspections and examinations made by duly authorized employees of
19 the commission if within the United States; and

20 (c) That if the applicant violates any of the provisions of the
21 application or the license, any section of the act, or any of the rules
22 and regulations of the commission that apply to manufacturers, the
23 commission may suspend, cancel, or revoke such shipping license for such
24 period of time as it may determine.

25 (7) The application for a shipping license under subsection (4) or
26 (5) of this section shall be in such form as the commission prescribes.
27 The application shall require an applicant which is a manufacturer, a
28 craft brewery, a craft distillery, or a farm winery to identify the
29 brands of alcoholic liquor that the applicant is requesting the authority
30 to ship either into or within Nebraska. For all applicants, unless
31 otherwise provided in this section, the application shall contain all

1 provisions the commission deems proper and necessary to effectuate the
2 purpose of any section of the act and the rules and regulations of the
3 commission that apply to manufacturers or retailers and shall include,
4 but not be limited to, provisions that the applicant, in consideration of
5 the issuance of such shipping license, agrees:

6 (a) To comply with and be bound by sections 53-162 and 53-164.01 in
7 making and filing reports, paying taxes, penalties, and interest, and
8 keeping records;

9 (b) To permit and be subject to all of the powers granted by section
10 53-164.01 to the commission or its duly authorized employees or agents
11 for inspection and examination of the applicant's premises and records
12 and to pay the actual expenses, excluding salary, reasonably attributable
13 to such inspections and examinations made by duly authorized employees of
14 the commission if within the United States;

15 (c) That if the applicant violates any of the provisions of the
16 application or the license, any section of the act, or any of the rules
17 and regulations of the commission that apply to manufacturers or
18 retailers, the commission may suspend, cancel, or revoke such shipping
19 license for such period of time as it may determine;

20 (d) That the applicant agrees to notify the commission of any
21 violations in the state in which he or she is domiciled and any
22 violations of the direct shipping laws of any other states. Failure to
23 notify the commission within thirty days after such a violation may
24 result in a hearing before the commission pursuant to which the license
25 may be suspended, canceled, or revoked; and

26 (e) That the applicant, if a manufacturer, craft brewery, craft
27 distillery, or farm winery, agrees to notify any wholesaler licensed in
28 Nebraska that has been authorized to distribute such brands that the
29 application has been filed for a shipping license. The notice shall be in
30 writing and in a form prescribed by the commission. The commission may
31 adopt and promulgate rules and regulations as it reasonably deems

1 necessary to implement this subdivision, including rules and regulations
2 that permit the holder of a shipping license under this subdivision to
3 amend the shipping license by, among other things, adding or deleting any
4 brands of alcoholic liquor identified in the shipping license.

5 (8) Any manufacturer or retailer who is granted a shipping license
6 under subsection (4) or (5) of this section shall:

7 (a) Only ship the brands of alcoholic liquor identified on the
8 application;

9 (b) Only ship alcoholic liquor that is owned by the holder of the
10 shipping license;

11 (c) Only ship alcoholic liquor that is properly registered with the
12 Alcohol and Tobacco Tax and Trade Bureau of the United States Department
13 of the Treasury;

14 (d) Not ship any alcoholic liquor products that the manufacturers or
15 wholesalers licensed in Nebraska have voluntarily agreed not to bring
16 into Nebraska at the request of the commission;

17 (e) Not ship more than nine liters of alcoholic liquor per month to
18 any person in Nebraska to whom alcoholic beverages may be lawfully sold.
19 All such sales and shipments shall be for personal consumption only and
20 not for resale; and

21 (f) Cause the direct shipment of alcoholic liquor to be by approved
22 common carrier only. The commission shall adopt and promulgate rules and
23 regulations pursuant to which common carriers may apply for approval to
24 provide common carriage of alcoholic liquor shipped by a holder of a
25 shipping license issued pursuant to subsection (4) or (5) of this
26 section. The rules and regulations shall include provisions that require
27 (i) the recipient to demonstrate, upon delivery, that he or she is at
28 least twenty-one years of age, (ii) the recipient to sign an electronic
29 or paper form or other acknowledgment of receipt as approved by the
30 commission, and (iii) the commission-approved common carrier to submit to
31 the commission such information as the commission may prescribe. The

1 commission-approved common carrier shall refuse delivery when the
2 proposed recipient appears to be under the age of twenty-one years and
3 refuses to present valid identification. All holders of shipping licenses
4 shipping alcoholic liquor pursuant to this subdivision shall affix a
5 conspicuous notice in sixteen-point type or larger to the outside of each
6 package of alcoholic liquor shipped within or into the State of Nebraska,
7 in a conspicuous location, stating: CONTAINS ALCOHOLIC BEVERAGES;
8 SIGNATURE OF PERSON AT LEAST 21 YEARS OF AGE REQUIRED FOR DELIVERY. Any
9 delivery of alcoholic beverages to a minor by a common carrier shall
10 constitute a violation by the common carrier. The common carrier and the
11 holder of the shipping license shall be liable only for their independent
12 acts.

13 (9) For purposes of sections 53-160, 77-2703, and 77-27,142, each
14 shipment of alcoholic liquor by the holder of a shipping license under
15 subsection (3), (4), or (5) of this section shall constitute a sale in
16 Nebraska by establishing a nexus in the state. The holder of the shipping
17 license shall collect all the taxes due to the State of Nebraska and any
18 political subdivision and remit any excise taxes monthly to the
19 commission and any sales taxes to the Department of Revenue.

20 (10) A third-party shipper shall file an annual report with the
21 commission, in the form and manner prescribed by the commission,
22 regarding shipments of alcohol the third-party shipper has made into the
23 state ~~By July 1, 2014, the commission shall report to the General Affairs~~
24 ~~Committee of the Legislature the number of shipping licenses issued for~~
25 ~~license years 2013-14 and 2014-15. The report shall be made~~
26 ~~electronically.~~

27 Sec. 3. Section 53-124.11, Revised Statutes Cumulative Supplement,
28 2016, is amended to read:

29 53-124.11 (1) The commission may issue a special designated license
30 for sale or consumption of alcoholic liquor at a designated location to a
31 retail licensee, a craft brewery licensee, a microdistillery licensee, a

1 farm winery licensee, the holder of a manufacturer's license issued
2 pursuant to subsection (2) of section 53-123.01, a municipal corporation,
3 a fine arts museum incorporated as a nonprofit corporation, a religious
4 nonprofit corporation which has been exempted from the payment of federal
5 income taxes, a political organization which has been exempted from the
6 payment of federal income taxes, or any other nonprofit corporation the
7 purpose of which is fraternal, charitable, or public service and which
8 has been exempted from the payment of federal income taxes, under
9 conditions specified in this section. The applicant shall demonstrate
10 meeting the requirements of this subsection.

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

19 (3) Except for any special designated license issued to a holder of
20 a catering license, there shall be a fee of forty dollars for each day
21 identified in the special designated license. Such fee shall be submitted
22 with the application for the special designated license, collected by the
23 commission, and remitted to the State Treasurer for credit to the General
24 Fund. The applicant shall be exempt from the provisions of the Nebraska
25 Liquor Control Act requiring an application or renewal fee and the
26 provisions of the act requiring the expiration of forty-five days from
27 the time the application is received by the commission prior to the
28 issuance of a license, if granted by the commission. The retail
29 licensees, craft brewery licensees, microdistillery licensees, farm
30 winery licensees, holders of manufacturer's licenses issued pursuant to
31 subsection (2) of section 53-123.01, municipal corporations,

1 organizations, and nonprofit corporations enumerated in subsection (1) of
2 this section seeking a special designated license shall file an
3 application on such forms as the commission may prescribe. Such forms
4 shall contain, along with other information as required by the
5 commission, (a) the name of the applicant, (b) the premises for which a
6 special designated license is requested, identified by street and number
7 if practicable and, if not, by some other appropriate description which
8 definitely locates the premises, (c) the name of the owner or lessee of
9 the premises for which the special designated license is requested, (d)
10 sufficient evidence that the holder of the special designated license, if
11 issued, will carry on the activities and business authorized by the
12 license for himself, herself, or itself and not as the agent of any other
13 person, group, organization, or corporation, for profit or not for
14 profit, (e) a statement of the type of activity to be carried on during
15 the time period for which a special designated license is requested, and
16 (f) sufficient evidence that the activity will be supervised by persons
17 or managers who are agents of and directly responsible to the holder of
18 the special designated license.

19 (4) No special designated license provided for by this section shall
20 be issued by the commission without the approval of the local governing
21 body. The local governing body may establish criteria for approving or
22 denying a special designated license. The local governing body may
23 designate an agent to determine whether a special designated license is
24 to be approved or denied. Such agent shall follow criteria established by
25 the local governing body in making his or her determination. The
26 determination of the agent shall be considered the determination of the
27 local governing body unless otherwise provided by the local governing
28 body. For purposes of this section, the local governing body shall be the
29 city or village within which the premises for which the special
30 designated license is requested are located or, if such premises are not
31 within the corporate limits of a city or village, then the local

1 governing body shall be the county within which the premises for which
2 the special designated license is requested are located.

3 (5) The application for a special designated license, the approval
4 of the local governing body, and the proper fees shall be received by the
5 commission at least ten working days prior to the event for which the
6 application is submitted. The commission shall not process an application
7 which does not comply with this subsection, except that the executive
8 director of the commission may waive this requirement for an applicant
9 who is not licensed under the Nebraska Liquor Control Act.

10 (6) ~~(5)~~ If the applicant meets the requirements of this section, a
11 special designated license shall be granted and issued by the commission
12 for use by the holder of the special designated license. All statutory
13 provisions and rules and regulations of the commission that apply to a
14 retail licensee shall apply to the holder of a special designated license
15 with the exception of such statutory provisions and rules and regulations
16 of the commission so designated by the commission and stated upon the
17 issued special designated license, except that the commission may not
18 designate exemption of sections 53-123.01 to 53-123.03, 53-123.14,
19 53-169, 53-171, and 53-180 to 53-180.07. The decision of the commission
20 shall be final. If the applicant does not qualify for a special
21 designated license, the application shall be denied by the commission.

22 (7) ~~(6)~~ A special designated license issued by the commission shall
23 be mailed or delivered to the city, village, or county clerk who shall
24 deliver such license to the licensee upon receipt of any fee or tax
25 imposed by such city, village, or county.

26 Sec. 4. Section 53-134.01, Revised Statutes Cumulative Supplement,
27 2016, is amended to read:

28 53-134.01 (1) The holder of a Class C license may obtain a limited
29 bottling endorsement for such license as prescribed in this section. The
30 endorsement shall be issued for the same period and may be renewed in the
31 same manner as the Class C license. A limited bottling endorsement may

1 not be used in conjunction with a special designated license.

2 (2) A licensee desiring to obtain a limited bottling endorsement for
3 a license shall file with the commission an application upon such forms
4 as the commission prescribes and a fee of three hundred dollars payable
5 to the commission.

6 (3) The holder of a limited bottling endorsement may sell beer for
7 consumption off the licensed premises in sealed containers filled as
8 provided in this subsection if:

9 (a) The sale occurs on the licensed premises of the licensee during
10 the hours the licensee is authorized to sell beer;

11 (b) The licensee uses sanitary containers purchased by the customer
12 from the licensee or exchanged for containers previously purchased by the
13 customer from the licensee. The containers shall prominently display the
14 endorsement holder's trade name or logo or some other mark that is unique
15 to the endorsement holder and shall hold no more than sixty-four ~~thirty-~~
16 ~~two~~ ounces;

17 (c) The licensee seals the container in a manner designed so that it
18 is visibly apparent whether the sealed container has been tampered with
19 or opened or seals the container and places the container in a bag
20 designed so that it is visibly apparent whether the sealed container has
21 been tampered with or opened; and

22 (d) The licensee provides a dated receipt to the customer and
23 attaches a copy of the dated receipt to the sealed container or, if the
24 sealed container is placed in a bag, to the bag.

25 Sec. 5. Section 53-135, Revised Statutes Cumulative Supplement,
26 2016, is amended to read:

27 53-135 A retail license issued by the commission and outstanding
28 shall ~~may~~ be automatically renewed by the commission without formal
29 application upon payment of the renewal fee and license fee if payable to
30 the commission prior to or within thirty days after the expiration of the
31 license unless the local governing body requests in writing that the

1 commission hold a hearing to determine if due to a change in
2 circumstances the applicant should file an application to be processed as
3 set forth in section 53-131. The payment shall be an affirmative
4 representation and certification by the licensee that all answers
5 contained in an application, if submitted, would be the same in all
6 material respects as the answers contained in the last previous
7 application. The commission may at any time require a licensee to submit
8 an application, and the commission shall at any time require a licensee
9 to submit an application if requested in writing to do so by the local
10 governing body.

11 If a licensee files an application form in triplicate original upon
12 seeking renewal of his or her license, the application shall be processed
13 as set forth in section 53-131.

14 Sec. 6. Section 53-168, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 53-168 (1) It shall be unlawful for any person having a retail
17 license to sell beer to accept credit for the purchase of beer from any
18 manufacturer or wholesaler of beer and for any person having a retail
19 license to sell alcoholic liquor or any officer, associate, member,
20 representative, or agent of such licensee to accept, receive, or borrow
21 money or anything else of value or to accept or to receive credit, other
22 than merchandising credit in the ordinary course of business for a period
23 not to exceed thirty days, directly or indirectly, from (a) any person,
24 partnership, limited liability company, or corporation engaged in
25 manufacturing or wholesaling such liquor, (b) any person connected with
26 or in any way representing such manufacturer or wholesaler, (c) any
27 member of the family of such manufacturer or wholesaler, (d) any
28 stockholders in any corporation engaged in manufacturing or wholesaling
29 such liquor, or (e) any officer, manager, agent, member, or
30 representative of such manufacturer or wholesaler.

31 (2) It shall be unlawful for any manufacturer or wholesaler to give

1 or lend money or otherwise loan or extend credit, except the
2 merchandising credit referred to in subsection (1) of this section,
3 directly or indirectly, to any such licensee or to the manager,
4 representative, agent, member, officer, or director of such licensee. It
5 shall be unlawful for any wholesaler to participate in any manner in a
6 merchandising and coupon plan of any manufacturer involving alcoholic
7 liquor and the redemption in cash. The redemption of any merchandising
8 and coupon plan involving cash shall be made by the manufacturer to the
9 consumer.

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

14 (4) It shall not be a violation of subsection (1) or (2) of this
15 section for a manufacturer or wholesaler to sell or provide alcoholic
16 liquor exclusively or in minimum quantities in containers bearing a
17 private label or to sell or provide alcoholic liquor in containers
18 bearing a generic label to a wholesaler or retailer.

19 (5) It shall not be a violation of subsection (1) or (2) of this
20 section for a wholesaler or retailer to accept or purchase from a
21 manufacturer or wholesaler alcoholic liquor exclusively or in minimum
22 quantities in containers bearing a private label or for a wholesaler or
23 retailer to accept or purchase from a manufacturer or wholesaler
24 alcoholic liquor in containers bearing a generic label.

25 (6)(a) It shall be unlawful for a wholesaler to sell any alcoholic
26 liquor to a person having a retail license to sell alcoholic liquor that
27 has a payment on an account for alcoholic liquor which is more than
28 thirty-four days overdue according to the records of the commission. Each
29 delivery of alcoholic liquor shall be accompanied by an invoice stating
30 the date of purchase. If a person having a retail license to sell
31 alcoholic liquor fails to provide payment in full to a wholesaler for a

1 payment on an account for alcoholic liquor on or before the thirty-fourth
2 day after the date of purchase, the wholesaler shall immediately report
3 that fact in writing, including by electronic mail or facsimile
4 transmission, to the commission.

5 (b) A retail licensee may submit a detailed electronic or paper
6 statement and supporting documents to the commission and the wholesaler
7 to dispute a violation of subdivision (a) of this subsection and the
8 inclusion of the retail licensee on the list required by subdivision (c)
9 of this subsection. The commission may review the submitted materials and
10 may hold a hearing with reasonable notice to the retail and wholesale
11 licensee and opportunity to appear and defend and make a determination as
12 to whether to include the retail licensee on the list.

13 (c) The commission shall keep an updated list of retail licensees
14 with overdue accounts reported under this subsection on the web site of
15 the commission. The list shall be updated daily.

16 (7) The commission shall not accept the voluntary cancellation or
17 suspension of a retail license for the sale of alcoholic liquor or allow
18 such a retail license to be renewed if the licensee is listed on the web
19 site of the commission under subsection (6) of this section.

20 (8) A person that has a retail license to sell alcoholic liquor
21 which is expired or has been canceled by the commission shall not be
22 eligible to hold any other license under the Nebraska Liquor Control Act
23 if the licensee is listed on the web site of the commission under
24 subsection (6) of this section.

25 (9) It shall be unlawful for a wholesaler to accept a postdated
26 check, a note, or a memorandum for the sale of alcoholic liquor. It shall
27 be unlawful for a wholesaler to participate in a scheme to assist the
28 retail licensee to sell alcoholic liquor to violate this section.

29 Sec. 7. Section 53-1,100, Revised Statutes Cumulative Supplement,
30 2016, is amended to read:

31 53-1,100 (1) Any person (a) who imports alcoholic liquor for

1 distribution as a wholesaler or distributes or sells alcoholic liquor at
2 any place within the state without having first obtained a valid license
3 to do so under the Nebraska Liquor Control Act, (b) who manufactures
4 alcoholic liquor other than spirits within the state without having first
5 obtained a valid license to do so under the act, (c) who makes any false
6 statement or otherwise violates any of the provisions of the act in
7 obtaining any license under the act, (d) who, having obtained a license
8 under the act, violates any of the provisions of the act with respect to
9 the manufacture, possession, distribution, or sale of alcoholic liquor or
10 with respect to the maintenance of the licensed premises, or (e) who
11 violates any other provision of the act for which a penalty is not
12 otherwise provided, shall for a first offense be guilty of a Class IV
13 misdemeanor and for a second or subsequent offense shall be guilty of a
14 Class II misdemeanor and subject to subsection (5) of this section, if
15 applicable.

16 (2) Any person who manufactures spirits at any place within the
17 state without having first obtained a valid license to do so under the
18 act shall be guilty of a Class I misdemeanor for a first offense and a
19 Class IV felony for a second or subsequent offense and subject to
20 subsection (5) of this section, if applicable.

21 (3) Each day any person engages in business as a manufacturer,
22 wholesaler, or retailer in violation of the act shall constitute a
23 separate offense.

24 (4) In any prosecution in which a person is charged with an offense
25 arising out of the failure to obtain a valid license as provided in
26 subdivision (1)(a) or (b) or subsection (2) of this section, evidence of
27 the failure of the accused to produce such license upon demand shall
28 constitute prima facie proof that a license has not been issued by the
29 commission to such person.

30 (5)(a) For a second violation described in this section occurring
31 within four years after the date of the first violation, the commission,

1 in its discretion, may order that the licensee be required to suspend
2 sales of alcoholic liquor for a period of time not to exceed forty-eight
3 hours.

4 (b) For a third or subsequent violation described in this section
5 occurring within four years after the date of the first violation, the
6 commission, in its discretion, may order that the licensee be required to
7 suspend sales of alcoholic liquor for a period of time not to exceed
8 fifteen days.

9 (c) For any licensee which has no violation described in this
10 section for a period of four years consecutively, any violation shall be
11 treated as a new first violation.

12 Sec. 8. Section 53-1,104, Revised Statutes Cumulative Supplement,
13 2016, is amended to read:

14 53-1,104 (1) Any licensee which sells or permits the sale of any
15 alcoholic liquor not authorized under the terms of such license on the
16 licensed premises or in connection with such licensee's business or
17 otherwise shall be subject to suspension, cancellation, or revocation of
18 such license by the commission.

19 (2) When an order suspending a license to sell alcoholic liquor
20 becomes final, the licensee may elect to pay a cash penalty to the
21 commission in lieu of suspending sales of alcoholic liquor for the
22 designated period if such election is not prohibited by order of the
23 commission. Except as otherwise provided in subsection (3) of this
24 section, for the first such suspension for any licensee, the penalty
25 shall be fifty dollars per day, and for a second or any subsequent
26 suspension occurring within four years after the date of the first
27 suspension, the penalty shall be one hundred dollars per day and the
28 commission, in its discretion, may order that the licensee be required to
29 suspend sales of alcoholic liquor for a period of time not to exceed
30 forty-eight hours and that the licensee may not elect to pay a cash
31 penalty. The commission may use the required suspension of sales of

1 alcoholic liquor penalty either alone or in conjunction with suspension
2 periods for which the licensee may elect to pay a cash penalty.

3 (3)(a) For a second suspension for violation of section 53-180 or
4 53-180.02 occurring within four years after the date of the first
5 suspension, the commission, in its discretion, may order that the
6 licensee be required to suspend sales of alcoholic liquor for a period of
7 time not to exceed forty-eight hours and that the licensee may not elect
8 to pay a cash penalty. The commission may use the required suspension of
9 sales of alcoholic liquor penalty either alone or in conjunction with
10 suspension periods for which the licensee may elect to pay a cash
11 penalty. For purposes of this subsection, second suspension for violation
12 of section 53-180 shall include suspension for a violation of section
13 53-180.02 following suspension for a violation of section 53-180 and
14 second suspension for violation of section 53-180.02 shall include
15 suspension for a violation of section 53-180 following suspension for a
16 violation of section 53-180.02;

17 (b) For a third or subsequent suspension for violation of section
18 53-180 or 53-180.02 occurring within four years after the date of the
19 first suspension, the commission, in its discretion, may order that the
20 licensee be required to suspend sales of alcoholic liquor for a period of
21 time not to exceed fifteen days and that the licensee may not elect to
22 pay a cash penalty. The commission may use the required suspension of
23 sales of alcoholic liquor penalty either alone or in conjunction with
24 suspension periods for which the licensee may elect to pay a cash
25 penalty. For purposes of this subsection, third or subsequent suspension
26 for violation of section 53-180 shall include suspension for a violation
27 of section 53-180.02 following suspension for a violation of section
28 53-180 and third or subsequent suspension for violation of section
29 53-180.02 shall include suspension for a violation of section 53-180
30 following suspension for a violation of section 53-180.02; and

31 (c) For a first suspension based upon a finding that a licensee or

1 an employee or agent of the licensee has been convicted of possession of
2 a gambling device on a licensee's premises in violation of sections
3 28-1107 to 28-1111, the commission, in its discretion, may order that the
4 licensee be required to suspend sales of alcoholic liquor for thirty days
5 and that the licensee may not elect to pay a cash penalty. For a second
6 or subsequent suspension for such a violation of sections 28-1107 to
7 28-1111 occurring within four years after the date of the first
8 suspension, the commission shall order that the license be canceled.

9 (4) For any licensee which has no violation for a period of four
10 years consecutively, any suspension shall be treated as a new first
11 suspension.

12 (5) The election provided for in subsection (2) of this section
13 shall be filed with the commission in writing one week before the
14 suspension is ordered to commence and shall be accompanied by payment in
15 full of the sum required by this section. If such election has not been
16 received by the commission by the close of business one week before the
17 day such suspension is ordered to commence, it shall be conclusively
18 presumed that the licensee has elected to close for the period of the
19 suspension and any election received later shall be absolutely void and
20 the payment made shall be returned to the licensee. The election shall be
21 made on a form prescribed by the commission. The commission shall remit
22 all funds collected under this section to the State Treasurer for
23 distribution in accordance with Article VII, section 5, of the
24 Constitution of Nebraska.

25 (6) Recognizing that suspension of the license of a licensee
26 domiciled outside of the state poses unique enforcement difficulties, the
27 commission may, at its discretion, mandate that a licensee domiciled
28 outside of the state pay the cash penalty found in subsection (2) of this
29 section rather than serve the suspension.

30 Sec. 9. Section 53-1,115, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 53-1,115 (1) A copy of the rule, regulation, order, or decision of
2 the commission denying an application or suspending, canceling, or
3 revoking a license or of any notice required by any proceeding before it,
4 certified under the seal of the commission, shall be served upon each
5 party of record to the proceeding before the commission. Service upon any
6 attorney of record for any such party shall be deemed to be service upon
7 such party. Each party appearing before the commission shall enter his or
8 her appearance and indicate to the commission his or her address for such
9 service. The mailing of a copy of any rule, regulation, order, or
10 decision of the commission or of any notice by the commission, in the
11 proceeding, to such party at such address shall be deemed to be service
12 upon such party.

13 (2) Within thirty days after the service of any rule, regulation,
14 order, or decision of the commission denying an application or
15 suspending, canceling, or revoking any license upon any party to the
16 proceeding, as provided for by subsection (1) of this section, such party
17 may apply for a rehearing with respect to any matters determined by the
18 commission. The commission shall receive and consider such application
19 for a rehearing within thirty days after its filing with the executive
20 director of the commission. If such application for rehearing is granted,
21 the commission shall proceed as promptly as possible to consider the
22 matters presented by such application. No appeal shall be allowed from
23 any decision of the commission except as provided in section 53-1,116.

24 (3) Upon final disposition of any proceeding, costs shall be paid by
25 the party or parties against whom a final decision is rendered. Costs may
26 be taxed or retaxed to local governing bodies as well as individuals.
27 Only one rehearing referred to in subsection (2) of this section shall be
28 granted by the commission on application of any one party.

29 (4) For purposes of this section, party of record means:

30 (a) In the case of an administrative proceeding before the
31 commission on the application for a retail, craft brewery, or

1 microdistillery license:

2 (i) The applicant;

3 (ii) Each individual protesting the issuance of such license
4 pursuant to subdivision (1)(b) of section 53-133;

5 (iii) The local governing body if it is entering an appearance to
6 protest the issuance of the license or if it is requesting a hearing
7 pursuant to subdivision (1)(c) of section 53-133; and

8 (iv) The commission;

9 (b) In the case of an administrative proceeding before a local
10 governing body to cancel or revoke a retail, craft brewery, or
11 microdistillery license:

12 (i) The licensee; and

13 (ii) The local governing body; and

14 (c) In the case of an administrative proceeding before the
15 commission to suspend, cancel, or revoke a retail, craft brewery, or
16 microdistillery license:

17 (i) The licensee; and

18 (ii) The commission.

19 Sec. 10. Section 53-504, Revised Statutes Cumulative Supplement,
20 2016, is amended to read:

21 53-504 (1) The Nebraska Beer Industry Promotional Fund is created.
22 The fund shall consist of money credited pursuant to this section, fees
23 received from shipping licenses issued to beer manufacturers pursuant to
24 subsection (2) of section 53-123.15, gifts, grants, bequests, and any
25 money appropriated by the Legislature. For administrative purposes, the
26 fund shall be located in the Department of Agriculture.

27 (2) Beginning July 1, 2016, in addition to the annual license fee
28 imposed by section 53-124.01, each holder of a craft brewery license
29 shall pay an annual fee in the amount of two hundred fifty dollars to the
30 Nebraska Liquor Control Commission or shall opt out of paying the
31 additional fee on forms provided by the commission. Fees collected

1 pursuant to this subsection shall be remitted to the State Treasurer for
2 credit to the Nebraska Beer Industry Promotional Fund.

3 (3) The Department of Agriculture, at the direction of and in
4 cooperation with the Nebraska Craft Brewery Board, shall use the Nebraska
5 Beer Industry Promotional Fund to develop and maintain programs for the
6 research and advancement of the beer brewing process, the marketing and
7 promotion of the beer industry in Nebraska, and the marketing and
8 promotion of agricultural products and their byproducts grown and
9 produced in Nebraska for use in the beer industry. Such expenditures may
10 include, but are not limited to, all necessary funding for the employment
11 of experts in the field of beer brewing and business development, as
12 deemed necessary by the board, and programs to carry out the purposes of
13 this subsection. None of the money credited to the Nebraska Beer Industry
14 Promotional Fund may be used for any type of compensation for any
15 employee of a licensee or an entity representing licensees under the
16 Nebraska Liquor Control Act or for lobbying purposes.

17 (4) Money in the Nebraska Beer Industry Promotional Fund not
18 expended during any fiscal year may be reappropriated for the ensuing
19 biennium. Any money in the fund available for investment shall be
20 invested by the state investment officer pursuant to the Nebraska Capital
21 Expansion Act and the Nebraska State Funds Investment Act.

22 Sec. 11. Section 59-1401, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 59-1401 Sections 59-1401 to 59-1406 and sections 12 and 14 to 18 of
25 this act shall be known and may be cited as the Music Licensing Agency
26 Act. ~~As used in sections 59-1401 to 59-1406, person means any individual,~~
27 ~~resident or nonresident of this state, and every domestic, foreign, or~~
28 ~~alien partnership, limited liability company, society, association, or~~
29 ~~corporation and the words performing rights refer to public performance~~
30 ~~for profit.~~

31 Sec. 12. For purposes of the Music Licensing Agency Act:

1 (1) Copyright owner means the owner of a copyright of a nondramatic
2 musical work recognized and enforceable under the copyright laws of the
3 United States pursuant to 17 U.S.C. 101 et seq., as such sections existed
4 on January 1, 2018, and does not include the owner of a copyright in a
5 motion picture or audiovisual work or in part of a motion picture or
6 audiovisual work;

7 (2) Music licensing agency means an association or corporation that
8 licenses the public performance of nondramatic musical works on behalf of
9 copyright owners;

10 (3) Performing right means the right to perform a copyrighted
11 nondramatic musical work publicly for profit;

12 (4) Person means any individual, resident or nonresident of this
13 state, and every domestic, foreign, or alien partnership, limited
14 liability company, society, association, corporation, or music licensing
15 agency;

16 (5) Proprietor means the owner of a retail establishment,
17 restaurant, inn, bar, tavern, sports or entertainment facility, or other
18 similar place of business or professional office located in this state in
19 which the public may assemble and in which nondramatic musical works or
20 similar copyrighted works may be performed, broadcast, or otherwise
21 transmitted for the enjoyment of members of the public there assembled;
22 and

23 (6) Royalty means the fees payable to a copyright owner for a
24 performing right.

25 Sec. 13. Section 59-1403, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 59-1403 ~~There From and after August 10, 1945,~~ there is hereby
28 levied and there shall be collected a tax for the act or privilege of
29 selling, licensing, or otherwise disposing in this state of performing
30 rights in any musical composition, which has been copyrighted under the
31 laws of the United States, in an amount equal to three percent of the

1 gross receipts of all such sales, licenses, or other dispositions of
2 performing rights in this state payable to the Department of Revenue
3 ~~Secretary of State on or before March 15, 1946, with respect to all such~~
4 ~~gross receipts for the portion of the calendar year 1945 from August 10,~~
5 ~~1945, and annually thereafter, on or before March 15 of each succeeding~~
6 year with respect to the gross receipts of the preceding calendar year.
7 ~~At the time of paying the said tax the Secretary of State shall issue a~~
8 ~~receipt therefor in duplicate, one of which shall be given to the~~
9 ~~taxpayer and one filed with the State Treasurer at the time the tax~~
10 ~~collected is paid by the Secretary of State to the state treasury. The~~
11 ~~department Secretary of State shall adopt and promulgate publish~~ rules
12 and regulations not in conflict with this section herewith, as well as a
13 form of return and any other forms necessary to carry out the ~~provisions~~
14 of this section.

15 Sec. 14. (1) Beginning January 1, 2019, a music licensing agency
16 shall not license or attempt to license the use of or collect or attempt
17 to collect any compensation with regard to any sale, license, or other
18 disposition of a performing right unless the music licensing agency
19 registers and files annually, on or before February 15, with the
20 Department of Revenue an electronic copy of each variation of the
21 performing-rights agreement providing for the payment of royalties made
22 available from the music licensing agency to any proprietor within this
23 state. The registration shall be valid for the calendar year. The
24 department shall charge a late fee of ten thousand dollars for each
25 forty-five-day period which has passed since February 15 of the
26 registration year when a music licensing agency fails to renew a
27 registration or engages in business without registration. The department
28 shall remit the fees collected pursuant to this section to the State
29 Treasurer for credit to the Department of Revenue Enforcement Fund.

30 (2) Each registered music licensing agency shall make available
31 electronically to proprietors the most current available list of members

1 and affiliates represented by the music licensing agency and the most
2 current available list of the performed works that the music licensing
3 agency licenses.

4 Sec. 15. (1) Beginning January 1, 2019, no music licensing agency
5 may enter into, or offer to enter into, a contract for the payment of
6 royalties by a proprietor unless at least seventy-two hours prior to the
7 execution of that contract it provides to the proprietor or the
8 proprietor's employees, in writing, the following:

9 (a) A schedule of the rates and terms of royalties under the
10 contract; and

11 (b) Notice that the proprietor is entitled to the information filed
12 with the Department of Revenue pursuant to section 14 of this act.

13 (2) Beginning January 1, 2019, a contract for the payment of
14 royalties executed in this state shall:

15 (a) Be in writing;

16 (b) Be signed by the parties; and

17 (c) Include, at least, the following information:

18 (i) The proprietor's name and business address;

19 (ii) The name and location of each place of business to which the
20 contract applies;

21 (iii) The duration of the contract; and

22 (iv) The schedule of rates and terms of the royalties to be
23 collected under the contract, including any sliding scale or schedule for
24 any increase or decrease of those rates for the duration of the contract.

25 Sec. 16. (1) Beginning January 1, 2019, before seeking payment or a
26 contract for payment of royalties for the use of copyrighted works by
27 that proprietor, a representative or agent for a music licensing agency
28 shall identify himself or herself to the proprietor or the proprietor's
29 employees, disclose that he or she is acting on behalf of a music
30 licensing agency, and disclose the purpose for being on the premises.

31 (2) A representative or agent of a music licensing agency shall not:

1 (a) Use obscene, abusive, or profane language when communicating
2 with a proprietor or his or her employees;

3 (b) Communicate by telephone or inperson with a proprietor other
4 than at the proprietor's place of business during the hours when the
5 proprietor's business is open to the public unless otherwise authorized
6 by the proprietor or the proprietor's agents, employees, or
7 representatives;

8 (c) Engage in any coercive conduct, act, or practice that is
9 substantially disruptive to a proprietor's business;

10 (d) Use or attempt to use any unfair or deceptive act or practice in
11 negotiating with a proprietor; or

12 (e) Communicate with an unlicensed proprietor about licensing
13 performances of musical works at the proprietor's establishment after
14 receiving notification in writing from an attorney representing the
15 proprietor that all further communications related to the licensing of
16 the proprietor's establishment by the music licensing agency should be
17 addressed to the attorney. However, the music licensing agency may resume
18 communicating directly with the proprietor if the attorney fails to
19 respond to communications from the music licensing agency within sixty
20 days or the attorney becomes nonresponsive for a period of sixty days or
21 more.

22 Sec. 17. The Department of Revenue shall inform proprietors of
23 their rights and responsibilities regarding the public performance of
24 copyrighted music as part of the business licensing service.

25 Sec. 18. Nothing in the Music Licensing Agency Act may be construed
26 to prohibit a music licensing agency from conducting an investigation to
27 determine the existence of music use by a proprietor's business or
28 informing a proprietor of the proprietor's obligations under the
29 copyright laws of the United States pursuant to 17 U.S.C. 101 et seq., as
30 such sections existed on January 1, 2018.

31 Sec. 19. Section 59-1404, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 59-1404 Upon compliance with the Music Licensing Agency Act,
3 ~~provisions of sections 59-1401 to 59-1406~~ the copyright owner, and his or
4 her proprietors, their assigns and licensees, of a nondramtic musical
5 work compositions copyrighted under the laws of the United States shall
6 be entitled to all the benefits thereof.

7 Sec. 20. Section 59-1405, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 59-1405 All music licensing agencies ~~persons~~ who sell, license the
10 use of, or in any manner whatsoever dispose of, in this state, the
11 performing rights in or to any copyrighted musical composition shall
12 refrain from discriminating in price or terms between licensees similarly
13 situated, except ; ~~Provided, however,~~ that differentials based upon
14 applicable business factors which justify different prices or terms shall
15 not be considered discriminations within the meaning of this section.
16 Nothing ; ~~and provided further, that nothing~~ contained in this section
17 shall prevent price changes from time to time by reason of changing
18 conditions affecting the market for or marketability of performing
19 rights.

20 Sec. 21. Section 59-1406, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 59-1406 Any person violating the Music Licensing Agency Act ~~sections~~
23 ~~59-1401 to 59-1406~~ shall be fined an amount not less than five ~~one~~
24 hundred dollars and not more than two ~~one~~ thousand dollars. Multiple
25 violations on a single day may be considered separate violations.

26 Sec. 22. Sections 6 and 25 of this act become operative on January
27 1, 2019. The other sections of this act become operative on their
28 effective date.

29 Sec. 23. If any section in this act or any part of any section is
30 declared invalid or unconstitutional, the declaration shall not affect
31 the validity or constitutionality of the remaining portions.

1 Sec. 24. Original sections 53-118, 53-1,115, 59-1401, 59-1403,
2 59-1404, 59-1405, and 59-1406, Reissue Revised Statutes of Nebraska, and
3 sections 53-123.15, 53-124.11, 53-134.01, 53-135, 53-1,100, 53-1,104, and
4 53-504, Revised Statutes Cumulative Supplement, 2016, are repealed.

5 Sec. 25. Original section 53-168, Reissue Revised Statutes of
6 Nebraska, is repealed.

7 Sec. 26. Since an emergency exists, this act takes effect when
8 passed and approved according to law.