

AMENDMENTS TO LB404

Introduced by Vargas, 7.

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 4 and 5 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 4 and 5
11 of this act apply.

12 Sec. 3. Section 53-103.14, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 53-103.14 (1) Franchise or agreement, with reference to the
15 relationship between a manufacturer and wholesaler, includes one or more
16 of the following:

17 (a) ~~(1)~~ A commercial relationship of a definite duration or
18 continuing indefinite duration which is not required to be in writing;

19 (b) ~~(2)~~ A relationship by which the wholesaler is granted the right
20 to offer and sell one or more of the manufacturer's brands by the
21 manufacturer;

22 (c) ~~(3)~~ A relationship by which the franchise, as an independent
23 business, constitutes a component of the manufacturer's distribution
24 system;

25 (d) ~~(4)~~ A relationship by which the operation of the wholesaler's
26 business is substantially associated with the manufacturer's brand,
27 advertising, or other commercial symbol designating the manufacturer; and

1 (e) ~~(5)~~ A relationship by which the operation of the wholesaler's
2 business is substantially reliant on the manufacturer for the continued
3 supply of beer.

4 (2) Except as provided in subsection (5) of section 53-222,
5 franchise or agreement does not mean a small producer contract entered
6 into or renewed on or after January 31, 2024.

7 Sec. 4. Small producer means a manufacturer of beer that produces
8 at or below the maximum limit set forth in subsection (1) of section
9 53-123.14.

10 Sec. 5. Small producer contract means a contract between a small
11 producer and a wholesaler, which:

12 (1) Is freely negotiated;

13 (2) Is in writing, regardless of the term;

14 (3) Is executed by both parties;

15 (4) Identifies the geographic territory and specific brands to be
16 distributed by the wholesaler;

17 (5) Specifies termination and renewal provisions; and

18 (6) Is filed with the commission.

19 Sec. 6. Section 53-103.41, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 53-103.41 Wholesaler means a person importing or causing to be
22 imported into the state or purchasing or causing to be purchased within
23 the state alcoholic liquor for sale or resale to retailers licensed under
24 the Nebraska Liquor Control Act, whether the business of the wholesaler
25 is conducted under the terms of a franchise or any other form of an
26 agreement with a manufacturer or manufacturers, or a small producer
27 contract with a small producer, or who has caused alcoholic liquor to be
28 imported into the state or purchased in the state from a manufacturer or
29 manufacturers and was licensed to conduct such a business by the
30 commission on May 1, 1970, or has been so licensed since that date.

31 Wholesaler includes a distributor, distributorship, and jobber.

1 Sec. 7. Section 53-201, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 53-201 (1) The purpose of sections 53-201 to 53-223 and sections 10
4 and 11 of this act is to provide fair, efficient, and competitive
5 distribution of beer by (a) ~~(1)~~ regulating the termination, expiration,
6 and renewal of distribution agreements between beer suppliers and beer
7 wholesalers, (b) ~~(2)~~ promoting a distribution system in which each beer
8 wholesaler will devote reasonable efforts and resources to sales,
9 distribution, and quality control of the beer it sells, (c) ~~(3)~~ promoting
10 the continued availability of good quality beer for the consumers of
11 Nebraska through orderly marketing and vigorous interbrand competition,
12 (d) ~~(4)~~ preventing a beer supplier from unfairly depriving a beer
13 wholesaler of the value of the investment the wholesaler made in its
14 business in terms of money, time, effort, and skill, (e) ~~and (5)~~
15 controlling the sale of malt beverages in this state and facilitating the
16 lawful and orderly marketing of malt beverages pursuant to the police
17 powers of this state, and (f) ensuring small producers and the brands of
18 such producers have commercially reasonable access to the retail market.

19 (2) Except as expressly allowed by the commission, nothing in
20 sections 53-201 to 53-223 and sections 10 and 11 of this act shall allow
21 for more than one wholesaler to sell the same brand in the same
22 territory.

23 Sec. 8. Section 53-202, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 53-202 For purposes of sections 53-201 to 53-223 and sections 10 and
26 11 of this act, the definitions found in sections 53-203 to 53-215 and
27 sections 10 and 11 of this act shall be used.

28 Sec. 9. Section 53-204, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 53-204 (1) Agreement shall mean any agreement between a wholesaler
31 and a supplier, whether oral or written, by which a wholesaler is granted

1 the right to purchase and sell a brand or brands of beer sold by a
2 supplier.

3 (2) Except as provided in subsection (5) of section 53-222,
4 agreement shall not include a small producer contract entered into or
5 renewed after January 31, 2024.

6 Sec. 10. Small producer has the same meaning as in section 4 of
7 this act.

8 Sec. 11. Small producer contract has the same meaning as section 5
9 of this act.

10 Sec. 12. Section 53-216, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 53-216 A supplier shall not:

13 (1) Fail to provide each wholesaler of the supplier's brand or
14 brands with a written agreement which contains the entire agreement with
15 the wholesaler and designates a specific, exclusive sales territory. Any
16 agreement which is in existence on April 18, 1989, shall be renewed in a
17 manner consistent with sections 53-201 to 53-223 and sections 10 and 11
18 of this act, and the provisions of such sections may be incorporated by
19 reference in the agreement. Nothing in such sections shall prevent a
20 supplier from making a one-time appointment, for a period not to exceed
21 ninety days, of a wholesaler to temporarily service a sales territory not
22 designated to another wholesaler until such time as a wholesaler is
23 appointed by the supplier. The wholesaler who is designated to service
24 the sales territory during the period of temporary service shall not be
25 in violation of such sections and, with respect to the temporary sales
26 territory, shall not have any of the rights provided under sections
27 53-218 and 53-220. The temporary service period may be extended beyond
28 ninety days by the Nebraska Liquor Control Commission if justifiable
29 circumstances exist as determined by the commission;

30 (2) Fix, maintain, establish, or unduly influence the price at which
31 a wholesaler shall be required to sell any beer;

1 (3) Enter into an additional agreement with any other wholesaler for
2 or to sell to any other wholesaler the same brand or brands of beer in
3 the same sales territory or any portion thereof or to sell directly to
4 any retailer in this state;

5 (4) Coerce or attempt to coerce any wholesaler to accept delivery of
6 any beer or other commodity which has not been ordered by the wholesaler,
7 except that a supplier may impose reasonable inventory requirements upon
8 a wholesaler if the requirements are made in good faith and are generally
9 applied to other similarly situated Nebraska wholesalers having an
10 agreement with the supplier;

11 (5) Coerce or attempt to coerce any wholesaler to accept delivery of
12 any beer or other commodity ordered by a wholesaler if the order was
13 canceled by the wholesaler in accordance with acceptable procedures;

14 (6) Coerce or attempt to coerce any wholesaler to do any illegal act
15 or to violate any law, rule, or regulation by threatening to amend,
16 modify, cancel, terminate, or refuse to renew any agreement existing
17 between the supplier and wholesaler;

18 (7) Require a wholesaler to assent to any condition, stipulation, or
19 provision limiting the wholesaler's right to sell the brand or brands of
20 beer or other products of any other supplier unless the acquisition of
21 the brand or brands or products of another supplier would materially
22 impair or adversely affect the wholesaler's quality of service, sales, or
23 ability to compete effectively in representing the brand or brands of the
24 supplier presently being sold by the wholesaler. The supplier shall have
25 the burden of proving that such acquisition of such other brand or brands
26 or products would have such effect;

27 (8) Require a wholesaler to purchase one or more brands of beer or
28 other products in order for the wholesaler to purchase another brand or
29 brands of beer for any reason. A wholesaler that has agreed to distribute
30 a brand or brands before April 18, 1989, shall continue to distribute the
31 brand or brands in conformance with sections 53-201 to 53-223 and

1 sections 10 and 11 of this act;

2 (9) Require a wholesaler to submit audited profit and loss
3 statements, audited balance sheets, or audited financial records as a
4 condition of renewal or continuation of an agreement. A supplier may
5 require profit and loss statements, balance sheets, or financial records
6 which are certified by the wholesaler or an officer thereof;

7 (10) Coerce, compel, or require a wholesaler to provide or divulge
8 specific information regarding the wholesaler's individual accounts or
9 customers or his or her exclusive relationship with them or coerce,
10 compel, or require a wholesaler to provide specific information
11 concerning competitive brands;

12 (11) Use the threat of losing or withholding its credit as a means
13 of compelling a wholesaler to standards of performance in any area of
14 business except that area directly relating to credit;

15 (12) Withhold delivery of beer ordered by a wholesaler or change a
16 wholesaler's quota of a brand or brands if the withholding or change is
17 not made in good faith;

18 (13) Require a wholesaler by any means directly to participate in or
19 contribute to any local or national advertising fund controlled, directly
20 or indirectly, by a supplier;

21 (14) Willfully discriminate, directly or indirectly, in price,
22 programs, or terms of sale offered to franchisees if the effect of such
23 discrimination may be to substantially lessen competition or to give to
24 one holder of a franchise any economic, business, or competitive
25 advantage not offered to all holders of the same or similar franchise.
26 This subdivision shall not govern dock prices;

27 (15) Take any action against a wholesaler who files a complaint
28 regarding an alleged violation by the supplier of a federal, state, or
29 local law, rule, or regulation in retaliation for such complaint;

30 (16) Restrict or inhibit, directly or indirectly, the right of free
31 association among wholesalers for any lawful purpose;

1 (17) Require or prohibit, without just cause, any change in the
2 manager or successor manager of any wholesaler who has been approved by
3 the supplier as of or subsequent to April 18, 1989. If a wholesaler
4 changes an approved manager or successor manager, a supplier shall not
5 require or prohibit the change unless the person selected by the
6 wholesaler fails to meet the reasonable qualifications for managers of
7 Nebraska wholesalers of the supplier, which reasonable qualifications
8 previously have been consistently applied to similarly situated Nebraska
9 wholesalers by the supplier. The supplier shall have the burden of
10 proving that such person fails to meet such reasonable qualifications and
11 that the qualifications have been consistently applied to similarly
12 situated Nebraska wholesalers;

13 (18) Upon written notice of intent to transfer the wholesaler's
14 business, interfere with, prevent, or unreasonably delay for a period of
15 sixty days or more the transfer of the wholesaler's business if the
16 proposed transferee is a designated member; or

17 (19) Upon written notice of intent to transfer the wholesaler's
18 business other than to a designated member, withhold consent to or
19 approval of, or unreasonably delay for a period of sixty days or more
20 after receipt of all material information reasonably requested of the
21 wholesaler a response to a request by the wholesaler for, any transfer of
22 a wholesaler's business if the proposed transferee meets the reasonable
23 qualifications required by the supplier for similarly situated Nebraska
24 wholesalers. The supplier shall have the burden of proving that the
25 proposed transferee fails to meet such reasonable qualifications and that
26 the qualifications have been consistently applied to similarly situated
27 Nebraska wholesalers.

28 Sec. 13. Section 53-217, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 53-217 A wholesaler shall not:

31 (1) Fail to devote such efforts as are required in the agreement

1 between the supplier and wholesaler within the supplier's designated
2 sales territory relating to the sale and distribution of the supplier's
3 brand or brands of beer which the wholesaler has been granted the right
4 to sell or distribute;

5 (2) Sell or deliver beer to a retail licensee located outside the
6 sales territory designated to the wholesaler by the supplier of a
7 particular brand or brands of beer, except that during a period of
8 temporary service interruption impacting a particular sales territory, a
9 wholesaler who normally services the impacted sales territory shall file
10 with the Nebraska Liquor Control Commission and give to the affected
11 supplier written notice designating the specific wholesaler or
12 wholesalers, not disapproved by the supplier, who will service the sales
13 territory during the period of temporary service interruption and the
14 approximate length of time of the service interruption. Each wholesaler
15 designated to temporarily service a sales territory shall be a wholesaler
16 who has a current agreement with a supplier for the brand or brands
17 affected. When the temporary service interruption is over, the wholesaler
18 who normally services the sales territory shall notify the commission,
19 the supplier, and the wholesaler or wholesalers servicing the sales
20 territory on a temporary basis of this fact in writing, and any
21 wholesaler servicing the sales territory on a temporary basis shall cease
22 servicing the sales territory upon receipt of the notice. A wholesaler
23 who is designated to service a sales territory during a period of
24 temporary service shall not be in violation of sections 53-201 to 53-223
25 and sections 10 and 11 of this act and, with respect to the sales
26 territory, shall not have any of the rights provided under sections
27 53-218 and 53-220; or

28 (3) Transfer his or her business without giving the supplier written
29 notice of intent to transfer the business and, when required by sections
30 53-201 to 53-223, receiving the supplier's approval for the proposed
31 transfer. Consent or approval from the supplier shall not be required for

1 any transfer of the wholesaler's business to a designated member or any
2 transfer of less than control of the wholesaler's business. The
3 wholesaler shall give the supplier written notice of any change in
4 ownership of the wholesaler.

5 Sec. 14. Section 53-218, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 53-218 (1) Notwithstanding any agreement and except as otherwise
8 provided for in sections 53-201 to 53-223 and sections 10 and 11 of this
9 act, a supplier shall not amend or modify an agreement, cause a
10 wholesaler to resign from an agreement, or cancel, terminate, fail to
11 renew, or refuse to continue under an agreement unless the supplier has:

12 (a) Satisfied the applicable notice requirements of subsection (3)
13 of this section;

14 (b) Acted in good faith; and

15 (c) Good cause for the amendment, modification, forced resignation,
16 cancellation, termination, nonrenewal, or discontinuance.

17 (2) For each amendment, modification, cancellation, termination,
18 nonrenewal, or discontinuance, the supplier shall have the burden of
19 proving that it has acted in good faith, that the notice requirements
20 under this section have been complied with, and that there was good cause
21 for the amendment, modification, cancellation, termination, nonrenewal,
22 or discontinuance.

23 (3) Notwithstanding any agreement and except as to new products and
24 as otherwise provided in this section and in addition to the time limits
25 set forth in subdivision (4)(e) of this section, the supplier shall
26 furnish written notice of the amendment, modification, cancellation,
27 termination, nonrenewal, or discontinuance of an agreement to the
28 wholesaler not less than thirty days before the effective date of the
29 amendment, modification, cancellation, termination, nonrenewal, or
30 discontinuance. The notice shall be sent by certified mail and shall
31 contain:

1 (a) A statement of intention to amend, modify, cancel, terminate,
2 not renew, or discontinue the agreement;

3 (b) A statement of the reason for the amendment, modification,
4 cancellation, termination, nonrenewal, or discontinuance; and

5 (c) The date on which the amendment, modification, cancellation,
6 termination, nonrenewal, or discontinuance shall take effect.

7 (4) Notwithstanding any agreement, good cause shall exist for the
8 purposes of a cancellation, termination, nonrenewal, or discontinuance
9 under subdivision (1)(c) of this section when:

10 (a) There is a failure by the wholesaler to comply with a provision
11 of the agreement which is both reasonable and of material significance to
12 the business relationship between the wholesaler and the supplier;

13 (b) The supplier first acquired knowledge of the failure described
14 in subdivision (a) of this subsection not more than twenty-four months
15 before the date notification was given pursuant to subsection (3) of this
16 section;

17 (c) The wholesaler was given notice by the supplier of failure to
18 comply with the agreement within twenty-four months of such failure;

19 (d) The wholesaler was afforded a reasonable opportunity to assert
20 good faith efforts to comply with the agreement within the time limits
21 provided for in subdivision (e) of this subsection; and

22 (e) The wholesaler has been afforded thirty days in which to submit
23 a plan of corrective action to comply with the agreement and an
24 additional ninety days to cure such noncompliance in accordance with the
25 plan.

26 (5) Notwithstanding subsections (1) and (3) of this section, a
27 supplier may cancel, terminate, fail to renew, or discontinue an
28 agreement immediately upon written notice given in the manner and
29 containing the information required by subsection (3) of this section if:

30 (a) The wholesaler becomes insolvent, files or has filed against it
31 a petition under any bankruptcy or receivership law, makes an assignment

1 for the benefit of creditors, or is dissolved or liquidated and such
2 action materially affects the wholesaler's ability to remain in business;

3 (b) The wholesaler's state or federal license is revoked or
4 suspended by the appropriate regulatory agency and the wholesaler cannot
5 service the wholesaler's sales territory for more than sixty-one days;

6 (c) The wholesaler or a partner, a member, or an individual who owns
7 ten percent or more of the partnership, the limited liability company, or
8 the stock of a corporate wholesaler has been convicted of a felony under
9 the United States Code or the laws of any state which reasonably may
10 adversely affect the goodwill or interest of the wholesaler or supplier.
11 An existing stockholder, partner, or member or a designated member shall
12 have, subject to the provisions of sections 53-201 to 53-223 and sections
13 10 and 11 of this act, the right to purchase the partnership interest,
14 the limited liability company member interest, or the stock of the
15 offending partner or stockholder, and if the sale is completed prior to
16 conviction, the provisions of this subdivision shall not apply; or

17 (d) The supplier and wholesaler agree to a termination.

18 (6) Notwithstanding subsections (1), (3), and (4) of this section,
19 upon not less than fifteen days' written notice given in the manner and
20 containing the information required by subsection (3) of this section, a
21 supplier may cancel, terminate, fail to renew, or discontinue an
22 agreement if:

23 (a) There was intentional fraudulent conduct relating to a material
24 matter on the part of the wholesaler in dealings with the supplier or its
25 producers. The supplier shall have the burden of proving intentional
26 fraudulent conduct relating to a material matter on the part of the
27 wholesaler;

28 (b) The wholesaler failed to confine its sales of a brand or brands
29 to retailers in its designated sales territory. This subdivision shall
30 not apply if there is a dispute between two or more wholesalers as to the
31 boundaries of the assigned territory and the boundaries cannot be

1 determined by a reading of the description contained in the agreements
2 between the supplier and the wholesalers;

3 (c) A wholesaler who has failed to pay for beer ordered and
4 delivered in accordance with established terms with the supplier fails to
5 make full payment within two business days after receipt of written
6 notice of the delinquency and demand for immediate payment from the
7 supplier;

8 (d) A wholesaler intentionally has made a transfer of the
9 wholesaler's business, other than a transfer to a designated member or
10 pursuant to a loan agreement or debt instrument, without prior written
11 notice to the supplier and has failed, within thirty days from the
12 receipt of written notice from the supplier of its intent to terminate on
13 the ground of such transfer, to reverse the transfer of the wholesaler's
14 business;

15 (e) A wholesaler intentionally has made a transfer of his or her
16 business, other than a transfer to a designated member, although the
17 wholesaler has prior to the transfer received from the supplier a timely
18 notice of disapproval of the transfer in accordance with sections 53-201
19 to 53-223 and sections 10 and 11 of this act; or

20 (f) The wholesaler intentionally ceases or ceases for a period of
21 more than thirty-one days to carry on business with respect to any of the
22 supplier's brand or brands previously serviced by a wholesaler in its
23 sales territory designated by the supplier unless such cessation is due
24 to a force beyond the control of the wholesaler or to a labor dispute and
25 the wholesaler has made good faith efforts to overcome such events. This
26 subdivision shall affect only that brand or brands with respect to which
27 the wholesaler ceased to carry on business.

28 (7) Notwithstanding subsections (1), (3), (5), and (6) of this
29 section, a supplier may cancel, terminate, not renew, or discontinue an
30 agreement upon not less than thirty days' written notice if the supplier
31 discontinues production or discontinues distribution in this state of all

1 the brands sold by the supplier to the wholesaler. Nothing in this
2 section shall prohibit a supplier from (a) upon not less than thirty
3 days' written notice, discontinuing the distribution of any particular
4 brand or package of beer or (b) conducting test marketing of a new brand
5 of beer or of a brand of beer which is not currently being sold in this
6 state if the supplier has notified the Nebraska Liquor Control Commission
7 in writing of its plans to test market. The notice to the commission
8 shall describe the market area in which the test will be conducted, the
9 name or names of the wholesaler or wholesalers who will be selling the
10 beer, the name or names of the brand of beer being tested, and the period
11 of time, not to exceed eighteen months, during which the testing will
12 take place.

13 (8) Each wholesaler who sells beer to a retailer in this state shall
14 service for the purpose of quality control all the beer it sells to that
15 retailer. Each wholesaler shall, to the extent permitted by the Nebraska
16 Liquor Control Act and the rules and regulations adopted and promulgated
17 pursuant to such act:

18 (a) Rotate the beer it sold to a retailer no less frequently than
19 may be specified from time to time by the brand owner so that beer
20 produced first will be sold first;

21 (b) Clean and maintain tap equipment and provide related services as
22 may be specified from time to time by the brand owner;

23 (c) Remove and replace with the same kind of beer any beer it sold
24 to a retailer which has not been resold to a consumer within the time
25 limits specified by the brand owner; and

26 (d) Provide whatever additional quality control services and comply
27 with whatever additional quality control requirements are specified in
28 writing from time to time by the brand owner, subject to the conditions
29 that those services and requirements are reasonable and are reasonably
30 related to promotion of quality control and that the wholesaler has
31 received written notice of the services to be provided and the

1 requirements to be satisfied and has been granted a reasonable time
2 within which to comply.

3 (9) Except in the event of a temporary service interruption, a
4 wholesaler shall not sell beer (a) to a retailer who does not have a
5 location within the wholesaler's sales territory at which the retailer is
6 entitled to resell beer to consumers or who the wholesaler knows or
7 reasonably should know does not have a location within the wholesaler's
8 sales territory at which the retailer is entitled to resell beer or (b)
9 to any person who the wholesaler has reason to believe will sell or
10 supply all or part of such beer to any retailer who does not have a
11 location within the wholesaler's sales territory at which the retailer is
12 entitled to resell beer. During a period of temporary service
13 interruption impacting a particular wholesaler's sales territory, the
14 wholesaler who normally services the sales territory shall file with the
15 Nebraska Liquor Control Commission and serve on his or her suppliers a
16 written notice stating that a temporary service interruption has occurred
17 and indicating the anticipated duration of the temporary service
18 interruption. After receiving such notice the supplier may designate
19 another wholesaler or wholesalers to service the sales territory during
20 the period of temporary service interruption. After the temporary service
21 interruption, the wholesaler who normally services the sales territory
22 shall file with the commission and serve on each wholesaler providing
23 temporary service and each supplier a written notice stating that the
24 temporary service interruption has ended. Each wholesaler providing
25 temporary service shall cease servicing the sales territory after
26 receiving such notice.

27 Sec. 15. Section 53-220, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 53-220 A supplier that, in violation of section 53-218 or 53-219,
30 (1) has amended, modified, canceled, terminated, or refused to renew any
31 agreement, (2) has caused a wholesaler to resign from an agreement, or

1 (3) has interfered with, prevented, or unreasonably delayed or, when
2 required by sections 53-201 to 53-223 and sections 10 and 11 of this act,
3 has unreasonably withheld or unreasonably delayed consent to or approval
4 of any assignment or transfer of a wholesaler's business shall pay the
5 wholesaler reasonable compensation for the diminished value of the
6 wholesaler's business, including any ancillary business which has been
7 negatively affected by the act of the supplier. The value of the
8 wholesaler's business or ancillary business shall include, but not be
9 limited to, any goodwill. Nothing in such sections shall give rise to a
10 claim against the supplier or wholesaler by any proposed purchaser of the
11 wholesaler's business.

12 Sec. 16. Section 53-221, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 53-221 A wholesaler may not waive any of the rights granted in
15 sections 53-201 to 53-223 and sections 10 and 11 of this act, and the
16 provisions of any agreement which would have such an effect shall be null
17 and void. Nothing in such sections shall be construed to limit or
18 prohibit good faith dispute settlements voluntarily entered into by the
19 parties.

20 Sec. 17. Section 53-222, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 53-222 (1) Sections 53-201 to 53-223 and sections 10 and 11 of this
23 act shall apply to agreements in existence on April 18, 1989, and
24 agreements entered into or renewed after such date but shall not apply to
25 small producer contracts entered into or renewed after January 31, 2024,
26 except as expressly provided in sections 53-201 to 53-223 and sections 10
27 and 11 of this act.

28 (2) A transferee of a wholesaler that continues in business as a
29 wholesaler shall have the benefit of and be bound by all terms and
30 conditions of the agreement or the small producer contract entered into
31 or renewed after January 31, 2024, with the supplier in effect on the

1 date of the transfer. A transfer of a wholesaler's business which
2 requires the supplier's consent or approval but is disapproved by the
3 supplier shall be null and void.

4 (3) A successor to a supplier that continues in business as a
5 supplier shall be bound by all terms and conditions of each distribution
6 agreement or each small producer contract entered into or renewed after
7 January 31, 2024, that the predecessor was a party to at the time of
8 transfer with respect to each brand the successor continues to make
9 available for sale in this state.

10 (4) Except for a contract that meets the requirements of subsection
11 (5) of this section, on or after January 31, 2024, a wholesaler shall
12 only be granted the right to purchase and sell a brand or brands of beer
13 sold by a small producer through a small producer contract. A copy of a
14 small producer contract shall be filed with the Nebraska Liquor Control
15 Commission by the wholesaler within ten days after execution of such
16 contract.

17 (5) Nothing in this section shall affect the terms of any written,
18 fully executed contract or agreement in existence as of January 30, 2024,
19 including if such contract or agreement is renewed, amended, or
20 superseded, between a wholesaler and a small producer if:

21 (a) The contract or agreement:

22 (i) Identifies the brand or brands of the small producer to be sold
23 by the wholesaler;

24 (ii) Identifies the territory within which the wholesaler is
25 authorized to distribute such brand or brands; and

26 (iii) Specifies termination and renewal provisions; and

27 (b) The brand or brands included in the contract or agreement and
28 the territory covered are filed with the commission in accordance with
29 rules and regulations.

30 Sec. 18. Section 53-223, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 53-223 (1) If a supplier engages in conduct prohibited under
2 sections 53-201 to 53-223 and sections 10 and 11 of this act, a
3 wholesaler with whom the supplier has an agreement may maintain a civil
4 action against the supplier to recover actual damages reasonably incurred
5 as the result of the prohibited conduct. If a wholesaler engages in
6 conduct prohibited under such sections, a supplier with whom the
7 wholesaler has an agreement may maintain a civil action against the
8 wholesaler to recover actual damages reasonably incurred as the result of
9 the prohibited conduct.

10 (2) A supplier who violates any provision of such sections shall be
11 liable for all actual damages, all court costs, and, in the court's
12 discretion, reasonable attorney's fees incurred by a wholesaler as a
13 result of the violation. A wholesaler who violates any provision of such
14 sections shall be liable for all actual damages, all court costs, and, in
15 the court's discretion, reasonable attorney's fees incurred by the
16 supplier as a result of the violation.

17 (3) A supplier or wholesaler may bring an action for declaratory
18 judgment for determination of any controversy arising pursuant to such
19 sections.

20 (4) Upon proper application to the court, a supplier or wholesaler
21 may obtain injunctive relief against any violation of such sections. If
22 the court grants injunctive relief or issues a temporary restraining
23 order, bond shall be posted.

24 (5) The remedies provided by such sections are not exclusive, and
25 nothing contained in such sections shall abolish any cause of action or
26 remedy available to the supplier or the wholesaler existing on April 18,
27 1989.

28 (6) Any legal action taken under such sections or relating to a
29 dispute arising out of an agreement or breach thereof or over the
30 provisions of an agreement shall be filed in a state or federal court
31 located in Nebraska, which state court is located in, or which federal

1 court has jurisdiction and venue of, the county in which the wholesaler
2 maintains its principal place of business in this state.

3 Sec. 19. Original sections 53-103, 53-103.14, 53-103.41, 53-201,
4 53-202, 53-204, 53-216, 53-217, 53-218, 53-220, 53-221, 53-222, and
5 53-223, Reissue Revised Statutes of Nebraska, and section 53-101, Revised
6 Statutes Cumulative Supplement, 2022, are repealed.