

LEGISLATIVE BILL 376

Approved by the Governor April 21, 2023

Introduced by Lowe, 37.

A BILL FOR AN ACT relating to the Nebraska Liquor Control Act; to amend sections 53-103, 53-117.06, 53-123.11, and 53-168, Reissue Revised Statutes of Nebraska, and sections 53-101, 53-123.16, 53-124.11, 53-169, and 53-171, Revised Statutes Cumulative Supplement, 2022; to define terms; to require reports by certain licensees prior to the sale or shipment of any alcoholic liquor into the state; to provide for a fee; to authorize certain licensees to use channel pricing and to enter into sponsorship or advertising agreements; to provide for rules and regulations; to allow farm wineries to obtain additional retail licenses; to allow microdistilleries to engage in direct sales and store products at offsite facilities; to change provisions related to special designated licenses; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

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

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

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

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

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

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

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

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

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

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

(2) To be the primary source of supply in the United States, the licensee causing such alcoholic liquor to be imported into Nebraska must be the first source, such as the manufacturer or the source closest to the manufacturer, in the channel of commerce from which the product can be secured by Nebraska licensed wholesalers.

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

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

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

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

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

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

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

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

(2) If the primary source of supply in the United States for such alcoholic liquor changes, the new licensed manufacturer, licensed wholesaler, or holder of a shipping license importing such alcoholic liquor shall submit the information required pursuant to subsection (1) of this section at least thirty days prior to the shipment of such alcoholic liquor into this state. The licensed manufacturer, licensed wholesaler, or holder of a shipping license shall also remit to the commission any applicable fee set by the commission not

to exceed thirty dollars.

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

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

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

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

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

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

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

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

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

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

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

53-117.06 Any money collected by the commission pursuant to section 53-117.05 or 53-167.02 or section 5 of this act shall be credited to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund, which fund is hereby created. The purpose of the fund shall be to cover any administrative costs, including salary and benefits, incurred by the commission in producing or distributing the material referred to in such sections and to defray the costs associated with electronic regulatory transactions, industry education events, enforcement training, and equipment for regulatory work. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Liquor Control Commission Rule and Regulation Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

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

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

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

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

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

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

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

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

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

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

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

(i) Sell alcoholic liquor authorized under a farm winery license not in its original package, such as sangria or wine slushies, to a person twenty-one years of age or older for consumption off the premises if (i) the alcoholic liquor is (A) not partially consumed and (B) in a labeled and sealed container with a tamper-evident lid, cap, or seal, as approved by the commission, and (ii) for alcoholic liquor transported in a motor vehicle, the alcoholic liquor is placed in the trunk of the motor vehicle or the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk. A farm winery which sells alcoholic liquor authorized under a farm winery license not in its original package for consumption off the premises shall provide notice to the commission during a farm winery licensee's initial licensure or at the time of the annual renewal of such license regarding such sales.

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

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

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

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

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

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

Sec. 10. Section 53-123.16, Revised Statutes Cumulative Supplement, 2022, is amended to read:

53-123.16 (1) Any person who operates a microdistillery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a microdistillery shall permit the licensee to produce a maximum of one hundred thousand gallons of liquor per year in the aggregate from all physical locations comprising the licensed premises. For purposes of this section, licensed premises may include up to five separate physical locations. A microdistillery may also sell to licensed wholesalers for sale and distribution to licensed retailers. A microdistillery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of microdistilled product for consumption on or off the licensed premises, except that the sale of any beer, wine, or alcoholic liquor, other than microdistilled product manufactured by the microdistillery licensee, by the drink for consumption on the microdistillery premises shall require the appropriate retail license. Any license held by the operator of a microdistillery shall be subject to the act. A holder of a microdistillery license may obtain an annual catering license pursuant to section 53-124.12, a special designated license pursuant to section 53-124.11, an entertainment district license pursuant to section 53-123.17, or a promotional farmers market special designated license pursuant to section 53-124.16. The commission may, upon the conditions it determines, grant to any microdistillery licensed under this section a special license authorizing the microdistillery to purchase and to import, from such persons as are entitled to sell the same, wines or spirits to be used solely as ingredients and for the sole purpose of blending with and flavoring microdistillery products as a part of the microdistillation process.

(2) A holder of a microdistillery license may directly sell for resale up to five hundred gallons per calendar year of microdistilled products produced at its licensed premises directly to retail licensees located in the State of Nebraska which hold the appropriate retail license if the holder of the microdistillery license:

(a) Self-distributes its microdistilled products utilizing only persons employed by the microdistillery licensee; and

(b) Complies with all relevant statutes, rules, and regulations that apply

to Nebraska wholesalers regarding distribution of microdistilled products.

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

(4) The commission may adopt and promulgate rules and regulations relating to the distribution rights of microdistillery licensees.

Sec. 11. Section 53-124.11, Revised Statutes Cumulative Supplement, 2022, is amended to read:

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

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

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

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

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

(4) No special designated license provided for by this section shall be issued by the commission without the approval of the local governing body. The local governing body may establish criteria for approving or denying a special designated license. The local governing body may designate an agent to determine whether a special designated license is to be approved or denied.

Such agent shall follow criteria established by the local governing body in making his or her determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body. For purposes of this section, the local governing body shall be the city or village within which the premises for which the special designated license is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be the county within which the premises for which the special designated license is requested are located.

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

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

Sec. 12. Section 53-168, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

Sec. 13. Section 53-169, Revised Statutes Cumulative Supplement, 2022, is amended to read:

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

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

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

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

Sec. 14. Section 53-171, Revised Statutes Cumulative Supplement, 2022, is amended to read:

53-171 (1) No person licensed as a wholesaler of alcoholic liquor shall be permitted to receive any retail license at the same time. No person licensed as a manufacturer shall be permitted to receive any retail license at the same time except as set forth in subsection (2) of section 53-123.01 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a manufacturer's license issued pursuant to such subsection to engage in the wholesale distribution of alcoholic liquor. No person licensed as a retailer of alcoholic liquor shall be permitted to receive any manufacturer's or wholesale license at the same time.

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

Sec. 15. Original sections 53-103, 53-117.06, 53-123.11, and 53-168, Reissue Revised Statutes of Nebraska, and sections 53-101, 53-123.16, 53-124.11, 53-169, and 53-171, Revised Statutes Cumulative Supplement, 2022, are repealed.

Sec. 16. Since an emergency exists, this act takes effect when passed and approved according to law.