

E AND R AMENDMENTS TO LB 1120

Introduced by Wishart, 27, Chairman Enrollment and Review

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

3           Section 1. Section 53-101, Revised Statutes Cumulative Supplement,  
4 2016, is amended to read:

5           53-101 Sections 53-101 to 53-1,122 and sections 3 and 4 of this act  
6 shall be known and may be cited as the Nebraska Liquor Control Act.

7           Sec. 2. Section 53-103, Revised Statutes Cumulative Supplement,  
8 2016, is amended to read:

9           53-103 For purposes of the Nebraska Liquor Control Act, the  
10 definitions found in sections 53-103.01 to 53-103.46 and section 3 of  
11 this act apply.

12           Sec. 3. Bottle club means an operation, whether formally organized  
13 as a club having a regular membership list, dues, officers, and meetings  
14 or not, keeping and maintaining premises where persons who have made  
15 their own purchases of alcoholic liquor congregate for the express  
16 purpose of consuming alcoholic liquor upon the payment of a fee or other  
17 consideration.

18           Sec. 4. (1) A bottle club may be operated by a club, an individual,  
19 a partnership, a limited liability company, or a corporation. An accurate  
20 and current membership list shall be maintained upon the licensed  
21 premises which contains the names and residences of the members but shall  
22 not be subject to disclosure except as required by court order or warrant  
23 or subpoena.

24           (2) A bottle club shall not operate on any day between the hours of  
25 5 a.m. and 6 a.m.

26           (3) The holder of a bottle club license shall not simultaneously  
27 hold another license under the Nebraska Liquor Control Act.

1           Sec. 5. Section 53-117, Revised Statutes Cumulative Supplement,  
2 2016, is amended to read:

3           53-117 The commission has the following powers, functions, and  
4 duties:

5           (1) To receive applications for and to issue licenses to and  
6 suspend, cancel, and revoke licenses of manufacturers, wholesalers,  
7 nonbeverage users, retailers, railroads including owners and lessees of  
8 sleeping, dining, and cafe cars, airlines, boats, bottle clubs, and  
9 pedal-pub vehicles in accordance with the Nebraska Liquor Control Act;

10           (2) To fix by rules and regulations the standards of manufacture of  
11 alcoholic liquor not inconsistent with federal laws in order to insure  
12 the use of proper ingredients and methods in the manufacture and  
13 distribution thereof and to adopt and promulgate rules and regulations  
14 not inconsistent with federal laws for the proper labeling of containers,  
15 barrels, casks, or other bulk containers or of bottles of alcoholic  
16 liquor manufactured or sold in this state. The Legislature intends, by  
17 the grant of power to adopt and promulgate rules and regulations, that  
18 the commission have broad discretionary powers to govern the traffic in  
19 alcoholic liquor and to enforce strictly all provisions of the act in the  
20 interest of sanitation, purity of products, truthful representations, and  
21 honest dealings in a manner that generally will promote the public health  
22 and welfare. All such rules and regulations shall be absolutely binding  
23 upon all licensees and enforceable by the commission through the power of  
24 suspension or cancellation of licenses, except that all rules and  
25 regulations of the commission affecting a club possessing any form of  
26 retail license shall have equal application to all such licenses or shall  
27 be void;

28           (3) To call upon other administrative departments of the state,  
29 county and municipal governments, county sheriffs, city police  
30 departments, village marshals, peace officers, and prosecuting officers  
31 for such information and assistance as the commission deems necessary in

1 the performance of its duties. The commission shall enter into an  
2 agreement with the Nebraska State Patrol in which the Nebraska State  
3 Patrol shall hire six new patrol officers and, from the entire Nebraska  
4 State Patrol, shall designate a minimum of six patrol officers who will  
5 spend a majority of their time in administration and enforcement of the  
6 Nebraska Liquor Control Act;

7 (4) To recommend to local governing bodies rules and regulations not  
8 inconsistent with law for the distribution and sale of alcoholic liquor  
9 throughout the state;

10 (5) To inspect or cause to be inspected any premises where alcoholic  
11 liquor is manufactured, distributed, or sold and, when sold on unlicensed  
12 premises or on any premises in violation of law, to bring an action to  
13 enjoin the use of the property for such purpose;

14 (6) To hear and determine appeals from orders of a local governing  
15 body in accordance with the act;

16 (7) To conduct or cause to be conducted an audit to inspect any  
17 licensee's records and books;

18 (8) In the conduct of any hearing or audit authorized to be held by  
19 the commission (a) to examine or cause to be examined, under oath, any  
20 licensee and to examine or cause to be examined the books and records of  
21 such licensee, (b) to hear testimony and take proof material for its  
22 information in the discharge of its duties under the act, and (c) to  
23 administer or cause to be administered oaths;

24 (9) To investigate the administration of laws in relation to  
25 alcoholic liquor in this and other states and to recommend to the  
26 Governor and through him or her to the Legislature amendments to the act;  
27 and

28 (10) To receive, account for, and remit to the State Treasurer state  
29 license fees and taxes provided for in the act.

30 Sec. 6. Section 53-117.07, Revised Statutes Cumulative Supplement,  
31 2016, is amended to read:

1           53-117.07 All proceedings for the suspension, cancellation, or  
2 revocation of licenses of manufacturers, wholesalers, nonbeverage users,  
3 craft breweries, microdistilleries, railroads, airlines, shippers, boats,  
4 bottle clubs, and pedal-pub vehicles shall be before the commission, and  
5 the proceedings shall be in accordance with rules and regulations adopted  
6 and promulgated by it not inconsistent with law. No such license shall be  
7 so suspended, canceled, or revoked except after a hearing by the  
8 commission with reasonable notice to the licensee and opportunity to  
9 appear and defend.

10           Sec. 7. Section 53-123, Revised Statutes Cumulative Supplement,  
11 2016, is amended to read:

12           53-123 Licenses issued by the commission shall be of the following  
13 types: (1) Manufacturer's license; (2) alcoholic liquor wholesale  
14 license, except beer; (3) beer wholesale license; (4) retail license; (5)  
15 railroad license; (6) airline license; (7) boat license; (8) nonbeverage  
16 user's license; (9) farm winery license; (10) craft brewery license; (11)  
17 shipping license; (12) special designated license; (13) catering license;  
18 (14) microdistillery license; (15) entertainment district license; ~~and~~  
19 (16) pedal-pub vehicle license; and (17) bottle club license.

20           Sec. 8. Section 53-123.15, Revised Statutes Cumulative Supplement,  
21 2016, is amended to read:

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

28           (2) The commission may issue a shipping license to a manufacturer.  
29 Such license shall allow the licensee to ship alcoholic liquor only to a  
30 licensed wholesaler. A person who receives a license pursuant to this  
31 subsection shall pay the fee required in sections 53-124 and 53-124.01

1 for a manufacturer's shipping license. Such fee shall be collected by the  
2 commission and be remitted to the State Treasurer for credit . ~~Fees~~  
3 ~~remitted prior to July 1, 2016, shall be credited~~ to the General Fund,  
4 except that the fee received for a shipping license issued to a beer  
5 manufacturer pursuant to this subsection . ~~Fees remitted beginning on~~  
6 ~~July 1, 2016,~~ shall be credited to the Nebraska Beer Industry Promotional  
7 Fund.

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

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

29 (5) The commission may issue a shipping license to any retailer who  
30 is licensed within or outside Nebraska, who is authorized to sell  
31 alcoholic liquor at retail in the state of domicile of the retailer, and

1 who is not a manufacturer if such retailer satisfies the requirements of  
2 subsections (7) through (9) of this section to ship alcoholic liquor from  
3 another state directly to a consumer in this state. A retailer who  
4 receives a license pursuant to this subsection shall pay the fee required  
5 in sections 53-124 and 53-124.01 for a retail direct sales shipping  
6 license. Such fee shall be collected by the commission and remitted to  
7 the State Treasurer for credit to the Winery and Grape Producers  
8 Promotional Fund.

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

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

19 (b) To permit and be subject to all of the powers granted by section  
20 53-164.01 to the commission or its duly authorized employees or agents  
21 for inspection and examination of the applicant's premises and records  
22 and to pay the actual expenses, excluding salary, reasonably attributable  
23 to such inspections and examinations made by duly authorized employees of  
24 the commission if within the United States; and

25 (c) That if the applicant violates any of the provisions of the  
26 application or the license, any section of the act, or any of the rules  
27 and regulations of the commission that apply to manufacturers, the  
28 commission may suspend, cancel, or revoke such shipping license for such  
29 period of time as it may determine.

30 (7) The application for a shipping license under subsection (4) or  
31 (5) of this section shall be in such form as the commission prescribes.

1 The application shall require an applicant which is a manufacturer, a  
2 craft brewery, a craft distillery, or a farm winery to identify the  
3 brands of alcoholic liquor that the applicant is requesting the authority  
4 to ship either into or within Nebraska. For all applicants, unless  
5 otherwise provided in this section, the application shall contain all  
6 provisions the commission deems proper and necessary to effectuate the  
7 purpose of any section of the act and the rules and regulations of the  
8 commission that apply to manufacturers or retailers and shall include,  
9 but not be limited to, provisions that the applicant, in consideration of  
10 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;

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 or  
23 retailers, the commission may suspend, cancel, or revoke such shipping  
24 license for such period of time as it may determine;

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

31 (e) That the applicant, if a manufacturer, craft brewery, craft

1 distillery, or farm winery, agrees to notify any wholesaler licensed in  
2 Nebraska that has been authorized to distribute such brands that the  
3 application has been filed for a shipping license. The notice shall be in  
4 writing and in a form prescribed by the commission. The commission may  
5 adopt and promulgate rules and regulations as it reasonably deems  
6 necessary to implement this subdivision, including rules and regulations  
7 that permit the holder of a shipping license under this subdivision to  
8 amend the shipping license by, among other things, adding or deleting any  
9 brands of alcoholic liquor identified in the shipping license.

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

12 (a) Only ship the brands of alcoholic liquor identified on the  
13 application;

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

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

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

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

26 (f) Cause the direct shipment of alcoholic liquor to be by approved  
27 common carrier only. The commission shall adopt and promulgate rules and  
28 regulations pursuant to which common carriers may apply for approval to  
29 provide common carriage of alcoholic liquor shipped by a holder of a  
30 shipping license issued pursuant to subsection (4) or (5) of this  
31 section. The rules and regulations shall include provisions that require



1 (i) the recipient to demonstrate, upon delivery, that he or she is at  
2 least twenty-one years of age, (ii) the recipient to sign an electronic  
3 or paper form or other acknowledgment of receipt as approved by the  
4 commission, and (iii) the commission-approved common carrier to submit to  
5 the commission such information as the commission may prescribe. The  
6 commission-approved common carrier shall refuse delivery when the  
7 proposed recipient appears to be under the age of twenty-one years and  
8 refuses to present valid identification. All holders of shipping licenses  
9 shipping alcoholic liquor pursuant to this subdivision shall affix a  
10 conspicuous notice in sixteen-point type or larger to the outside of each  
11 package of alcoholic liquor shipped within or into the State of Nebraska,  
12 in a conspicuous location, stating: CONTAINS ALCOHOLIC BEVERAGES;  
13 SIGNATURE OF PERSON AT LEAST 21 YEARS OF AGE REQUIRED FOR DELIVERY. Any  
14 delivery of alcoholic beverages to a minor by a common carrier shall  
15 constitute a violation by the common carrier. The common carrier and the  
16 holder of the shipping license shall be liable only for their independent  
17 acts.

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

25 (10) By July 1, 2014, the commission shall report to the General  
26 Affairs Committee of the Legislature the number of shipping licenses  
27 issued for license years 2013-14 and 2014-15. The report shall be made  
28 electronically.

29 Sec. 9. Section 53-124, Revised Statutes Cumulative Supplement,  
30 2016, is amended to read:

31 53-124 (1) At the time application is made to the commission for a

1 license of any type, the applicant shall pay the fee provided in section  
2 53-124.01 and, if the applicant is an individual, provide the applicant's  
3 social security number. The commission shall issue the types of licenses  
4 described in this section.

5 (2) There shall be an airline license, a boat license, a bottle club  
6 license, a pedal-pub vehicle license, and a railroad license. The  
7 commission shall charge one dollar for each duplicate of an airline  
8 license, a bottle club license, a pedal-pub vehicle license, or a  
9 railroad license.

10 (3)(a) There shall be a manufacturer's license for alcohol and  
11 spirits, for beer, and for wine. The annual fee for a manufacturer's  
12 license for beer shall be based on the barrel daily capacity as follows:

13 (i) 1 to 100 barrel daily capacity, or any part thereof, tier one;

14 (ii) 100 to 150 barrel daily capacity, tier two;

15 (iii) 150 to 200 barrel daily capacity, tier three;

16 (iv) 200 to 300 barrel daily capacity, tier four;

17 (v) 300 to 400 barrel daily capacity, tier five;

18 (vi) 400 to 500 barrel daily capacity, tier six;

19 (vii) 500 barrel daily capacity, or more, tier seven.

20 (b) For purposes of this subsection, daily capacity means the  
21 average daily barrel production for the previous twelve months of  
22 manufacturing operation. If no such basis for comparison exists, the  
23 manufacturing licensee shall pay in advance for the first year's  
24 operation a fee of five hundred dollars.

25 (4) There shall be five classes of nonbeverage users' licenses:  
26 Class 1, Class 2, Class 3, Class 4, and Class 5.

27 (5) In lieu of a manufacturer's, a retailer's, or a wholesaler's  
28 license, there shall be a license to operate issued for a craft brewery,  
29 a farm winery, or a microdistillery.

30 (6)(a) There shall be six classes of retail licenses:

31 (i) Class A: Beer only, for consumption on the premises;

1 (ii) Class B: Beer only, for consumption off the premises, sales in  
2 the original packages only;

3 (iii) Class C: Alcoholic liquor, for consumption on the premises and  
4 off the premises, sales in original packages only. If a Class C license  
5 is held by a nonprofit corporation, it shall be restricted to consumption  
6 on the premises only. A Class C license may have a sampling designation  
7 restricting consumption on the premises to sampling, but such designation  
8 shall not affect sales for consumption off the premises under such  
9 license;

10 (iv) Class D: Alcoholic liquor, including beer, for consumption off  
11 the premises, sales in the original packages only, except as provided in  
12 subdivision (6)(a)(vi) of this section and subsection (2) of section  
13 53-123.04;

14 (v) Class I: Alcoholic liquor, for consumption on the premises; and

15 (vi) Class J: Alcoholic liquor, including beer, for consumption off  
16 the premises, sales in the original packages only, for a retail licensee  
17 whose annual gross revenue from the sale of alcohol does not exceed  
18 twenty percent of the licensee's total annual gross revenue from all  
19 retail sales.

20 (b) All applicable license fees shall be paid by the applicant or  
21 licensee directly to the city or village treasurer in the case of  
22 premises located inside the corporate limits of a city or village and  
23 directly to the county treasurer in the case of premises located outside  
24 the corporate limits of a city or village.

25 (7) There shall be four types of shipping licenses as described in  
26 section 53-123.15: Manufacturers, vintage wines, manufacture direct  
27 sales, and retail direct sales.

28 (8) There shall be two types of wholesale licenses: Alcoholic liquor  
29 and beer only. The annual fee shall be paid for the first and each  
30 additional wholesale place of business operated in this state by the same  
31 licensee and wholesaling the same product.

1 (9) The license year, unless otherwise provided in the Nebraska  
2 Liquor Control Act, shall commence on May 1 of each year and shall end on  
3 the following April 30, except that the license year for a Class C  
4 license shall commence on November 1 of each year and shall end on the  
5 following October 31. During the license year, no license shall be issued  
6 for a sum less than the amount of the annual license fee as fixed in  
7 section 53-124.01, regardless of the time when the application for such  
8 license has been made, except that (a) when there is a purchase of an  
9 existing licensed business and a new license of the same class is issued  
10 or (b) upon the issuance of a new license for a location which has not  
11 been previously licensed, the license fee and occupation taxes shall be  
12 prorated on a quarterly basis as of the date of issuance.

13 Sec. 10. Section 53-124.01, Revised Statutes Cumulative Supplement,  
14 2016, is amended to read:

15 53-124.01 (1) The fees for annual licenses finally issued by the  
16 commission shall be as provided in this section and section 53-124.

17 (2) Airline license ... \$100

18 (3) Boat license ... \$50

19 (4) Bottle club license ... \$300

20 (5) {4} Manufacturer's license:

21 Class	Fee - In Dollars
22 Alcohol and spirits	1,000
23 Beer - tier one	100
24 Beer - tier two	200
25 Beer - tier three	350
26 Beer - tier four	500
27 Beer - tier five	650
28 Beer - tier six	700
29 Beer - tier seven	800
30 Wine	250

1	<u>(6)</u> <del>(5)</del> Nonbeverage user's license:	
2	Class	Fee - In Dollars
3	Class 1	5
4	Class 2	25
5	Class 3	50
6	Class 4	100
7	Class 5	250
8	<u>(7)</u> <del>(6)</del> Operator's license:	
9	Class	Fee - In Dollars
10	Craft brewery	250
11	Farm winery	250
12	Microdistillery	250
13	<u>(8)</u> <del>(7)</del> Pedal-pub vehicle license ...	\$50
14	<u>(9)</u> <del>(8)</del> Railroad license ...	\$100
15	<u>(10)</u> <del>(9)</del> Retail license:	
16	Class	Fee - In Dollars
17	Class A	100
18	Class B	100
19	Class C	300
20	Class D	200
21	Class I	250
22	Class J	50
23	<u>(11)</u> <del>(10)</del> Shipping license:	
24	Class	Fee - In Dollars
25	Manufacturer	1,000
26	Vintage wines	1,000
27	Manufacture direct sales	500
28	Retail direct sales	500
29	<u>(12)</u> <del>(11)</del> Wholesale license:	

1	Class	Fee - In Dollars
2	Alcoholic liquor	750
3	Beer	500

4       Sec. 11. Section 53-130, Revised Statutes Cumulative Supplement,  
5 2016, is amended to read:

6       53-130 (1) New licenses to manufacturers, wholesalers, railroads,  
7 airlines, boats, bottle clubs, pedal-pub vehicles, and nonbeverage users  
8 of alcoholic liquor may be issued by the commission upon (a) written  
9 application in duplicate filed in the manner and on such forms as the  
10 commission prescribes and in which the applicant for a beer wholesale  
11 license sets forth the sales territory in Nebraska in which it is  
12 authorized by a manufacturer or manufacturers to sell their brand or  
13 brands and the name of such brand or brands, (b) receipt of bond, (c)  
14 payment in advance of the nonrefundable application fee of forty-five  
15 dollars and the license fee, and (d) such notice and hearing as the  
16 commission fixes by its own order.

17       (2) A notice of such application shall be served upon the  
18 manufacturer or manufacturers listed in any application for a beer  
19 wholesale license and upon any existing wholesaler licensed to sell the  
20 brand or brands in the described sales territory.

21       (3) A license so issued may be renewed without formal application  
22 upon payment of license fees and a renewal fee of forty-five dollars  
23 prior to or within thirty days after the expiration of the license. The  
24 payment of such fees shall be an affirmative representation and  
25 certification by the licensee that all answers contained in an  
26 application, if submitted, would be the same in all material respects as  
27 the answers contained in the last previous application. The commission  
28 may at any time require a licensee to submit an application.

29       Sec. 12. Section 53-134.01, Revised Statutes Cumulative Supplement,  
30 2016, is amended to read:

1           53-134.01 (1) The holder of a Class C license may obtain a limited  
2 bottling endorsement for such license as prescribed in this section. The  
3 endorsement shall be issued for the same period and may be renewed in the  
4 same manner as the Class C license. A limited bottling endorsement may  
5 not be used in conjunction with a special designated license.

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

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

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

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

21           (c) The licensee seals the container in a manner designed so that it  
22 is visibly apparent whether the sealed container has been tampered with  
23 or opened or seals the container and places the container in a bag  
24 designed so that it is visibly apparent whether the sealed container has  
25 been tampered with or opened; and

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

29          Sec. 13. Section 53-1,115, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31          53-1,115 (1) A copy of the rule, regulation, order, or decision of

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

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

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

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

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



- 1 (i) The applicant;
- 2 (ii) Each individual protesting the issuance of such license  
3 pursuant to subdivision (1)(b) of section 53-133;
- 4 (iii) The local governing body if it is entering an appearance to  
5 protest the issuance of the license or if it is requesting a hearing  
6 pursuant to subdivision (1)(c) of section 53-133; and

7 (iv) The commission;

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

11 (i) The licensee; and

12 (ii) The local governing body; and

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

16 (i) The licensee; and

17 (ii) The commission.

18 Sec. 14. Section 59-1401, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20 59-1401 Sections 59-1401 to 59-1406 and sections 15 and 17 to 21 of  
21 this act shall be known and may be cited as the Music Licensing Agency  
22 Act. As used in sections 59-1401 to 59-1406, person means any individual,  
23 resident or nonresident of this state, and every domestic, foreign, or  
24 alien partnership, limited liability company, society, association, or  
25 corporation and the words performing rights refer to public performance  
26 for profit.

27 Sec. 15. For purposes of the Music Licensing Agency Act:

28 (1) Copyright owner means the owner of a copyright of a nondramatic  
29 musical work recognized and enforceable under the copyright laws of the  
30 United States pursuant to 17 U.S.C. 101 et seq., as such sections existed  
31 on January 1, 2018, and does not include the owner of a copyright in a

1 motion picture or audiovisual work or in part of a motion picture or  
2 audiovisual work;

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

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

8 (4) Person means any individual, resident or nonresident of this  
9 state, and every domestic, foreign, or alien partnership, limited  
10 liability company, society, association, corporation, or music licensing  
11 agency;

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

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

21 Sec. 16. Section 59-1403, Reissue Revised Statutes of Nebraska, is  
22 amended to read:

23 59-1403 ~~There From and after August 10, 1945, there is hereby~~  
24 ~~levied and there shall be collected a tax for the act or privilege of~~  
25 ~~selling, licensing, or otherwise disposing in this state of performing~~  
26 ~~rights in any musical composition, which has been copyrighted under the~~  
27 ~~laws of the United States, in an amount equal to three percent of the~~  
28 ~~gross receipts of all such sales, licenses, or other dispositions of~~  
29 ~~performing rights in this state, payable to the Department of Revenue~~  
30 ~~Secretary of State on or before March 15, 1946, with respect to all such~~  
31 ~~gross receipts for the portion of the calendar year 1945 from August 10,~~

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

11 Sec. 17. (1) Beginning January 1, 2019, a music licensing agency  
12 shall not license or attempt to license the use of or collect or attempt  
13 to collect any compensation with regard to any sale, license, or other  
14 disposition of a performing right unless the music licensing agency  
15 registers and files annually, on or before February 15, with the  
16 Department of Revenue an electronic copy of each variation of the  
17 performing-rights agreement providing for the payment of royalties made  
18 available from the music licensing agency to any proprietor within this  
19 state. The registration shall be valid for the calendar year. The  
20 department shall impose a fine for failure to renew or register in the  
21 amount of ten thousand dollars for each forty-five-day period which has  
22 passed since February 15 of the registration year if a music licensing  
23 agency fails to renew a registration or engages in business without  
24 registration.

25 (2) Each registered music licensing agency shall make available  
26 electronically to proprietors the most current available list of members  
27 and affiliates represented by the music licensing agency and the most  
28 current available list of the performed works that the music licensing  
29 agency licenses.

30 Sec. 18. (1) Beginning January 1, 2019, no music licensing agency  
31 may enter into, or offer to enter into, a contract for the payment of

1 royalties by a proprietor unless at least seventy-two hours prior to the  
2 execution of that contract it provides to the proprietor or the  
3 proprietor's employees, in writing, the following:

4 (a) A schedule of the rates and terms of royalties under the  
5 contract; and

6 (b) Notice that the proprietor is entitled to the information filed  
7 with the Department of Revenue pursuant to section 17 of this act.

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

10 (a) Be in writing;

11 (b) Be signed by the parties; and

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

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

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

16 (iii) The duration of the contract; and

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

20 Sec. 19. (1) Beginning January 1, 2019, before seeking payment or a  
21 contract for payment of royalties for the use of copyrighted works by  
22 that proprietor, a representative or agent for a music licensing agency  
23 shall identify himself or herself to the proprietor or the proprietor's  
24 employees, disclose that he or she is acting on behalf of a music  
25 licensing agency, and disclose the purpose for being on the premises.

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

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

29 (b) Communicate by telephone or in person with a proprietor other  
30 than at the proprietor's place of business during the hours when the  
31 proprietor's business is open to the public unless otherwise authorized

1 by the proprietor or the proprietor's agents, employees, or  
2 representatives;

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

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

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

17 Sec. 20. The Department of Revenue shall inform proprietors of their  
18 rights and responsibilities regarding the public performance of  
19 copyrighted music as part of the business licensing service.

20 Sec. 21. Nothing in the Music Licensing Agency Act may be construed  
21 to prohibit a music licensing agency from conducting an investigation to  
22 determine the existence of music use by a proprietor's business or  
23 informing a proprietor of the proprietor's obligations under the  
24 copyright laws of the United States pursuant to 17 U.S.C. 101 et seq., as  
25 such sections existed on January 1, 2018.

26 Sec. 22. Section 59-1404, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28 59-1404 Upon compliance with the Music Licensing Agency Act,  
29 provisions of sections 59-1401 to 59-1406 the copyright owner, and his or  
30 her proprietors, their assigns and licensees, of a nondramatic musical  
31 work compositions copyrighted under the laws of the United States shall

1 be entitled to all the benefits thereof.

2 Sec. 23. Section 59-1405, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

4 59-1405 All music licensing agencies persons who sell, license the  
5 use of, or in any manner whatsoever dispose of, in this state, the  
6 performing rights in or to any copyrighted musical composition shall  
7 refrain from discriminating in price or terms between licensees similarly  
8 situated, except ; ~~Provided, however,~~ that differentials based upon  
9 applicable business factors which justify different prices or terms shall  
10 not be considered discriminations within the meaning of this section.  
11 Nothing ; ~~and provided further, that nothing~~ contained in this section  
12 shall prevent price changes from time to time by reason of changing  
13 conditions affecting the market for or marketability of performing  
14 rights.

15 Sec. 24. Section 59-1406, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17 59-1406 Any person violating the Music Licensing Agency Act sections  
18 ~~59-1401 to 59-1406~~ shall be fined an amount not less than five one  
19 hundred dollars and not more than two one thousand dollars. Multiple  
20 violations on a single day may be considered separate violations.

21 Sec. 25. If any section in this act or any part of any section is  
22 declared invalid or unconstitutional, the declaration shall not affect  
23 the validity or constitutionality of the remaining portions.

24 Sec. 26. Original sections 53-1,115, 59-1401, 59-1403, 59-1404,  
25 59-1405, and 59-1406, Reissue Revised Statutes of Nebraska, and sections  
26 53-101, 53-103, 53-117, 53-117.07, 53-123, 53-123.15, 53-124, 53-124.01,  
27 53-130, and 53-134.01, Revised Statutes Cumulative Supplement, 2016, are  
28 repealed.

29 2. On page 1, strike lines 2 through 17 and insert "53-1,115,  
30 59-1401, 59-1403, 59-1404, 59-1405, and 59-1406, Reissue Revised Statutes  
31 of Nebraska, and sections 53-101, 53-103, 53-117, 53-117.07, 53-123,

1 53-123.15, 53-124, 53-124.01, 53-130, and 53-134.01, Revised Statutes  
2 Cumulative Supplement, 2016; to provide for licensure of bottle clubs and  
3 to define terms under the Nebraska Liquor Control Act; to provide and  
4 change provisions relating to fees; to change provisions relating to  
5 container size under a limited bottling endorsement and relating to  
6 rehearings as prescribed; to change provisions relating to music  
7 licensing; to name the Music Licensing Agency Act and to define terms  
8 under the act; to provide and change duties of the Secretary of State and  
9 the Department of Revenue; to require registration of music licensing  
10 agencies and filing of performing-rights agreements as prescribed; to  
11 provide duties relating to contracts; provide powers, duties, and  
12 limitations relating to collection of royalties; to provide for  
13 applicability; to change penalties; to harmonize provisions; to provide  
14 severability; and to repeal the original sections."