

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 274

Introduced by Lowe, 37.

Read first time January 12, 2021

Committee: General Affairs

1 A BILL FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 sections 53-101, 53-123, 53-123.11, 53-123.14, 53-123.16, 53-124.13,
3 and 53-134, Revised Statutes Cumulative Supplement, 2020; to provide
4 for a promotional farmers market special designated license; to
5 provide for a fee; to provide powers and duties; to harmonize
6 provisions; and to repeal the original sections.

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

1 Section 1. Section 53-101, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

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

5 Sec. 2. Section 53-123, Revised Statutes Cumulative Supplement,
6 2020, is amended to read:

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

17 Sec. 3. Section 53-123.11, Revised Statutes Cumulative Supplement,
18 2020, is amended to read:

19 53-123.11 (1) A farm winery license shall entitle the holder to:

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

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

25 (c) Permit a customer to remove one unsealed bottle of wine for
26 consumption off the premises. The licensee or his or her agent shall (i)
27 securely reseal such bottle and place the bottle in a bag designed so
28 that it is visibly apparent that the resealed bottle of wine has not been
29 opened or tampered with and (ii) provide a dated receipt to the customer
30 and attach to such bag a copy of the dated receipt for the resealed
31 bottle of wine. If the resealed bottle of wine is transported in a motor

1 vehicle, it must be placed in the trunk of the motor vehicle or the area
2 behind the last upright seat of such motor vehicle if the area is not
3 normally occupied by the driver or a passenger and the motor vehicle is
4 not equipped with a trunk;

5 (d) Ship wines produced at the farm winery by common carrier and
6 sold at retail to recipients in and outside the State of Nebraska, if the
7 output of such farm winery for each calendar year as reported to the
8 commission by December 31 of each year does not exceed thirty thousand
9 gallons. In the event such amount exceeds thirty thousand gallons, the
10 farm winery shall be required to use a licensed wholesaler to distribute
11 its wines for the following calendar year, except that this requirement
12 shall not apply to wines produced and sold onsite at the farm winery
13 pursuant to subdivision (1)(a) of this section;

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

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

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

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

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

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

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

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

9 (6) The holder of a farm winery license may obtain a promotional
10 farmers market special designated license pursuant to section 6 of this
11 act.

12 Sec. 4. Section 53-123.14, Revised Statutes Cumulative Supplement,
13 2020, is amended to read:

14 53-123.14 Any person who operates a craft brewery shall obtain a
15 license pursuant to the Nebraska Liquor Control Act. A license to operate
16 a craft brewery shall permit the production of a maximum of twenty
17 thousand barrels of beer per year in the aggregate from all physical
18 locations comprising the licensed premises. A craft brewery may also sell
19 to beer wholesalers for sale and distribution to licensed retailers. A
20 craft brewery license issued pursuant to this section shall be the only
21 license required by the Nebraska Liquor Control Act for the manufacture
22 and retail sale of beer for consumption on or off the licensed premises,
23 except that the sale of any beer other than beer manufactured by the
24 craft brewery licensee, wine, or alcoholic liquor by the drink for
25 consumption on the licensed premises shall require the appropriate retail
26 license. Any license held by the operator of a craft brewery shall be
27 subject to the act. A holder of a craft brewery license may obtain an
28 annual catering license pursuant to section 53-124.12, a special
29 designated license pursuant to section 53-124.11, ~~or~~ an entertainment
30 district license pursuant to section 53-123.17, or a promotional farmers
31 market special designated license pursuant to section 6 of this act. For

1 purposes of this section, licensed premises may include up to five
2 separate physical locations.

3 Sec. 5. Section 53-123.16, Revised Statutes Cumulative Supplement,
4 2020, is amended to read:

5 53-123.16 Any person who operates a microdistillery shall obtain a
6 license pursuant to the Nebraska Liquor Control Act. A license to operate
7 a microdistillery shall permit the licensee to produce on the premises a
8 maximum of ten thousand gallons of liquor per year. A microdistillery may
9 also sell to licensed wholesalers for sale and distribution to licensed
10 retailers. A microdistillery license issued pursuant to this section
11 shall be the only license required by the Nebraska Liquor Control Act for
12 the manufacture and retail sale of microdistilled product for consumption
13 on or off the licensed premises, except that the sale of any beer, wine,
14 or alcoholic liquor, other than microdistilled product manufactured by
15 the microdistillery licensee, by the drink for consumption on the
16 microdistillery premises shall require the appropriate retail license.
17 Any license held by the operator of a microdistillery shall be subject to
18 the act. A holder of a microdistillery license may obtain an annual
19 catering license pursuant to section 53-124.12, a special designated
20 license pursuant to section 53-124.11, ~~or~~ an entertainment district
21 license pursuant to section 53-123.17, or a promotional farmers market
22 special designated license pursuant to section 6 of this act. The
23 commission may, upon the conditions it determines, grant to any
24 microdistillery licensed under this section a special license authorizing
25 the microdistillery to purchase and to import, from such persons as are
26 entitled to sell the same, wines or spirits to be used solely as
27 ingredients and for the sole purpose of blending with and flavoring
28 microdistillery products as a part of the microdistillation process.

29 Sec. 6. (1) The commission may issue a promotional farmers market
30 special designated license to a craft brewery, microdistillery, or farm
31 winery licensee for the sale or consumption of alcoholic liquor, which

1 the holder is licensed to produce, at a farmers market conducted by the
2 licensee outside of the manufacturer's designated premises under
3 conditions specified in this section.

4 (2) A promotional farmers market special designated license issued
5 under this section shall not be used without approval of the local
6 governing body pursuant to section 7 of this act.

7 (3) The craft brewery, microdistillery, or farm winery licensee
8 seeking a promotional farmers market special designated license under
9 this section shall file an application on such forms as the commission
10 may prescribe. Such forms shall contain, along with other information as
11 required by the commission, (a) the name of the applicant, (b) the
12 premises for which the applicant is licensed, identified by street and
13 number if practicable and, if not, by some other appropriate description
14 which definitely locates the premises, (c) sufficient evidence that the
15 licensee will carry on the activities and business authorized by the
16 license on behalf of the licensee, and not as the agent of any other
17 person, group, organization, or corporation, for profit or not for
18 profits, (d) a statement of the type of activity to be carried on during
19 the time period for which a promotional farmers market special designated
20 license is requested, (e) sufficient evidence that the activity will be
21 supervised by persons or managers who are agents of and directly
22 responsible to the holder of the promotional farmers market special
23 designated license, and (f) information on a safety and security plan for
24 use of the promotional farmers market special designated license as
25 required by the commission.

26 (4) There shall be a fee of fifteen dollars for a promotional
27 farmers market special designated license payable to the commission and
28 submitted with the application. The applicant shall be exempt from the
29 provisions of the Nebraska Liquor Control Act requiring an application or
30 renewal fee and the provisions of the act requiring the expiration of
31 forty-five days from the time the application is received by the

1 commission prior to the issuance of a license, if granted by the
2 commission. The promotional farmers market special designated license
3 shall be issued for the same period and may be renewed in the same manner
4 as the craft brewery, microdistillery, or farm winery license.

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

19 (6) A promotional farmers market special designated license issued
20 by the commission shall be mailed or delivered to the licensee. The
21 licensee shall comply with any rules and regulations adopted and
22 promulgated by the commission. Violation of any provision of this section
23 or section 6 of this act may be cause to revoke, cancel, or suspend the
24 promotional farmers market special designated license or the class of
25 retail license issued under section 53-124 held by such licensee.

26 (7) For purposes of this section, farmers market means any common
27 facility or area where producers or growers gather on a regular,
28 recurring basis to sell fruits, vegetables, meats, and other farm
29 products directly to consumers.

30 Sec. 7. (1) The holder of a promotional farmers market special
31 designated license issued under section 6 of this act may apply to the

1 local governing body of a city, village, or county for a permit to use
2 the promotional farmers market special designated license to sell or
3 dispense alcoholic liquor, which the holder is licensed to produce, for
4 consumption at a farmers market located within the jurisdiction of the
5 local governing body.

6 (2) A permit may be issued to the licensee for the duration of an
7 annual farmers market without reapplying to the local governing body. The
8 local governing body may issue multiple permits to a licensee for each
9 separate farmers market location within the jurisdiction of the local
10 governing body.

11 (3) For purposes of this section, local governing body means the
12 governing body of the city or village within which the farmers market for
13 which the permit is requested is located or, if such farmers market is
14 not within the corporate limits of a city or village, local governing
15 body means the governing body of the county within which the farmers
16 market for which the permit is requested is located.

17 (4) No permit for the sale or consumption of alcoholic liquor at a
18 farmers market provided for by this section shall be granted without the
19 approval of the local governing body and the submission of a safety and
20 security plan containing such information as the local governing body may
21 require for use of the promotional farmers market special designated
22 license. The local governing body may establish criteria for approving or
23 denying a permit. The local governing body may designate an agent to
24 determine whether a permit is to be approved or denied. Such agent shall
25 follow criteria established by the local governing body in making the
26 determination. The determination of the agent shall be considered the
27 determination of the local governing body unless otherwise provided by
28 the local governing body.

29 (5) The decision of the local governing body shall be final. If the
30 applicant does not qualify for a permit to use the promotional farmers
31 market special designated license to sell or dispense alcoholic liquor,

1 including beer, for consumption at a farmers market, the permit shall be
2 denied.

3 (6) The city, village, or county clerk shall deliver confirmation of
4 the permit to use the promotional farmers market special designated
5 license to sell or dispense alcoholic liquor, including beer, for
6 consumption at a farmers market to the licensee upon receipt of any fee
7 or tax imposed by such city, village, or county.

8 (7) The local governing body shall electronically notify the
9 commission within five days after the authorization of any permit to sell
10 or dispense alcoholic liquor, including beer, for consumption at a
11 farmers market located within such city, village, or county to the holder
12 of a promotional farmers market special designated license.

13 (8) For purposes of this section farmers market has the same meaning
14 as in section 6 of this act.

15 Sec. 8. Section 53-124.13, Revised Statutes Cumulative Supplement,
16 2020, is amended to read:

17 53-124.13 (1) The holder of a catering license may deliver, sell, or
18 dispense alcoholic liquor, including beer, for consumption at premises
19 designated in a special designated license issued pursuant to section
20 53-124.11.

21 (2) The holder of the catering license shall file an application
22 seeking a special designated license for the event. The application shall
23 be filed at least twenty-one days prior to the event for which the
24 special designated license is requested unless the local governing body
25 has established an expedited process for such applications, in which case
26 the application shall be filed at least twelve days prior to the event.
27 In addition to the information required by subsection (3) of section
28 53-124.11, the applicant shall inform the commission of (a) the time of
29 the event, (b) the name of the person or organization requesting the
30 applicant's services, (c) the opening and closing dates of the event, and
31 (d) any other information the commission or local governing body deems

1 necessary. A holder of a catering license shall not cater an event unless
2 such licensee receives a special designated license for the event, except
3 that the holder of a catering license who also holds a promotional
4 farmers market special designated license under section 6 of this act may
5 cater a farmers market as prescribed in section 7 of this act.

6 (3) If the organization for which the holder of a catering license
7 is catering is a nonprofit organization exempted from the payment of
8 federal income taxes, such organization may share with such licensee a
9 part or all of the proceeds from the sale of any alcoholic liquor sold
10 and dispensed pursuant to this section.

11 (4) For purposes of this section, local governing body means the
12 governing body of the city or village in which the event will be held or,
13 if the event will not be held within the corporate limits of a city or
14 village, the governing body of the county in which such event will be
15 held.

16 (5) Only the holder of a special designated license or employees of
17 such licensee may dispense alcoholic liquor at the event which is being
18 catered. Violation of any provision of this section or section 53-124.12
19 or any rules or regulations adopted and promulgated pursuant to such
20 sections occurring during an event being catered by such licensee may be
21 cause to revoke, cancel, or suspend the class of retail license issued
22 under section 53-124 held by such licensee.

23 Sec. 9. Section 53-134, Revised Statutes Cumulative Supplement,
24 2020, is amended to read:

25 53-134 The local governing body of any city or village with respect
26 to licenses within its corporate limits and the local governing body of
27 any county with respect to licenses not within the corporate limits of
28 any city or village but within the county shall have the following
29 powers, functions, and duties with respect to retail, bottle club, craft
30 brewery, microdistillery, and entertainment district licenses:

31 (1) To cancel or revoke for cause retail, craft brewery,

1 microdistillery, or entertainment district licenses to sell or dispense
2 alcoholic liquor or bottle club licenses, issued to persons for premises
3 within its jurisdiction, subject to the right of appeal to the
4 commission;

5 (2) To enter or to authorize any law enforcement officer to enter at
6 any time upon any premises licensed under the Nebraska Liquor Control Act
7 to determine whether any provision of the act, any rule or regulation
8 adopted and promulgated pursuant to the act, or any ordinance,
9 resolution, rule, or regulation adopted by the local governing body has
10 been or is being violated and at such time examine the premises of such
11 licensee in connection with such determination. Any law enforcement
12 officer who determines that any provision of the act, any rule or
13 regulation adopted and promulgated pursuant to the act, or any ordinance,
14 resolution, rule, or regulation adopted by the local governing body has
15 been or is being violated shall report such violation in writing to the
16 executive director of the commission (a) within thirty days after
17 determining that such violation has occurred, (b) within thirty days
18 after the conclusion of an ongoing police investigation, or (c) within
19 thirty days after the verdict in a prosecution related to such an ongoing
20 police investigation if the prosecuting attorney determines that
21 reporting such violation prior to the verdict would jeopardize such
22 prosecution, whichever is later;

23 (3) To receive a signed complaint from any citizen within its
24 jurisdiction that any provision of the act, any rule or regulation
25 adopted and promulgated pursuant to the act, or any ordinance,
26 resolution, rule, or regulation relating to alcoholic liquor has been or
27 is being violated and to act upon such complaints in the manner provided
28 in the act;

29 (4) To receive retail license fees, bottle club license fees, craft
30 brewery license fees, and microdistillery license fees as provided in
31 sections 53-124 and 53-124.01 and entertainment district license fees as

1 provided in section 53-123.17 and pay the same, after the license has
2 been delivered to the applicant, to the city, village, or county
3 treasurer;

4 (5) To examine or cause to be examined any applicant or any retail
5 licensee, bottle club licensee, craft brewery licensee, microdistillery
6 licensee, or entertainment district licensee upon whom notice of
7 cancellation or revocation has been served as provided in the act, to
8 examine or cause to be examined the books and records of any applicant or
9 licensee except as otherwise provided for bottle club licensees in
10 section 53-123.08, and to hear testimony and to take proof for its
11 information in the performance of its duties. For purposes of obtaining
12 any of the information desired, the local governing body may authorize
13 its agent or attorney to act on its behalf;

14 (6) To cancel or revoke on its own motion any license if, upon the
15 same notice and hearing as provided in section 53-134.04, it determines
16 that the licensee has violated any of the provisions of the act or any
17 valid and subsisting ordinance, resolution, rule, or regulation duly
18 enacted, adopted, and promulgated relating to alcoholic liquor. Such
19 order of cancellation or revocation may be appealed to the commission
20 within thirty days after the date of the order by filing a notice of
21 appeal with the commission. The commission shall handle the appeal in the
22 manner provided for hearing on an application in section 53-133;

23 (7) Upon receipt from the commission of the notice and copy of
24 application as provided in section 53-131, to fix a time and place for a
25 hearing at which the local governing body shall receive evidence, either
26 orally or by affidavit from the applicant and any other person, bearing
27 upon the propriety of the issuance of a license. Notice of the time and
28 place of such hearing shall be published in a legal newspaper in or of
29 general circulation in such city, village, or county one time not less
30 than seven and not more than fourteen days before the time of the
31 hearing. Such notice shall include, but not be limited to, a statement

1 that all persons desiring to give evidence before the local governing
2 body in support of or in protest against the issuance of such license may
3 do so at the time of the hearing. Such hearing shall be held not more
4 than forty-five days after the date of receipt of the notice from the
5 commission, and after such hearing the local governing body shall cause
6 to be recorded in the minute record of their proceedings a resolution
7 recommending either issuance or refusal of such license. The clerk of
8 such city, village, or county shall mail to the commission by first-class
9 mail, postage prepaid, a copy of the resolution which shall state the
10 cost of the published notice, except that failure to comply with this
11 provision shall not void any license issued by the commission. If the
12 commission refuses to issue such a license, the cost of publication of
13 notice shall be paid by the commission from the security for costs; ~~and~~

14 (8) To review and authorize an application by a retail, bottle club,
15 craft brewery, farm winery, or microdistillery licensee for a temporary
16 expansion of its licensed premises within the jurisdiction of the local
17 governing body to an immediately adjacent area owned or leased by the
18 licensee or to an immediately adjacent street, parking lot, or alley, not
19 to exceed fifty days for calendar year 2020 and, for each calendar year
20 thereafter, not to exceed fifteen days per calendar year, as provided in
21 sections 53-123.12 and 53-129; and -

22 (9) To review and authorize an application by a craft brewery, farm
23 winery, or microdistillery licensee that holds a promotional farmers
24 market special designated license for a permit to use such promotional
25 farmers market special designated license to sell or dispense alcoholic
26 liquor, which the holder is licensed to produce, for consumption at a
27 farmers market within the jurisdiction of the local governing body as
28 provided in section 7 of this act. The local governing body shall
29 electronically notify the commission within five days after authorization
30 of any permit pursuant to this subdivision.

31 Sec. 10. Original sections 53-101, 53-123, 53-123.11, 53-123.14,

1 53-123.16, 53-124.13, and 53-134, Revised Statutes Cumulative Supplement,
2 2020, are repealed.