

ENGROSSED LEGISLATIVE BILL 113

Introduced by Quick, 35.

A BILL FOR AN ACT relating to the Nebraska Liquor Control Act; to amend section 53-123.17, Reissue Revised Statutes of Nebraska, and sections 53-123.01, 53-123.14, 53-123.16, and 53-129, Revised Statutes Cumulative Supplement, 2024; to change provisions relating to the rights of a holder of a manufacturer's, craft brewery, microdistillery, or entertainment district license; to redefine a term; to harmonize provisions; to provide severability; and to repeal the original sections.

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

Section 1. Section 53-123.01, Revised Statutes Cumulative Supplement, 2024, is amended to read:

53-123.01 (1) A manufacturer's license shall allow the manufacture, storage, and sale of alcoholic liquor to wholesale licensees in this state and to such persons outside the state as may be permitted by law, except that nothing in the Nebraska Liquor Control Act shall prohibit a manufacturer of beer from distributing tax-paid samples of beer at the premises of a licensed manufacturer for consumption on the premises. A manufacturer's 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 beer manufactured on the licensed premises for consumption on the licensed premises.

(2)(a) A licensee who or which first obtains a craft brewery license pursuant to section 53-123.14, holds such license for not less than three years, and operates a brewpub or microbrewery on the licensed premises of such craft brewery license shall obtain a manufacturer's license when the manufacture of beer on the licensed premises exceeds twenty thousand barrels per year. The manufacturer's license shall authorize the continued retail sale of beer for consumption on or off the premises but only to the extent the premises were previously licensed as a craft brewery. The sale of any beer

other than beer manufactured by the licensee, wine, or alcoholic liquor for consumption on the licensed premises shall require the appropriate retail license. The holder of such manufacturer's license may continue to operate up to eight retail locations which are in operation at the time such manufacturer's license is issued and shall divest itself from retail locations in excess of eight locations. The licensee shall not begin operation at any new retail location even if the licensee's production is reduced below twenty thousand barrels per year.

(b) The holder of such manufacturer's license may obtain an annual catering license pursuant to section 53-124.12, a special designated license pursuant to section 53-124.11, or an entertainment district license pursuant to section 53-123.17.

(3) A holder of a manufacturer's license to manufacture spirits may operate a rickhouse that meets the requirements for a distilled spirit plant pursuant to 26 U.S.C. 5178, as such section existed on January 1, 2024, if such manufacturer receives authorization from the commission and notifies the commission of the location of such rickhouse in a manner prescribed by the commission.

Sec. 2. Section 53-123.14, Revised Statutes Cumulative Supplement, 2024, is amended to read:

53-123.14 (1) Any person who operates a craft brewery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a craft brewery shall permit the production of a maximum of twenty thousand barrels of beer per year in the aggregate from all physical locations comprising the licensed premises. A craft brewery may also sell to beer wholesalers for sale and distribution to licensed retailers. A craft brewery 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 beer for consumption on or off the licensed premises, except that the sale of any beer other than beer manufactured by the craft brewery licensee, wine, or alcoholic liquor by the drink for consumption on the licensed premises shall require the

appropriate retail license. Any license held by the operator of a craft brewery shall be subject to the act. A holder of a craft brewery 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. For purposes of this section, licensed premises may include up to eight separate physical locations.

(2)(a) A holder of a craft brewery license may directly sell for resale up to two hundred fifty barrels per calendar year of beer 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 craft brewery license:

(i) Only self-distributes its beer in a territory in which the craft brewery licensee has not entered into a distribution agreement with a licensed Nebraska wholesaler for the territory where such retail licensee is located;

(ii) Self-distributes its beer utilizing only persons exclusively and solely employed by the craft brewery licensee in vehicles exclusively and solely owned or leased by the craft brewery licensee; and

(iii) Complies with all relevant statutes, rules, and regulations that apply to Nebraska beer wholesalers regarding distribution of such beer.

(b) A holder of a craft brewery license self-distributing beer in accordance with subdivision (2)(a) of this section may only self-distribute beer brewed at its licensed brewery premises and shall not distribute beer produced by any other licensee.

(3) A holder of a craft brewery 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 craft brewery license receives authorization from the commission and notifies the commission of the location of the storage facility and maintains, at the craft brewery 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 pertaining to distribution rights of craft brewery licensees.

Sec. 3. Section 53-123.16, Revised Statutes Cumulative Supplement, 2024, 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 eight 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 three thousand 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) A holder of a microdistillery license may operate a rickhouse that meets the requirements for a distilled spirit plant pursuant to 26 U.S.C. 5178, as such section existed on January 1, 2024, if such licensee receives authorization from the commission and notifies the commission of the location of such rickhouse in a manner prescribed by the commission.

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

Sec. 4. Section 53-123.17, Reissue Revised Statutes of Nebraska, is amended to read:

53-123.17 (1) A local governing body may designate an entertainment district in which a commons area may be used by retail, craft brewery, and microdistillery licensees and holders of a manufacturer's license which obtain an entertainment district license. The local governing body may, at any time, revoke such designation if it finds that the commons area threatens the health, safety, or welfare of the public or has become a common nuisance. The local governing body shall file the designation or the revocation of the designation

with the commission.

(2) An entertainment district license allows the sale of alcoholic liquor for consumption on the premises within the confines of a commons area. The consumption of alcoholic liquor in the commons area shall only occur during the hours authorized for sale of alcoholic liquor for consumption on the premises under section 53-179 and while food service is available in the commons area or is available for sale by at least one holder of an entertainment district license. Only the holder of an entertainment district license or employees of such licensee may sell or dispense alcoholic liquor in the commons area.

(3) An entertainment district licensee shall serve alcoholic liquor to be consumed in the commons area in containers that prominently display the licensee's trade name or logo or some other mark that is unique to the licensee under the licensee's retail license, craft brewery license, microdistillery license, or manufacturer's license. An entertainment district licensee may allow alcohol sold by another entertainment district licensee to enter the licensed premises of either licensee. No entertainment district licensee shall allow alcoholic liquor to leave the commons area or the premises licensed under its retail license, craft brewery license, microdistillery license, or manufacturer's license.

(4) If the licensed premises of the holder of a license to sell alcoholic liquor at retail issued under subsection (6) of section 53-124, a craft brewery license, a microdistillery license, or a manufacturer's license is adjacent to a commons area in an entertainment district designated by a local governing body pursuant to this section, the holder of the license may obtain an annual entertainment district license as prescribed in this section. The entertainment district license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, microdistillery license, or manufacturer's license.

(5) In order to obtain an entertainment district license, a person eligible under subsection (4) of this section shall:

(a) File an application with the commission upon such forms as the

commission prescribes; and

(b) Pay an additional license fee of three hundred dollars for the privilege of serving alcohol in the entertainment district payable to the clerk of the local governing body in the same manner as license fees under subdivision (4) of section 53-134.

(6) When an application for an entertainment district license is filed, the commission shall notify the clerk of the local governing body. The commission shall include with such notice one copy of the application by mail or electronic delivery. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

(7) The local governing body may impose an occupation tax on the business of an entertainment district licensee doing business within the liquor license jurisdiction of the local governing body as provided in subdivision (11)(b) of this section in accordance with section 53-132.

(8) The local governing body with respect to entertainment district licensees within its liquor license jurisdiction as provided in subdivision (11)(b) of this section may cancel an entertainment district license for cause for the remainder of the period for which such entertainment district license is issued. Any person whose entertainment district license is canceled may appeal to the commission in accordance with section 53-134.

(9) A local governing body may regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, any area it designates as an entertainment district.

(10) Violation of any provision of this section or any rules or regulations adopted and promulgated pursuant to this section by an entertainment district licensee may be cause to revoke, cancel, or suspend the retail license issued under subsection (6) of section 53-124, craft brewery license, microdistillery license, or manufacturer's license held by such licensee.

(11) For purposes of this section:

(a)(i) Commons area means an area:

- (A) Within an entertainment district designated by a local governing body;
- (B) Shared by authorized licensees with entertainment district licenses;
- (C) Abutting the licensed premises of such licensees;

(D) With reasonable safety measures in place to protect pedestrians, including signage, lighting, and reduced motor vehicle speeds when motor vehicles will be in close proximity to pedestrians; and

(E) With a prohibition on the carrying of open alcoholic liquor containers and the consumption of alcoholic liquor on any open street or highway except when necessary to cross the same at a designated crosswalk.

(ii) Commons area may include any area of a public or private right-of-way if the area otherwise meets the requirements of this section; and

(b) Local governing body means the governing body of the city or village in which the entertainment district licensee is located.

Sec. 5. Section 53-129, Revised Statutes Cumulative Supplement, 2024, is amended to read:

53-129 (1) Except as otherwise provided in subsection (3) of this section, retail, bottle club, craft brewery, and microdistillery licenses issued under the Nebraska Liquor Control Act apply only to that part of the premises described in the application approved by the commission and in the license issued on the application. For retail and bottle club licenses, only one location shall be described in each license. For craft brewery and microdistillery licenses, up to eight separate physical locations may be described in each license.

(2) After such license has been granted for the particular premises, the commission, with the approval of the local governing body and upon proper showing, may endorse upon the license permission to add to, delete from, or abandon the premises described in such license and, if applicable, to move from the premises to other premises approved by the local governing body. In order to obtain such approval, the retail, bottle club, craft brewery, or microdistillery licensee shall file with the local governing body a request in writing and a statement under oath which shows that the premises, as added to

or deleted from or to which such move is to be made, comply in all respects with the requirements of the act. No such addition, deletion, or move shall be made by any such licensee until the license has been endorsed to that effect in writing by the local governing body and by the commission and the licensee furnishes proof of payment of the renewal fee prescribed in subsection (4) of section 53-131.

(3)(a) A retail, bottle club, craft brewery, or microdistillery licensee may apply to the local governing body for a temporary expansion of its licensed premises to an immediately adjacent area owned or leased by the licensee or to an immediately adjacent street, parking lot, or alley, not to exceed fifty days for calendar year 2020 and, for each calendar year thereafter, not to exceed fifteen days per calendar year. The temporary area shall otherwise comply with all requirements of the Nebraska Liquor Control Act.

(b) The licensee shall file an application with the local governing body which shall contain (i) the name of the applicant, (ii) the premises for which a temporary expansion is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (iii) the name of the owner or lessee of the premises for which the temporary expansion is requested, (iv) sufficient evidence that the licensee 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, (v) a statement of the type of activity to be carried on during the time period for which a temporary expansion is requested, and (vi) sufficient evidence that the temporary expansion will be supervised by persons or managers who are agents of and directly responsible to the licensee.

(c) No temporary expansion provided for by this subsection shall be granted without the approval of the local governing body. The local governing body may establish criteria for approving or denying a temporary expansion. The local governing body may designate an agent to determine whether a temporary expansion is to be approved or denied. Such agent shall follow criteria

established by the local governing body in making the determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body.

(d) For purposes of this section, the local governing body shall be that of the city or village within which the premises for which the temporary expansion 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 that of the county within which the premises for which the temporary expansion is requested are located.

(e) The decision of the local governing body shall be final. If the applicant does not qualify for a temporary expansion, the temporary expansion shall be denied by the local governing body.

(f) The city, village, or county clerk shall deliver confirmation of the temporary expansion to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

Sec. 6. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 7. Original section 53-123.17, Reissue Revised Statutes of Nebraska, and sections 53-123.01, 53-123.14, 53-123.16, and 53-129, Revised Statutes Cumulative Supplement, 2024, are repealed.

PRESIDENT OF THE LEGISLATURE

*THIS IS TO CERTIFY that the within LB 113 was passed by the One Hundred Ninth
Legislature of Nebraska at its First Session on the day
of 20.....*

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR