

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1103

Introduced by Karpisek, 32.

Read first time January 23, 2008

Committee: General Affairs

A BILL

1 FOR AN ACT relating to farm wineries; to amend section 53-123.13,
2 Reissue Revised Statutes of Nebraska, section 53-123.11,
3 Revised Statutes Cumulative Supplement, 2006, and section
4 53-103, Revised Statutes Supplement, 2007; to redefine
5 a term; to change requirements for sale and purchase
6 of wines as prescribed; to harmonize provisions; and to
7 repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 53-103, Revised Statutes Supplement,
2 2007, is amended to read:

3 53-103 For purposes of the Nebraska Liquor Control Act,
4 unless the context otherwise requires:

5 (1) Alcohol means the product of distillation of any
6 fermented liquid, whether rectified or diluted, whatever the origin
7 thereof, and includes synthetic ethyl alcohol and alcohol processed
8 or sold in a gaseous form. Alcohol does not include denatured
9 alcohol or wood alcohol;

10 (2) Spirits means any beverage which contains alcohol
11 obtained by distillation, mixed with water or other substance
12 in solution, and includes brandy, rum, whiskey, gin, or other
13 spirituous liquors and such liquors when rectified, blended, or
14 otherwise mixed with alcohol or other substances;

15 (3) Wine means any alcoholic beverage obtained by the
16 fermentation of the natural contents of fruits or vegetables,
17 containing sugar, including such beverages when fortified by the
18 addition of alcohol or spirits;

19 (4) Beer means a beverage obtained by alcoholic
20 fermentation of an infusion or concoction of barley or other grain,
21 malt, and hops in water and includes, but is not limited to, beer,
22 ale, stout, lager beer, porter, and near beer;

23 (5) Alcoholic liquor includes alcohol, spirits, wine,
24 beer, and any liquid or solid, patented or not, containing alcohol,
25 spirits, wine, or beer and capable of being consumed as a beverage

1 by a human being. Alcoholic liquor also includes confections or
2 candy with alcohol content of more than one-half of one percent
3 alcohol. The act does not apply to (a) alcohol used in the
4 manufacture of denatured alcohol produced in accordance with acts
5 of Congress and regulations adopted and promulgated pursuant to
6 such acts, (b) flavoring extracts, syrups, medicinal, mechanical,
7 scientific, culinary, or toilet preparations, or food products
8 unfit for beverage purposes, but the act applies to alcoholic
9 liquor used in the manufacture, preparation, or compounding of such
10 products or confections or candy that contains more than one-half
11 of one percent alcohol, or (c) wine intended for use and used by
12 any church or religious organization for sacramental purposes;

13 (6) Near beer means beer containing less than one-half of
14 one percent of alcohol by volume;

15 (7) Original package means any bottle, flask, jug, can,
16 cask, barrel, keg, hogshead, or other receptacle or container
17 used, corked or capped, sealed, and labeled by the manufacturer of
18 alcoholic liquor to contain and to convey any alcoholic liquor;

19 (8) Manufacturer means every brewer, fermenter,
20 distiller, rectifier, winemaker, blender, processor, bottler,
21 or person who fills or refills an original package and others
22 engaged in brewing, fermenting, distilling, rectifying, or bottling
23 alcoholic liquor, including a wholly owned affiliate or duly
24 authorized agent for a manufacturer;

25 (9) Nonbeverage user means every manufacturer of any

1 of the products set forth and described in subsection (4) of
2 section 53-160, when such product contains alcoholic liquor, and
3 all laboratories, hospitals, and sanatoria using alcoholic liquor
4 for nonbeverage purposes;

5 (10) Manufacture means to distill, rectify, ferment,
6 brew, make, mix, concoct, process, blend, bottle, or fill an
7 original package with any alcoholic liquor and includes blending
8 but does not include the mixing or other preparation of drinks for
9 serving by those persons authorized and permitted in the act to
10 serve drinks for consumption on the premises where sold;

11 (11) Wholesaler means a person importing or causing to be
12 imported into the state or purchasing or causing to be purchased
13 within the state alcoholic liquor for sale or resale to retailers
14 licensed under the act, whether the business of the wholesaler is
15 conducted under the terms of a franchise or any other form of an
16 agreement with a manufacturer or manufacturers, or who has caused
17 alcoholic liquor to be imported into the state or purchased in
18 the state from a manufacturer or manufacturers and was licensed
19 to conduct such a business by the commission on May 1, 1970, or
20 has been so licensed since that date. Wholesaler does not include
21 any retailer licensed to sell alcoholic liquor for consumption off
22 the premises who sells alcoholic liquor other than beer or wine
23 to another retailer pursuant to section 53-175, except that any
24 such retailer shall obtain the required federal wholesaler's basic
25 permit and federal wholesale liquor dealer's special tax stamp.

1 Wholesaler includes a distributor, distributorship, and jobber;

2 (12) Person means any natural person, trustee,
3 corporation, partnership, or limited liability company;

4 (13) Retailer means a person who sells or offers for sale
5 alcoholic liquor for use or consumption and not for resale in any
6 form except as provided in section 53-175;

7 (14) Sell at retail and sale at retail means sale for use
8 or consumption and not for resale in any form except as provided in
9 section 53-175;

10 (15) Commission means the Nebraska Liquor Control
11 Commission;

12 (16) Sale means any transfer, exchange, or barter in any
13 manner or by any means for a consideration and includes any sale
14 made by any person, whether principal, proprietor, agent, servant,
15 or employee;

16 (17) To sell means to solicit or receive an order for, to
17 keep or expose for sale, or to keep with intent to sell;

18 (18) Restaurant means any public place (a) which is kept,
19 used, maintained, advertised, and held out to the public as a place
20 where meals are served and where meals are actually and regularly
21 served, (b) which has no sleeping accommodations, and (c) which
22 has adequate and sanitary kitchen and dining room equipment and
23 capacity and a sufficient number and kind of employees to prepare,
24 cook, and serve suitable food for its guests;

25 (19) Club means a corporation (a) which is organized

1 under the laws of this state, not for pecuniary profit, solely
2 for the promotion of some common object other than the sale or
3 consumption of alcoholic liquor, (b) which is kept, used, and
4 maintained by its members through the payment of annual dues, (c)
5 which owns, hires, or leases a building or space in a building
6 suitable and adequate for the reasonable and comfortable use and
7 accommodation of its members and their guests, and (d) which
8 has suitable and adequate kitchen and dining room space and
9 equipment and a sufficient number of servants and employees for
10 cooking, preparing, and serving food and meals for its members
11 and their guests. The affairs and management of such club shall
12 be conducted by a board of directors, executive committee, or
13 similar body chosen by the members at their annual meeting, and
14 no member, officer, agent, or employee of the club shall be paid
15 or shall directly or indirectly receive, in the form of salary or
16 other compensation, any profits from the distribution or sale of
17 alcoholic liquor to the club or the members of the club or its
18 guests introduced by members other than any salary fixed and voted
19 at any annual meeting by the members or by the governing body of
20 the club out of the general revenue of the club;

21 (20) Hotel means any building or other structure (a)
22 which is kept, used, maintained, advertised, and held out to
23 the public to be a place where food is actually served and
24 consumed and sleeping accommodations are offered for adequate
25 pay to travelers and guests, whether transient, permanent, or

1 residential, (b) in which twenty-five or more rooms are used for
2 the sleeping accommodations of such guests, and (c) which has one
3 or more public dining rooms where meals are served to such guests,
4 such sleeping accommodations and dining rooms being conducted in
5 the same buildings in connection therewith and such building or
6 buildings or structure or structures being provided with adequate
7 and sanitary kitchen and dining room equipment and capacity;

8 (21) Nonprofit corporation means any corporation
9 organized under the laws of this state, not for profit, which has
10 been exempted from the payment of federal income taxes;

11 (22) Minor means any person, male or female, under
12 twenty-one years of age, regardless of marital status;

13 (23) Brand means alcoholic liquor identified as the
14 product of a specific manufacturer;

15 (24) Franchise or agreement, with reference to the
16 relationship between a manufacturer and wholesaler, includes one or
17 more of the following: (a) A commercial relationship of a definite
18 duration or continuing indefinite duration which is not required
19 to be in writing; (b) a relationship by which the wholesaler is
20 granted the right to offer and sell the manufacturer's brands by
21 the manufacturer; (c) a relationship by which the franchise, as an
22 independent business, constitutes a component of the manufacturer's
23 distribution system; (d) a relationship by which the operation
24 of the wholesaler's business is substantially associated with
25 the manufacturer's brand, advertising, or other commercial symbol

1 designating the manufacturer; and (e) a relationship by which the
2 operation of the wholesaler's business is substantially reliant on
3 the manufacturer for the continued supply of beer;

4 (25) Territory or sales territory means the wholesaler's
5 area of sales responsibility for the brand or brands of the
6 manufacturer;

7 (26) Suspend means to cause a temporary interruption of
8 all rights and privileges of a license;

9 (27) Cancel means to discontinue all rights and
10 privileges of a license;

11 (28) Revoke means to permanently void and recall all
12 rights and privileges of a license;

13 (29) Generic label means a label which is not protected
14 by a registered trademark, either in whole or in part, or to
15 which no person has acquired a right pursuant to state or federal
16 statutory or common law;

17 (30) Private label means a label which the purchasing
18 wholesaler or retailer has protected, in whole or in part, by
19 a trademark registration or which the purchasing wholesaler or
20 retailer has otherwise protected pursuant to state or federal
21 statutory or common law;

22 (31) Farm winery means any enterprise which produces and
23 sells wines produced from grapes, other fruit, or other suitable
24 agricultural products of which at least seventy-five percent of
25 the finished product is grown in this state or which meets the

1 requirements of section 53-123.13;

2 (32) Campus, as it pertains to the southern boundary of
3 the main campus of the University of Nebraska-Lincoln, means the
4 south right-of-way line of R Street and abandoned R Street from
5 10th to 17th streets;

6 (33) Brewpub means any restaurant or hotel which produces
7 on its premises a maximum of ten thousand barrels of beer per year;

8 (34) Manager means a person appointed by a corporation to
9 oversee the daily operation of the business licensed in Nebraska. A
10 manager shall meet all the requirements of the act as though he or
11 she were the applicant, except for residency and citizenship;

12 (35) Shipping license means a license granted pursuant to
13 section 53-123.15;

14 (36) Sampling means consumption on the premises of a
15 retail licensee of not more than five samples of one fluid ounce or
16 less of alcoholic liquor by the same person in a twenty-four-hour
17 period;

18 (37) Microbrewery means any small brewery producing a
19 maximum of ten thousand barrels of beer per year;

20 (38) Craft brewery means a brewpub or a microbrewery;

21 (39) Local governing body means (a) the city council or
22 village board of trustees of a city or village within which the
23 licensed premises are located or (b) if the licensed premises are
24 not within the corporate limits of a city or village, the county
25 board of the county within which the licensed premises are located;

1 (40) Consume means knowingly and intentionally drinking
2 or otherwise ingesting alcoholic liquor; and

3 (41) Microdistillery means a distillery located in
4 Nebraska that is licensed to distill liquor on the premises of the
5 distillery licensee and produces ten thousand or fewer gallons of
6 liquor annually.

7 Sec. 2. Section 53-123.11, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 53-123.11 (1) A farm winery license shall entitle the
10 holder to:

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

14 (b) Sell wines produced at the farm winery at retail for
15 consumption on the premises;

16 (c) (i) Permit a customer to remove one unsealed bottle of
17 wine for consumption off the premises. The licensee or his or her
18 agent shall (A) securely reseal such bottle and place the bottle
19 in a bag designed so that it is visibly apparent that the resealed
20 bottle of wine has not been opened or tampered with and (B) provide
21 a dated receipt to the customer and attach to such bag a copy of
22 the dated receipt for the resealed bottle of wine.

23 (ii) If the resealed bottle of wine is transported in a
24 motor vehicle, it must be placed in the trunk of the motor vehicle
25 or the area behind the last upright seat of such motor vehicle if

1 the area is not normally occupied by the driver or a passenger and
2 the motor vehicle is not equipped with a trunk;

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

13 (e) Allow sampling of the wine at the farm winery and at
14 one branch outlet in the state in reasonable amounts; -

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

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

25 (2) No farm winery shall manufacture wine in excess of

1 fifty thousand gallons per year.

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

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

6 Sec. 3. Section 53-123.13, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 53-123.13 (1) If the operator of a farm winery is
9 unable to produce or purchase seventy-five percent of the grapes,
10 fruit, or other suitable agricultural products used in the farm
11 winery from within the state due to natural disaster which
12 causes substantial loss to the Nebraska-grown crop, such operator
13 may petition the commission to waive the seventy-five-percent
14 requirement prescribed in subdivision (31) of section 53-103 for
15 one year.

16 (2) It shall be within the discretion of the commission
17 to waive the seventy-five-percent requirement taking into
18 consideration the availability of products used in farm wineries in
19 this area and the ability of such operator to produce wine from
20 products that are abundant within the state.

21 (3) If the operator of a farm winery is granted a
22 waiver, any product purchased as concentrated juice from grapes
23 or other fruits from outside of Nebraska, when reconstituted from
24 concentrate, may not exceed in total volume along with other
25 products purchased the total percentage allowed by the waiver.

1 (4) Any product purchased under the waiver or as part
2 of the twenty-five percent of allowable product purchased that is
3 not Nebraska-grown for the production of wine shall not exceed
4 the twenty-five percent volume allowed under state law if made
5 from concentrated grapes or other fruit, when reconstituted. The
6 concentrate shall not be reduced to less than twenty-two degrees
7 Brix in accordance with 27 C.F.R. 24.180.

8 Sec. 4. Original section 53-123.13, Reissue Revised
9 Statutes of Nebraska, section 53-123.11, Revised Statutes
10 Cumulative Supplement, 2006, and section 53-103, Revised Statutes
11 Supplement, 2007, are repealed.