

E AND R AMENDMENTS TO LB 824

Introduced by Larson, 40, Chairman Enrollment and Review

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

3 Section 1. Section 53-101, Revised Statutes Supplement,
4 2011, is amended to read:

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

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

10 53-103 For purposes of the Nebraska Liquor Control Act,
11 the definitions found in sections 53-103.01 to 53-103.42 and
12 section 4 of this act apply.

13 Sec. 3. Section 53-103.03, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 53-103.03 Beer means a beverage obtained by alcoholic
16 fermentation of an infusion or concoction of barley or other grain,
17 malt, and hops in water and includes, but is not limited to, beer,
18 ale, stout, lager beer, porter, and near beer, and flavored malt
19 beverage.

20 Sec. 4. Flavored malt beverage means a beer that derives
21 not more than forty-nine percent of its total alcohol content from
22 flavors or flavorings containing alcohol obtained by distillation,
23 except that in the case of a malt beverage with an alcohol content

1 of more than six percent by volume, not more than one and one-half
2 percent of the volume of the malt beverage may consist of alcohol
3 derived from flavors, flavorings, or other nonbeverage ingredients
4 containing alcohol obtained by distillation.

5 Sec. 5. Section 53-103.38, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 53-103.38 Spirits means any beverage which contains
8 alcohol obtained by distillation, mixed with water or other
9 substance in solution. Spirits ~~and~~ includes brandy, rum, whiskey,
10 gin, or other spirituous liquors and such liquors when rectified,
11 blended, or otherwise mixed with alcohol or other substances.
12 Spirits does not include flavored malt beverages.

13 Sec. 6. Section 53-160, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 53-160 (1) For the purpose of raising revenue, a tax
16 is imposed upon the privilege of engaging in business as a
17 manufacturer or a wholesaler at a rate of thirty-one cents per
18 gallon on all beer; ninety-five cents per gallon for wine, except
19 for wines produced and released from bond in farm wineries; six
20 cents per gallon for wine produced and released from bond in farm
21 wineries; and three dollars and seventy-five cents per gallon on
22 alcohol and spirits manufactured and sold by such manufacturer or
23 shipped for sale in this state by such wholesaler in the course of
24 such business. The gallonage tax imposed by this subsection shall
25 be imposed only on alcoholic liquor upon which a federal excise tax
26 is imposed.

27 (2) Manufacturers or wholesalers of alcoholic liquor

1 shall be exempt from the payment of the gallonage tax on such
2 alcoholic liquor upon satisfactory proof, including bills of lading
3 furnished to the commission by affidavit or otherwise as the
4 commission may require, that such alcoholic liquor was manufactured
5 in this state but shipped out of the state for sale and consumption
6 outside this state.

7 (3) Dry wines or fortified wines manufactured or shipped
8 into this state solely and exclusively for sacramental purposes and
9 uses shall not be subject to the gallonage tax.

10 (4) The gallonage tax shall not be imposed upon any
11 alcoholic liquor, whether manufactured in or shipped into this
12 state, when sold to a licensed nonbeverage user for use in
13 the manufacture of any of the following when such products are
14 unfit for beverage purposes: Patent and proprietary medicines and
15 medicinal, antiseptic, and toilet preparations; flavoring extracts,
16 syrups, food products, and confections or candy; scientific,
17 industrial, and chemical products, except denatured alcohol; or
18 products for scientific, chemical, experimental, or mechanical
19 purposes.

20 (5) The gallonage tax shall not be imposed upon the
21 privilege of engaging in any business in interstate commerce or
22 otherwise, which business may not, under the Constitution and
23 statutes of the United States, be made the subject of taxation by
24 this state.

25 (6) The gallonage tax shall be in addition to all other
26 occupation or privilege taxes imposed by this state or by any
27 municipal corporation or political subdivision thereof.

1 (7) The commission shall collect the gallonage tax and
2 shall account for and remit to the State Treasurer at least once
3 each week all money collected pursuant to this section. If any
4 alcoholic liquor manufactured in or shipped into this state is
5 sold to a licensed manufacturer or wholesaler of this state to be
6 used solely as an ingredient in the manufacture of any beverage
7 for human consumption, the tax imposed upon such manufacturer or
8 wholesaler shall be reduced by the amount of the taxes which have
9 been paid as to such alcoholic liquor so used under the Nebraska
10 Liquor Control Act. The net proceeds of all revenue arising under
11 this section shall be credited to the General Fund.

12 Sec. 7. Section 53-164.01, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 53-164.01 Payment of the tax provided for in section
15 53-160 on alcoholic liquor shall be paid by the manufacturer or
16 wholesaler as follows:

17 (1)(a) All manufacturers or wholesalers, except farm
18 winery producers, whether inside or outside this state shall, on
19 or before the twenty-fifth day of each calendar month following
20 the month in which shipments were made, submit a report to the
21 commission upon forms furnished by the commission showing the total
22 amount of alcoholic liquor in gallons or fractional parts thereof
23 shipped by such manufacturer or wholesaler, whether inside or
24 outside this state, during the preceding calendar month;

25 (b) All beer wholesalers shall, on or before the
26 twenty-fifth day of each calendar month following the month in
27 which shipments were made, submit a report to the commission

1 upon forms furnished by the commission showing the total amount
2 of beer in gallons or fractional parts thereof shipped by all
3 manufacturers, whether inside or outside this state, during the
4 preceding calendar month to such wholesaler;

5 (c) (i) Except as provided in subdivision (ii) of this
6 subdivision, farm winery producers which paid less than one
7 thousand dollars of excise taxes pursuant to section 53-160 for the
8 previous calendar year and which will pay less than one thousand
9 dollars of excise taxes pursuant to section 53-160 for the current
10 calendar year shall, on or before the twenty-fifth day of the
11 calendar month following the end of the year in which wine was
12 packaged ~~or bottled for sale,~~ and released from bond, submit a
13 report to the commission upon forms furnished by the commission
14 showing the total amount of wine in gallons or fractional parts
15 thereof packaged ~~or bottled~~ and released from bond by such producer
16 during the preceding calendar year; and

17 (ii) Farm winery producers which paid one thousand
18 dollars or more of excise taxes pursuant to section 53-160 for
19 the previous calendar year or which become liable for one thousand
20 dollars or more of excise taxes pursuant to section 53-160 during
21 the current calendar year shall, on or before the twenty-fifth
22 day of each calendar month following the month in which wine was
23 packaged ~~or bottled for sale,~~ and released from bond, submit a
24 report to the commission upon forms furnished by the commission
25 showing the total amount of wine in gallons or fractional parts
26 thereof packaged ~~or bottled~~ and released from bond by such producer
27 during the preceding calendar month. A farm winery producer which

1 becomes liable for one thousand dollars or more of excise taxes
2 pursuant to section 53-160 during the current calendar year shall
3 also pay such excise taxes immediately;

4 (d) A craft brewery shall, on or before the twenty-fifth
5 day of each calendar month following the month in which the beer
6 was ~~produced~~ released from bond for sale, submit a report to the
7 commission on forms furnished by the commission showing the total
8 amount of beer in gallons or fractional parts thereof produced for
9 sale by the craft brewery during the preceding calendar month;

10 (e) A microdistillery shall, on or before the
11 twenty-fifth day of each calendar month following the month in
12 which the distilled liquor was ~~produced~~ released from bond for
13 sale, submit a report to the commission on forms furnished by
14 the commission showing the total amount of distilled liquor in
15 gallons or fractional parts thereof produced for sale by the
16 microdistillery during the preceding calendar month; and

17 (f) Reports submitted pursuant to subdivision (a), (b),
18 or (c) of this subdivision shall also contain a statement of
19 the total amount of alcoholic liquor, except beer, in gallons or
20 fractional parts thereof shipped to licensed retailers inside this
21 state and such other information as the commission may require;

22 (2) The wholesaler or farm winery producer shall at the
23 time of the filing of the report pay to the commission the tax
24 due on alcoholic liquor, except beer, shipped to licensed retailers
25 inside this state at the rate fixed in accordance with section
26 53-160. The tax due on beer shall be paid by the wholesaler on beer
27 shipped from all manufacturers;

1 (3) The tax imposed pursuant to section 53-160 shall be
2 due on the date the report is due less a discount of one percent
3 of the tax on alcoholic liquor for submitting the report and paying
4 the tax in a timely manner. The discount shall be deducted from the
5 payment of the tax before remittance to the commission and shall be
6 shown in the report to the commission as required in this section.
7 If the tax is not paid within the time provided in this section,
8 the discount shall not be allowed and shall not be deducted from
9 the tax;

10 (4) If the report is not submitted by the twenty-fifth
11 day of the calendar month or if the tax is not paid to the
12 commission by the twenty-fifth day of the calendar month, the
13 following penalties shall be assessed on the amount of the tax:
14 One to five days late, three percent; six to ten days late, six
15 percent; and over ten days late, ten percent. In addition, interest
16 on the tax shall be collected at the rate of one percent per month,
17 or fraction of a month, from the date the tax became due until
18 paid;

19 (5) No tax shall be levied or collected on alcoholic
20 liquor manufactured inside this state and shipped or transported
21 outside this state for sale and consumption outside this state;

22 (6) In order to insure the payment of all state taxes
23 on alcoholic liquor, together with interest and penalties, persons
24 required to submit reports and payment of the tax shall, at
25 the time of application for a license under sections 53-124 and
26 53-124.01, enter into a surety bond with corporate surety, both the
27 bond form and surety to be approved by the commission. Subject to

1 the limitations specified in this subdivision, the amount of the
2 bond required of any taxpayer shall be fixed by the commission and
3 may be increased or decreased by the commission at any time. In
4 fixing the amount of the bond, the commission shall require a bond
5 equal to the amount of the taxpayer's estimated maximum monthly
6 excise tax ascertained in a manner as determined by the commission.
7 Nothing in this section shall prevent or prohibit the commission
8 from accepting and approving bonds which run for a term longer
9 than the license period. The amount of a bond required of any one
10 taxpayer shall not be less than one thousand dollars. The bonds
11 required by this section shall be filed with the commission; and

12 (7) When a manufacturer or wholesaler sells and delivers
13 alcoholic liquor upon which the tax has been paid to any
14 instrumentality of the armed forces of the United States engaged
15 in resale activities as provided in section 53-160.01, the
16 manufacturer or wholesaler shall be entitled to a credit in
17 the amount of the tax paid in the event no tax is due on such
18 alcoholic liquor as provided in such section. The amount of the
19 credit, if any, shall be deducted from the tax due on the following
20 monthly report and subsequent reports until liquidated.

21 Sec. 8. Original sections 53-103, 53-103.03, 53-103.38,
22 53-160, and 53-164.01, Reissue Revised Statutes of Nebraska, and
23 section 53-101, Revised Statutes Supplement, 2011, are repealed.

24 Sec. 9. Since an emergency exists, this act takes effect
25 when passed and approved according to law.

26 2. On page 1, strike lines 2 through 6 and insert
27 "sections 53-103, 53-103.03, 53-103.38, 53-160, and 53-164.01,

1 Reissue Revised Statutes of Nebraska, and section 53-101, Revised
2 Statutes Supplement, 2011; to define and redefine terms; to change
3 provisions relating to beer, spirits, the gallonage tax, and
4 reports involving the gallonage tax; to harmonize provisions; to
5 repeal the original sections; and to declare an emergency."