

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SECOND LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 554**

Introduced by Harms, 48.

Read first time January 19, 2011

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the State Boat Act; to amend sections  
2 53-123.04 and 53-123.11, Reissue Revised Statutes of  
3 Nebraska, and section 37-1201, Revised Statutes  
4 Cumulative Supplement, 2010; to prohibit open containers  
5 of alcohol in or on a vessel, motorboat, or personal  
6 watercraft 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 37-1201, Revised Statutes Cumulative  
2 Supplement, 2010, is amended to read:

3           37-1201 Sections 37-1201 to 37-12,110 and section 2 of  
4 this act shall be known and may be cited as the State Boat Act. It is  
5 the policy of this state to promote safety for persons and property  
6 in and connected with the use, operation, and equipment of vessels  
7 and to promote uniformity of laws relating thereto.

8           Sec. 2. (1) For purposes of this section:

9           (a) Alcoholic beverage means (i) beer, ale porter, stout,  
10 and other similar fermented beverages, including sake or similar  
11 products, of any name or description containing one-half of one  
12 percent or more of alcohol by volume, brewed or produced from malt,  
13 wholly or in part, or from any substitute therefor, (ii) wine  
14 containing not less than one-half of one percent of alcohol by  
15 volume, or (iii) distilled spirits which is that substance known as  
16 ethyl alcohol, ethanol, or spirits of wine in any form, including all  
17 dilutions and mixtures thereof from whatever source or by whatever  
18 process produced. Alcoholic beverage does not include trace amounts  
19 not readily consumable as a beverage;

20           (b) Open alcoholic beverage container, except as provided  
21 in subsection (3) of section 53-123.04 and subdivision (1)(c) of  
22 section 53-123.11, means any bottle, can, or other receptacle:

23           (i) That contains any amount of alcoholic beverage; and

24           (ii)(A) That is open or has a broken seal or (B) the  
25 contents of which are partially removed; and

1           (c) Underway means not (i) at anchor, (ii) made fast to  
2 the shore, or (iii) aground.

3           (2) It is unlawful for any person in or on a vessel,  
4 motorboat, or personal watercraft to possess an open alcoholic  
5 beverage container on waters of this state while such vessel,  
6 motorboat, or personal watercraft is underway.

7           Sec. 3. Section 53-123.04, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           53-123.04 (1) A retail license shall allow the licensee  
10 to sell and offer for sale at retail either in the original package  
11 or otherwise, as prescribed in the license, on the premises specified  
12 in the license or on the premises where catering is occurring,  
13 alcoholic liquor or beer for use or consumption but not for resale in  
14 any form except as provided in section 53-175.

15           (2) Nothing in the Nebraska Liquor Control Act shall  
16 prohibit a holder of a Class D license from allowing the sampling of  
17 tax-paid wine for consumption on the premises by such licensee or his  
18 or her employees in cooperation with a licensed wholesaler in the  
19 manner prescribed by the commission.

20           (3)(a) A restaurant holding a license to sell alcoholic  
21 liquor at retail for consumption on the licensed premises may permit  
22 a customer to remove one unsealed bottle of wine for consumption off  
23 the premises if the customer has purchased a full-course meal and  
24 consumed a portion of the bottle of wine with such full-course meal  
25 on the licensed premises. The licensee or his or her agent shall (i)

1 securely reseal such bottle and place the bottle in a bag designed so  
2 that it is visibly apparent that the resealed bottle of wine has not  
3 been opened or tampered with and (ii) provide a dated receipt to the  
4 customer and attach to such bag a copy of the dated receipt for the  
5 resealed bottle of wine and the full-course meal.

6 (b) If the resealed bottle of wine is transported in a  
7 motor vehicle, it must be placed in the trunk of the motor vehicle or  
8 the area behind the last upright seat of such motor vehicle if the  
9 area is not normally occupied by the driver or a passenger and the  
10 motor vehicle is not equipped with a trunk.

11 (c) If the resealed bottle of wine is transported in or  
12 on a vessel, motorboat, or personal watercraft, it must be placed in  
13 an area or compartment of the vessel, motorboat, or personal  
14 watercraft not readily accessible to the driver.

15 ~~(e)-(d)~~ For purposes of this subsection, full-course meal  
16 means a diversified selection of food which is ordinarily consumed  
17 with the use of tableware and cannot conveniently be consumed while  
18 standing or walking.

19 Sec. 4. Section 53-123.11, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 53-123.11 (1) A farm winery license shall entitle the  
22 holder to:

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

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

3                   (c)(i) Permit a customer to remove one unsealed bottle of  
4 wine for consumption off the premises. The licensee or his or her  
5 agent shall (A) securely reseal such bottle and place the bottle in a  
6 bag designed so that it is visibly apparent that the resealed bottle  
7 of wine has not been opened or tampered with and (B) provide a dated  
8 receipt to the customer and attach to such bag a copy of the dated  
9 receipt for the resealed bottle of wine.

10                  (ii) If the resealed bottle of wine is transported in a  
11 motor vehicle, it must be placed in the trunk of the motor vehicle or  
12 the area behind the last upright seat of such motor vehicle if the  
13 area is not normally occupied by the driver or a passenger and the  
14 motor vehicle is not equipped with a trunk. †

15                  (iii) If the resealed bottle of wine is transported in or  
16 on a vessel, motorboat, or personal watercraft, it must be placed in  
17 an area or compartment of the vessel, motorboat, or personal  
18 watercraft not readily accessible to the driver;

19                  (d) Ship wines produced at the farm winery by common  
20 carrier and sold at retail to recipients in and outside the State of  
21 Nebraska, if the output of such farm winery for each calendar year as  
22 reported to the commission by December 31 of each year does not  
23 exceed thirty thousand gallons. In the event such amount exceeds  
24 thirty thousand gallons, the farm winery shall be required to use a  
25 licensed wholesaler to distribute its wines for the following

1 calendar year, except that this requirement shall not apply to wines  
2 produced and sold onsite at the farm winery pursuant to subdivision  
3 (1)(a) of this section;

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

6 (f) Sell wines produced at the farm winery to other  
7 Nebraska farm winery licensees, in bulk, bottled, labeled, or  
8 unlabeled, in accordance with 27 C.F.R. 24.308, 27 C.F.R. 24.309, and  
9 27 C.F.R. 24.314, as such regulations existed on January 1, 2008;

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

14 (h) Store and warehouse products produced at the farm  
15 winery in a designated, secure, offsite storage facility if the  
16 holder of the farm winery license notifies the commission of the  
17 location of the facility and maintains, at the farm winery and at the  
18 facility, a separate perpetual inventory of the product stored at the  
19 facility. Consumption of alcoholic liquor at the facility is strictly  
20 prohibited.

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

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

25 (4) A holder of a farm winery license may obtain an

1 annual catering license pursuant to section 53-124.12.

2                   Sec. 5. Original sections 53-123.04 and 53-123.11,  
3 Reissue Revised Statutes of Nebraska, and section 37-1201, Revised  
4 Statutes Cumulative Supplement, 2010, are repealed.