

AMENDMENTS TO LB 230

Introduced by Karpisek

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

3 Section 1. Section 53-123.15, Revised Statutes Cumulative
4 Supplement, 2012, is amended to read:

5 53-123.15 (1) No person shall order or receive alcoholic
6 liquor in this state which has been shipped directly to him or her
7 from outside this state by any person other than a holder of a
8 shipping license issued by the commission, except that a licensed
9 wholesaler may receive not more than three gallons of wine in any
10 calendar year from any person who is not a holder of a shipping
11 license.

12 (2) The commission may issue a shipping license to
13 a manufacturer. Such license shall allow the licensee to ship
14 alcoholic liquor only to a licensed wholesaler, except that a
15 licensed wholesaler may, without a shipping license and for the
16 purposes of subdivision (2) of section 53-161, receive beer in
17 this state which has been shipped from outside the state by a
18 manufacturer in accordance with the Nebraska Liquor Control Act
19 to the wholesaler, then transported by the wholesaler to another
20 state for retail distribution, and then returned by the retailer
21 to such wholesaler. A person who receives a license pursuant to
22 this subsection shall pay the fee required in sections 53-124 and
23 53-124.01 for a manufacturer's shipping license. Such fee shall be

1 collected by the commission and be remitted to the State Treasurer
2 for credit to the General Fund.

3 (3) The commission may issue a shipping license to
4 any person who deals with vintage wines, which shipping license
5 shall allow the licensee to distribute such wines to a licensed
6 wholesaler in the state. For purposes of distributing vintage
7 wines, a licensed shipper must utilize a designated wholesaler if
8 the manufacturer has a designated wholesaler. For purposes of this
9 section, vintage wine shall mean a wine verified to be ten years of
10 age or older and not available from a primary American source of
11 supply. A person who receives a license pursuant to this subsection
12 shall pay the fee required in sections 53-124 and 53-124.01 for a
13 vintage wine dealer's shipping license. Such fee shall be collected
14 by the commission and be remitted to the State Treasurer for credit
15 to the General Fund.

16 (4) The commission may issue a shipping license to
17 any ~~person~~ manufacturer who sells and ships alcoholic liquor
18 from another state directly to a consumer in this state if the
19 manufacturer satisfies the requirements of subsections (7) through
20 (10) of this section. A ~~person~~ manufacturer who receives a license
21 pursuant to this subsection shall pay the fee required in sections
22 53-124 and 53-124.01 for a manufacture direct sales shipping
23 license. Such fee shall be collected by the commission and remitted
24 to the State Treasurer for credit to the Winery and Grape Producers
25 Promotional Fund.

26 (5) The commission may issue a shipping license to
27 any retailer who is licensed within or outside Nebraska, who is

1 authorized to sell alcoholic liquor at retail in the state of
2 domicile of the retailer, and who is not a manufacturer if such
3 retailer satisfies the requirements of subsections (7) through
4 (10) of this section to ship alcoholic liquor from another state
5 directly to a consumer in this state. A retailer who receives a
6 license pursuant to this subsection shall pay the fee required in
7 sections 53-124 and 53-124.01 for a retail direct sales shipping
8 license. Such fee shall be collected by the commission and remitted
9 to the State Treasurer for credit to the Winery and Grape Producers
10 Promotional Fund.

11 ~~(5)~~ (6) The application for a shipping license under
12 subsection (2) or (3) of this section shall be in such form as the
13 commission prescribes. The application shall contain all provisions
14 the commission deems proper and necessary to effectuate the purpose
15 of any section of the act and the rules and regulations of the
16 commission that apply to manufacturers and shall include, but not
17 be limited to, provisions that the applicant, in consideration of
18 the issuance of such shipping license, agrees:

19 (a) To comply with and be bound by ~~section~~ sections
20 53-162 and 53-164.01 in making and filing reports, paying taxes,
21 penalties, and interest, and keeping records;

22 (b) To permit and be subject to all of the powers granted
23 by section 53-164.01 to the commission or its duly authorized
24 employees or agents for inspection and examination of the
25 applicant's premises and records and to pay the actual expenses,
26 excluding salary, reasonably attributable to such inspections and
27 examinations made by duly authorized employees of the commission

1 if within the United States; and

2 (c) That if the applicant violates any of the provisions
3 of the application or the license, any section of the act, or
4 any of the rules and regulations of the commission that apply to
5 manufacturers, the commission may ~~revoke or~~ suspend, cancel, or
6 revoke such shipping license for such period of time as it may
7 determine.

8 (7) The application for a shipping license under
9 subsection (4) or (5) of this section shall be in such form as the
10 commission prescribes. The application shall identify the brands
11 of alcoholic liquor that the applicant is requesting the authority
12 to ship either into or within Nebraska. The application shall
13 contain all provisions the commission deems proper and necessary
14 to effectuate the purpose of any section of the act and the rules
15 and regulations of the commission that apply to manufacturers or
16 retailers and shall include, but not be limited to, provisions that
17 the applicant, in consideration of the issuance of such shipping
18 license, agrees:

19 (a) To comply with and be bound by sections 53-162 and
20 53-164.01 in making and filing reports, paying taxes, penalties,
21 and interest, and keeping records;

22 (b) To permit and be subject to all of the powers granted
23 by section 53-164.01 to the commission or its duly authorized
24 employees or agents for inspection and examination of the
25 applicant's premises and records and to pay the actual expenses,
26 excluding salary, reasonably attributable to such inspections and
27 examinations made by duly authorized employees of the commission if

1 within the United States;

2 (c) That if the applicant violates any of the provisions
3 of the application or the license, any section of the act, or
4 any of the rules and regulations of the commission that apply to
5 manufacturers or retailers, the commission may suspend, cancel, or
6 revoke such shipping license for such period of time as it may
7 determine;

8 (d) That the applicant agrees to notify the commission of
9 any violations in the state in which he or she is domiciled and any
10 violations of the direct shipping laws of any other states. Failure
11 to notify the commission within thirty days after such a violation
12 may result in a hearing before the commission pursuant to which the
13 license may be suspended, canceled, or revoked; and

14 (e) That the applicant agrees to notify any wholesaler
15 licensed in Nebraska that has been authorized to distribute such
16 brands that the application has been filed for a shipping license.
17 The notice shall be in writing and in a form prescribed by the
18 commission. The commission may adopt and promulgate rules and
19 regulations as it reasonably deems necessary to implement this
20 subdivision, including rules and regulations that permit the holder
21 of a shipping license under this subdivision to amend the shipping
22 license by, among other things, adding or deleting any brands of
23 alcoholic liquor identified in the shipping license.

24 (8) Any applicant for a shipping license under subsection
25 (4) or (5) of this section that does not have the right to control
26 the distribution of the brands of alcoholic liquor identified in
27 the application may be issued a shipping license for alcoholic

1 liquor if the applicant has obtained and filed with the application
2 for a shipping license, and with any subsequent application for
3 renewal of the license, the written consent of either (a) the
4 manufacturer whose brands of alcoholic liquor are identified in
5 the application or (b) any wholesale distributor authorized to
6 distribute the alcoholic liquor produced by the manufacturer.
7 Any manufacturer, or its wholesale distributor, that has provided
8 written authorization pursuant to this subsection to sell and
9 ship its brand or brands of alcoholic liquor shall not be
10 restricted from withdrawing such authorization at any time. If
11 such authorization is withdrawn, the manufacturer shall promptly
12 notify the holder of the shipping license and the commission in
13 writing of its decision to withdraw from the authority to sell and
14 ship any of its brands, and the holder of the shipping license
15 shall promptly file with the commission an amendment to its license
16 eliminating any such withdrawn brand or brands from the shipping
17 license.

18 (9) Any manufacturer or retailer who is granted a
19 shipping license under subsection (4) or (5) of this section
20 shall:

21 (a) Only ship the brands of alcoholic liquor identified
22 on the application;

23 (b) Only ship alcoholic liquor that is owned by the
24 holder of the shipping license;

25 (c) Only ship alcoholic liquor that is properly
26 registered with the Alcohol and Tobacco Tax and Trade Bureau of the
27 United States Department of the Treasury;

1 (d) Not ship any alcoholic liquor products that the
2 manufacturers or wholesalers licensed in Nebraska have voluntarily
3 agreed not to bring into Nebraska at the request of the commission;

4 (e) Not ship more than nine liters of alcoholic liquor
5 per month to any person in Nebraska to whom alcoholic beverages
6 may be lawfully sold. All such sales and shipments shall be for
7 personal consumption only and not for resale; and

8 (f) Cause the direct shipment of alcoholic liquor to
9 be by approved common carrier only. The commission shall adopt
10 and promulgate rules and regulations pursuant to which common
11 carriers may apply for approval to provide common carriage of
12 alcoholic liquor shipped by a holder of a shipping license issued
13 pursuant to subsection (4) or (5) of this section. The rules
14 and regulations shall include provisions that require (i) the
15 recipient to demonstrate, upon delivery, that he or she is at
16 least twenty-one years of age, (ii) the recipient to sign an
17 electronic or paper form or other acknowledgement of receipt as
18 approved by the commission, and (iii) the commission-approved
19 common carrier to submit to the commission such information as the
20 commission may prescribe. The commission-approved common carrier
21 shall refuse delivery when the proposed recipient appears to be
22 under the age of twenty-one years and refuses to present valid
23 identification. All holders of shipping licenses shipping alcoholic
24 liquor pursuant to this subdivision shall affix a conspicuous
25 notice in sixteen-point type or larger to the outside of each
26 package of alcoholic liquor shipped within or into the State of
27 Nebraska, in a conspicuous location, stating: CONTAINS ALCOHOLIC

1 BEVERAGES; SIGNATURE OF PERSON AT LEAST 21 YEARS OF AGE REQUIRED
2 FOR DELIVERY. Any delivery of alcoholic beverages to a minor by a
3 common carrier shall constitute a violation by the common carrier.
4 The common carrier and the holder of the shipping license shall be
5 liable only for their independent acts.

6 (10) For purposes of sections 53-160 and 77-2703, each
7 shipment of alcoholic liquor by the holder of a shipping license
8 under subsection (3), (4), or (5) of this section shall constitute
9 a sale in Nebraska by establishing a nexus in the state. The
10 holder of the shipping license shall collect all the taxes due to
11 the State of Nebraska and remit any excise taxes monthly to the
12 commission and any sales taxes to the Department of Revenue.

13 Sec. 2. Section 53-124, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 53-124 (1) At the time application is made to the
16 commission for a license of any type, the applicant shall pay
17 the fee provided in section 53-124.01 and, if the applicant is
18 an individual, provide the applicant's social security number. The
19 commission shall issue the types of licenses described in this
20 section.

21 (2) There shall be an airline license, a boat license,
22 and a railroad license. The commission shall charge one dollar for
23 each duplicate of an airline license or a railroad license.

24 (3)(a) There shall be a manufacturer's license for
25 alcohol and spirits, for beer, and for wine. The annual fee
26 for a manufacturer's license for beer shall be based on the barrel
27 daily capacity as follows:

1 (i) 1 to 100 barrel daily capacity, or any part thereof,
2 tier one;

3 (ii) 100 to 150 barrel daily capacity, tier two;

4 (iii) 150 to 200 barrel daily capacity, tier three;

5 (iv) 200 to 300 barrel daily capacity, tier four;

6 (v) 300 to 400 barrel daily capacity, tier five;

7 (vi) 400 to 500 barrel daily capacity, tier six;

8 (vii) 500 barrel daily capacity, or more, tier seven.

9 (b) For purposes of this subsection, daily capacity means
10 the average daily barrel production for the previous twelve months
11 of manufacturing operation. If no such basis for comparison exists,
12 the manufacturing licensee shall pay in advance for the first
13 year's operation a fee of five hundred dollars.

14 (4) There shall be five classes of nonbeverage users'
15 licenses: Class 1, Class 2, Class 3, Class 4, and Class 5.

16 (5) In lieu of a manufacturer's, a retailer's, or a
17 wholesaler's license, there shall be a license to operate issued
18 for a craft brewery, a farm winery, or a microdistillery.

19 (6) (a) There shall be five classes of retail licenses:

20 (i) Class A: Beer only, for consumption on the premises;

21 (ii) Class B: Beer only, for consumption off the
22 premises, sales in the original packages only;

23 (iii) Class C: Alcoholic liquor, for consumption on the
24 premises and off the premises, sales in original packages only. If
25 a Class C license is held by a nonprofit corporation, it shall be
26 restricted to consumption on the premises only. A Class C license
27 may have a sampling designation restricting consumption on the

1 premises to sampling, but such designation shall not affect sales
2 for consumption off the premises under such license;

3 (iv) Class D: Alcoholic liquor, including beer, for
4 consumption off the premises, sales in the original packages only,
5 except as provided in subsection (2) of section 53-123.04; and

6 (v) Class I: Alcoholic liquor, for consumption on the
7 premises.

8 (b) All applicable license fees shall be paid by the
9 applicant or licensee directly to the city or village treasurer in
10 the case of premises located inside the corporate limits of a city
11 or village and directly to the county treasurer in the case of
12 premises located outside the corporate limits of a city or village.

13 (7) There shall be ~~three~~ four types of shipping licenses
14 as described in section 53-123.15: Manufacturers, vintage wines,
15 ~~and manufacture direct sales, and retail direct sales.~~

16 (8) There shall be two types of wholesale licenses:
17 Alcoholic liquor and beer only. The annual fee shall be paid for
18 the first and each additional wholesale place of business operated
19 in this state by the same licensee and wholesaling the same
20 product.

21 (9) The license year, unless otherwise provided in the
22 Nebraska Liquor Control Act, shall commence on May 1 of each year
23 and shall end on the following April 30, except that the license
24 year for a Class C license shall commence on November 1 of each
25 year and shall end on the following October 31. During the license
26 year, no license shall be issued for a sum less than the amount of
27 the annual license fee as fixed in section 53-124.01, regardless

1 of the time when the application for such license has been made,
2 except that (a) when there is a purchase of an existing licensed
3 business and a new license of the same class is issued or (b) upon
4 the issuance of a new license for a location which has not been
5 previously licensed, the license fee and occupation taxes shall be
6 prorated on a quarterly basis as of the date of issuance.

7 Sec. 3. Section 53-124.01, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 53-124.01 (1) The fees for annual licenses finally issued
10 by the commission shall be as provided in this section and section
11 53-124.

12 (2) Airline license ... \$100

13 (3) Boat license ... \$50

14 (4) Manufacturer's license:

15	Class	Fee - In Dollars
16	Alcohol and spirits	1,000
17	Beer - tier one	100
18	Beer - tier two	200
19	Beer - tier three	350
20	Beer - tier four	500
21	Beer - tier five	650
22	Beer - tier six	700
23	Beer - tier seven	800
24	Wine	250

25 (5) Nonbeverage user's license:

1	Class	Fee - In Dollars
2	Class 1	5
3	Class 2	25
4	Class 3	50
5	Class 4	100
6	Class 5	250
7	(6) Operator's license:	
8	Class	Fee - In Dollars
9	Craft brewery	250
10	Farm winery	250
11	Microdistillery	250
12	(7) Railroad license ...	\$100
13	(8) Retail license:	
14	Class	Fee - In Dollars
15	Class A	100
16	Class B	100
17	Class C	300
18	Class D	200
19	Class I	250
20	(9) Shipping license:	
21	Class	Fee - In Dollars
22	Manufacturer	1,000

1 Vintage wines 1,000

2 ~~Direct~~ Manufacture direct sales 500

3 Retail direct sales 500

4 (10) Wholesale license:

5 Class Fee - In Dollars

6 Alcoholic liquor 750

7 Beer 500

8 Sec. 4. Section 53-162, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 53-162 For the purpose of raising revenue, a tax is
11 imposed upon persons holding a shipping license issued pursuant
12 to subsection (4) or (5) of section 53-123.15 who ship alcoholic
13 liquor to individuals pursuant to section 53-192 and for which
14 the required taxes in the state of purchase or this state have
15 not been paid. The tax, if due, shall be paid by the holder
16 of the shipping license issued pursuant to subsection (4) or (5)
17 of section 53-123.15. The amount of the tax shall be imposed as
18 provided in section 53-160. The tax shall be collected by the
19 commission, except that the tax shall not be due until December
20 31 of the year in which the purchase was made. The tax shall be
21 delinquent if unpaid within twenty-five days after December 31.
22 The revenue from the tax shall be credited to the General Fund.
23 The commission shall adopt and promulgate rules and regulations to
24 carry out this section.

25 Sec. 5. Section 53-304, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 53-304 Each Nebraska winery shall pay to the Nebraska
3 Liquor Control Commission twenty dollars for every one hundred
4 sixty gallons of juice produced or received by its facility.
5 Gifts, grants, or bequests may be received for the support of
6 the Nebraska Grape and Winery Board. Funds paid pursuant to the
7 charge imposed by this section and funds received pursuant to
8 subsection (4) or (5) of section 53-123.15 and from gifts, grants,
9 or bequests shall be remitted to the State Treasurer for credit
10 to the Winery and Grape Producers Promotional Fund which is hereby
11 created. For administrative purposes, the fund shall be located in
12 the Department of Agriculture. All revenue credited to the fund
13 pursuant to the charge imposed by this section and excise taxes
14 collected pursuant to section 2-5603 and any funds received as
15 gifts, grants, or bequests and credited to the fund shall be used
16 by the department, at the direction of and in cooperation with
17 the board, to develop and maintain programs for the research and
18 advancement of the growing, selling, marketing, and promotion of
19 grapes, fruits, berries, honey, and other agricultural products and
20 their byproducts grown and produced in Nebraska for use in the wine
21 industry. Such expenditures may include, but are not limited to,
22 all necessary funding for the employment of experts in the fields
23 of viticulture and enology, as deemed necessary by the board,
24 and programs aimed at improving the promotion of all varieties
25 of wines, grapes, fruits, berries, honey, and other agricultural
26 products and their byproducts grown and produced in Nebraska for
27 use in the wine industry.

1 Funds credited to the fund shall be used for no other
2 purposes than those stated in this section and any transfers
3 authorized pursuant to section 2-5604. Any funds not expended
4 during a fiscal year may be maintained in the fund for distribution
5 or expenditure during subsequent fiscal years. Any money in the
6 fund available for investment shall be invested by the state
7 investment officer pursuant to the Nebraska Capital Expansion Act
8 and the Nebraska State Funds Investment Act.

9 Sec. 6. Original sections 53-124, 53-124.01, 53-162,
10 and 53-304, Reissue Revised Statutes of Nebraska, and section
11 53-123.15, Revised Statutes Cumulative Supplement, 2012, are
12 repealed.