

The Voice

of the Nebraska Grocery Industry

APRIL/MAY/JUNE 2021



**CONGRATULATIONS TO OUR
2021 AWARD WINNERS!**

BE A SURVIVOR

Not all independent grocers are going out of business.
Independent grocers can still compete and win!



Not as profitable as you once were? Independent grocers are in a fight for their lives. Don't be the next grocer forced to shut their doors. Continuing to operate in the same manner and hoping for different results will not be a winning long-term strategy. The future remains bright for those who embrace the change necessary to survive and prosper. While transitioning wholesalers may require some extra effort and a change to the status quo, isn't it worth it to make the call sooner rather than later to learn how Associated Wholesale Grocers can provide you a lower cost of goods and a real chance to compete in the marketplace today and in the future?

For a lower cost of goods PLEASE CONTACT: Wayne Hall 608-347-7318
Dave McKelvey 713-876-6240
Neal Schumacher 573-489-1545



SpartanNash[®]

Support Services Group

YOUR TRUSTED PARTNER FOR 2021 AND BEYOND



- Advertising Support
- Asset Protection
- Category Management
- Customer Service
- Financial Services
- Food Safety
- Graphic Services
- Marketing
- Merchandising
- Pharmacy
- Pricing
- Reclamation
- Retail Development
- Retail Technology
- Retailer Education
- Shelf Technology
- Supply Solutions

CONTACT US TODAY AND LEARN HOW WE CAN HELP YOUR BUSINESS!

Visit [SpartanNash.com](https://www.spartannash.com)

or Call: **John Paul**, VP Sales 616-878-8161 • john.paul@spartannash.com

or **Greg Cross**, Development Manager 320-292-0382 • greg.cross@spartannash.com

C O N T E N T S

features & departments

6	Update from Executive Director	17	Fareway Opens Store in Omaha
8-9	Legislative Update	19	Award Winners
9	Electronic Nicotine Delivery Systems	21-23	Repeal of Independent Contractor Rule
12-13	NGIA Legislative Dinner	25	The NGA Show 21
14	People, Places, Things	26-27	NE Child Labor Laws

advertisers

27	Advantage Solutions	10	Keurig Dr Pepper
15	Altria Client Services	22	Nebraska Lottery
24	Anheuser-Busch	27	Omaha World Herald
6	Arctic Glacier	5	Pan-O-Gold Baking Company
IFC	Associated Wholesale Grocers	7	Pepsi Cola
14	Cellular Center	16	Republic National Distributing Company
24	Cheyenne International LLC	10	Retail Data Systems
11	Coca-Cola	20	Reynolds American
5	Crystal Farms	BC	Shazam
21	Diageo	24	Sparboe Company
18	Fareway Stores	3	SpartanNash
18	Farmer-Bocken Company a division of Core-Mark	8	Swedish Match
10	Federated Insurance	21	The Brenmar Company
23	Hiland Dairy	10	The Mark Anthony Brands
9	Kemps	24	UR Brands/Barrel O' Fun
18	Kemps	11	Well's Enterprise
		7	Wildhorse Distributing

Owned and Published by: **Nebraska Grocery Industry Association, Inc.**
 5935 South 56th Street, Suite B, Lincoln, Nebraska 68516-3301
 Phone: (402) 423-5533 or 800-433-6742 • E-mail: afellers@nebgrocery.com.
We retain the right to refuse any advertisement or copy content deemed inappropriate or inconsistent with our goals and objectives to serve our members.

NGIA - 2021 Calendar of Events

- June 21** **NGIA Sandbaggers Spring Golf Outing at Iron Horse**
- June 21-25.....Midsummer Executive Conference, Phoenix, AZ
- Aug. 3-5.....AWG - VMC Show, Overland Park Conv. Ctr.
- Aug. 10-13.....FMI - VIRTUAL Project Manager Academy
- Aug. 27.....AWG Nebraska Holiday Food Show, Omaha, NE
- Sept. 19-21National Grocers Association Show, Las Vegas, NV
- Sept. 29-30.....Convention – Nebraska Petroleum Marketers & Convenience Store Association
- Oct. 5****Hackers & Snackers Golf Extravaganza – Quarry Oaks**

(If you would like to have your event listed on the calendar, please contact the NGIA office)

Chairman of the Board:
DeLone Wilson

Cubby's
 Phil's Cash Saver

Vice Chairman of the Board:
Frank Woodward

Hy-Vee

Secretary/Treasurer:
Shannon McCord

Ideal Market

Immediate Past Chairman:
Peter Clark

Aurora Mall
 Boogaarts Market
 Crete Foodmart

Executive Director:
Ansley Fellers

Directors:
Thom Brittenham

Land O'Frost/Wimmers

Kathy Gunlock

Farmer-Bocken Company
 a Division of Core-Mark

Mike Herrod

Associated Wholesale
 Grocers

Cortney Kallenbach

SpartanNash

Dave Keitges

Kemps Dairy

Mogens Knudsen

Plum Creek Market

Sheila Lowrie

Bakers/Dillon Stores

Pat Raybould

Russ's Market
 Super Saver

Kiley White

Grocery Kart, Inc.

Matt Will

Republic National
 Distributing



Pan-O-Gold Baking Company

Bakers of Quality Bakery Items

**Country
Hearth.**
NATURAL BREADS

ARTISAN
HEARTH.

**Village
Hearth**

13247 Cary Circle La Vista, NE 68138 402-339-4803



Ansley Fellers
Executive Director

Update from the Executive Director

As you'd expect, the first half of this year was dominated primarily by work in the Nebraska legislature. Throughout the early days of the session, with the possibility of a COVID outbreak still looming, members and lobbyists were hustling to beat a forced early adjournment. By April, members and staff at the Capitol as well as much of the lobby were vaccinated and, while work didn't slow down, attitudes improved and opportunities to gather reemerged.

Thanks to donations from NGIA board members, we were able to deliver candy to offices throughout the spring and provide senators ice cream in the waning days of the session. For this we've been given and will gladly take credit for keeping the senators moderately cordial and productive right up until adjournment.

With the help of our friends at the Chambers of Commerce, Nebraska Retail Federation and Nebraska Restaurant Association, we saw major legislative successes including passage of COVID liability protections for business, a phased-in reduction of the corporate tax rate, and a bill to make permanent bar and restaurant alcohol to-go, along with enhanced opportunities for curbside pickup. We also successfully assisted in the veto override effort on LB 108, the bill to increase the gross income limit to qualify for SNAP to 165% the federal poverty level. See more about legislative wins on Page 8.

On April 14th NGIA hosted a Legislative Reception at the Country Club of Lincoln (Pg. 12 & 13) which was a huge success. Thanks so much to those who purchased tickets, sponsored the event, donated silent auction items for our scholarship fund, and attended – some of you did all of those things! NGIA staff were vital to the operation – showing up early to set up, welcoming and registering guests, and anything and everything related to the silent auction. We had a great deal of senator participation and positive feedback.

Speaking of the scholarship fund, NGIA is very pleased to have chosen our 2021 scholarship winners. With students from a variety of backgrounds and experiences including high school seniors, college students, and non-traditional students, we are exceptionally proud of the slate of applicants we received. While we wish we could award scholarships to each one, we will continue working to build the fund so we can grant even more in the future. Look for additional details about each winner in the Fall 2021 issue of The Voice.

In May, NGIA board, members and staff participated in a federal "virtual fly-in," meeting remotely with

Senators Fisher and Sasse and staff from the offices of Congressmen Smith and Bacon. We were able to share with the delegation information about the more than \$3 billion the industry has invested in pandemic response, including on enhanced employee and customer safety. We also discussed food-related issues such as SNAP and WIC regulations and the expiration of the USDA food box program, as well as Pharmacy Benefit Manager (PBM) oversight, the excessive cost of swipe fees, and the damage to the industry which would result from tax changes like eliminating the stepped-up basis and the 20% pass-through deduction.

It was an action-packed spring, and with the Sand Baggers golf outing right around the corner, we're looking forward to an eventful summer.

As always, we thank you and hope you find your NGIA membership valuable. We appreciate your support and value your commitment to your employees and communities.

Please be on the lookout for ways to stay connected and engaged and reach out to us whenever we can be of assistance.

All the best,

...Proudly Serving Nebraska Grocers
For Over 100 Years.

1-800-333-7340
1-402-592-9262
Omaha Headquarters



WILDHORSE
D I S T R I B U T I N G

NATIONAL DISTRIBUTOR OF
TOBACCO BRANDS AND ACCESSORIES

713 N. Frontier, Papillion, NE 68046
888-293-2635

www.WildHorseDist.com

NGIA State Legislative Update

The Legislature adjourned sine die on May 27th and will reconvene later this year for the purpose of redrawing legislative districts using 2020 Census data.

In addition to passing the state's two-year budget, lawmakers this year funded property tax relief, cut taxes on military retirement, Social Security income, business inputs and residential water service, and phased in a reduction in the corporate tax rate. All told, the Legislature passed 200 pieces of legislation, which includes three bills vetoed by the governor and overridden by legislators.

LB 108 was the subject of one override vote. The legislation, supported by NGIA, would increase income eligibility for the Supplemental Nutrition Assistance Program (SNAP) for two years. By increasing the gross income limit to qualify for SNAP to 165% the federal poverty level, LB 108 would allow employees to steadily grow their income without immediately losing their benefits, addressing what we call the SNAP "cliff effect." It also represents another means of attracting and retaining workers as businesses across Nebraska continue to struggle with significant labor shortages.

Other bills backed by NGIA and signed into law include:

LB 139, a bill to provide protection from potential lawsuits for businesses, as well as health care providers, first responders, schools, churches and senior care facilities, when the lawsuit alleges the entity negligently exposed an individual to COVID-19 infection. The bill prevents a civil action as long as the protected business was acting in compliance with federal public health guidelines in place at the time of an alleged exposure.

LB 274, a collection of alcohol-related bills. In addition to creating parity in taxation for ready-made cocktails, the bill included a provision to make permanent take-out alcohol from restaurants and bars and a repeal of the prohibition on selling alcohol to a person within a motor vehicle. The provision, known informally as the "feet on the ground" rule, is generally seen as precluding curbside pickup of alcohol. That provision was repealed and replaced with language allowing a retailer with the proper license to sell alcohol to a person twenty-one years or older in a motor vehicle if the alcohol is sold along with food, the motor vehicle is in park, and the alcohol is placed in the trunk.

LB 583 will require prescriptions for controlled substances to be issued electronically. NGIA joined the Nebraska Retail Federation and the National Association of Chain Drug Stores in supporting this bill to improve public and patient safety and security by reducing medication and

handwriting errors, making patient care more efficient, and improving tracking of prescriptions.

LB 432 is an effort to achieve corporate and individual income tax parity by stair stepping the corporate tax rate down to 7.5 percent the first year, 7.25 the second year, then stating the intent of the body is to take it the rest of the way to the individual rate (6.84) in the next biennium.

NGIA also worked to defeat a number of bills which would have been detrimental to the food industry and, in some cases, businesses as a whole:

LB 115, which will still be alive next year, would eliminate the sales tax exemption on purchases of candy and soft drinks. In our testimony, NGIA reminded the Revenue Committee we would like to continue being a part of discussions on a more fundamental overhaul of our tax system, but carving out specific food items is complicated and burdensome for retailers and consumers. Additionally, excise taxes like this are too narrow and regressive to be practical sources of revenue, and evidence of any direct impact on obesity continues to be limited, so it remains entirely unclear whether such taxes have any positive effect on public health.

LB 258, sponsored by Omaha Sen. Tony Vargas, would

Swedish Match

Our ongoing commitment to customer service and consumer satisfaction make Swedish Match your #1 choice for growing your OTP profits.

Please call 1-800-367-3677 or visit swedishmatch.com

©2019 SWEDISH MATCH NORTH AMERICA LLC

require employers with four or more employees to provide paid sick and safe leave. Under the proposal, employees would accrue at least one hour of paid leave for every 30 hours worked. Employees could earn up to 40 hours of paid leave per year, based on hours worked. LB258 failed to advance on a 17-20 vote. Twenty-five votes were needed.

We also had several “wins” on the state regulatory front. For instance, following testimony and continuous feedback from NGIA, and the possibility of legislative action by the legislature’s Revenue Committee, the Department of Revenue (DOR) walked back efforts to bring genuine little cigars under the Master Settlement Agreement. DOR’s original interpretation increased costs for a number of legitimate manufacturers, putting them at a competitive disadvantage, and forcing retailers to pull products altogether. The reversal was a win for manufacturers, distributors, retailers, and consumers.

Federal Update

As part of the National Grocers and FMI “virtual fly-in,” NGIA recently had the opportunity to meet with our federal delegation and, as mentioned in the Executive Director update, discuss a variety of topics critical to our industry such as swipe fees, taxes, and food and nutrition programs.

In addition to the information provided at these meetings, NGIA has signed onto a letter with partners from across the nation encouraging support for a renewed legislative effort to address direct and indirect remuneration (DIR) fees imposed by pharmacy benefit managers (PBMs) on pharmacies. We support legislation which would prohibit the retroactive “clawbacks” by PBMs while applying all price concessions at the point of sale and establishing standardized pharmacy performance measures.

We have also joined calls to exclude food and agriculture products from the Online COOL Act which would require online retailers and sellers to post Country of Origin Labeling (COOL) information to product descriptions on their websites, and asked our delegation to support the Inform Act, which would require online marketplaces to verify high-volume, third-party sellers on their platforms, making it much harder for criminals to sell counterfeit and stolen goods.

Stay tuned for more information as we continue monitoring issues like cybersecurity, the long-delayed COVID-related emergency temporary standard from the Occupational Safety and Health Administration (OSHA), federal infrastructure investment, and tax reform.

Please reach out to Ansley Fellers (afellers@nebgrocery.com) or Rich Otto (rich@nebgrocery.com) if you are interested in receiving more information about anything

mentioned here or would like to sign up to receive regular legislative and regulatory updates.

Though this is not an all-inclusive summary of bills and regulations impacting the industry, we hope this provides a helpful overview and welcome your input and assistance as we continue to educate and engage our elected officials and the general public on policy matters.

Electronic Nicotine Delivery Systems (ENDS)

Beginning March 28, 2021, the Preventing Online Sales of E-Cigarettes to Children Act amends the PACT Act and Jenkins Act to include ENDS. The definition of an ENDS includes:

- E-cigarettes
- E-hookahs
- E-cigars
- Vape pens
- Advanced refillable personal vaporizers
- Electronic pipes; and
- Any component, liquid, part, or accessory of a device without regard to whether the component, liquid, part, or accessory is sold separately from the device.

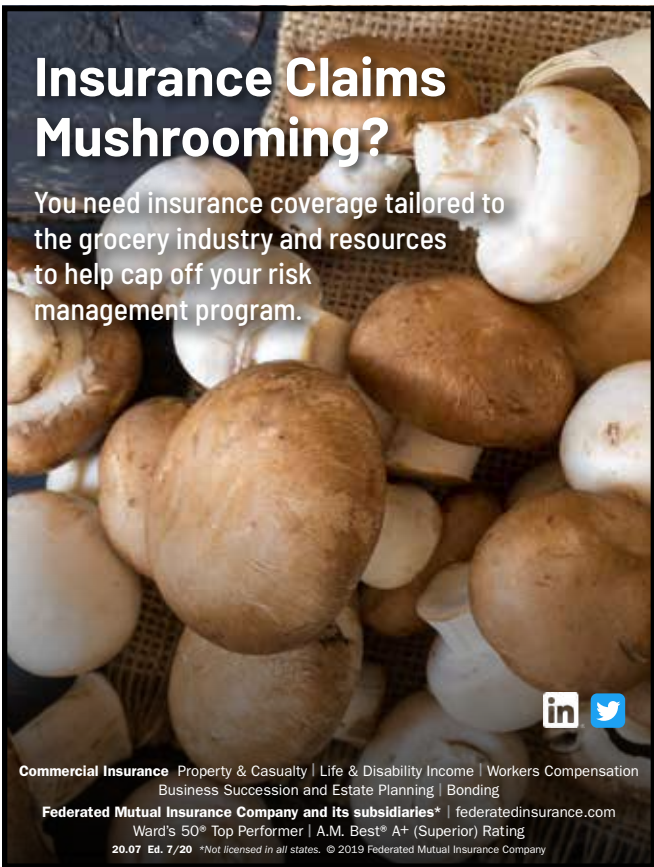
Nebraska does not subject ENDS products to an excise tax. Nebraska will not require monthly PACT ACT reporting for ENDS products. If you have questions, please contact:

Garrett Nedved
 Nebraska Department of Revenue
 Phone: 402-471-5862
 Email: garrett.nedved@nebraska.gov



Insurance Claims Mushrooming?

You need insurance coverage tailored to the grocery industry and resources to help cap off your risk management program.



Commercial Insurance Property & Casualty | Life & Disability Income | Workers Compensation
Business Succession and Estate Planning | Bonding
Federated Mutual Insurance Company and its subsidiaries* | federatedinsurance.com
Ward's 50[®] Top Performer | A.M. Best[®] A+ (Superior) Rating
20.07 Ed. 7/20 *Not licensed in all states. © 2019 Federated Mutual Insurance Company



We Do That!

Partnering with Nebraska Grocers Since 1950

Retail technology solutions to improve store operations and the customer experience.



Mike VerWey
mverwey@rdspos.com

Scott Worthington
sworthington@rdspos.com

800.564.4737

www.rdspos.com/grocery



Omaha: 402-972-4701

Norfolk: 402-371-9347



**NO MATTER HOW YOU SLICE IT...
...A GOOD PARTNER IS HARD TO FIND.**



Mark Anthony Brands Inc. is proud to be a partner of the Nebraska Grocers Association and all the hard work that they do!

MIKE'S IS HARD. SO IS PRISON. DON'T DRIVE DRUNK.™ PREMIUM MALT BEVERAGE. ©2017 Mike's Hard Lemonade Co., Chicago, IL

Coca-Cola®

LIVE  POSITIVELY™



Wells Enterprises, Inc.
is a Proud Supporter of the
Nebraska Grocery Industry Association

 {     

©2020 Wells Enterprises, Inc. All rights reserved.

NGIA Legislative Dinner Another Success!

Members of the food industry filled the ballroom at the Country Club of Lincoln to chat with and thank Governor Pete Ricketts, State Senators, and several industry leaders, and bid on silent auction items to support the NGIA scholarship program. Awards were presented to industry leaders. See more about our 2021 industry award winners on Page 19.



De Lone Wilson - Cubby's, Inc



Governor Pete Ricketts



Ted Stessman - Farner-Bocken Company a Division of Core-Mark



Bob Osborne - Arctic Glacier Premium Ice



Thom Brittenham - Land O'Frost/Wimmers



Ansley Fellers - Nebraska Grocery Industry Association

Legislative Dinner, Cont.

NGIA members mingle and thank state leaders at the NGIA Legislative Dinner held on April 14th at the Country Club of Lincoln.



CellularCenter™
CELL PHONE ESSENTIALS

Call/Text Bryan at 605.366.5257 or
Peters Distributing Inc at 605.543.5229

**BEST OF THE BEST
BASIC CELLULAR SUPPLIES
NOTHING EXPENSIVE OR ABSTRACT
LOW RETAIL PRICE, GOOD QUALITY
& GREAT MARGIN**

WALL/CAR CHARGERS
WIRELESS CHARGERS
BLUETOOTH HEADSETS
EAR BUDS, 10' CORDS
ADAPTERS & MORE

***Marketing kit/signage included**
Displays free stand or hang

COUNTERTOP **FULL SERVICE RACK** **10' CORD SPINNER**

Nebraska Food News...People...Places...Things

Hy-Vee's team of registered dietitians are celebrating National Physical Fitness and Sports Month by hosting free virtual events. These include store tours, virtual seminars and live question-and-answer sessions regarding ways to shop, exercise and snack to help support an active lifestyle. Also, for the seventh year, Hy-Vee's KidsFit Club is encouraging healthy lifestyles all summer for kids through events and rewards programs.

Nider's Grocery, in Humboldt, owner Shelley Wood was presented with a big thank you from Summer Lunch Club treasurer Diane James for being a strong supporter of the program that feeds children free nutritious meals.

Sargent Corner Market has updated the front of their store with a major facelift. The finished project is complete with new automatic opening doors.

Gary's Super Foods in North Platte hosts Rotary Club's third annual "Grocery Grab". Ruth Hyland of Maxwell, winner of the event's top three-minute spree, focused on "higher-dollar items that are more expensive to buy on a regular basis." Her ticket at the end of her run totaled \$297.13.

Bayard Grocery, Bayard's sole grocery store, closed over two months ago however the community is still working to bring a grocery store back to Bayard. Now begins the physical work, according to Twin City Development Community Development Director Michelle Coolidge. The steering committee leading the initiative has made progress in determining what kind of store works best for Bayard. "It's probably leaning toward either a cooperative or an LLC but there are still some variations of each of those models that we have to factor in," Coolidge said.

Hy-Vee near 79th and Cass Streets hosted an event that caused hundreds to wait in line for hours to meet rapper Curtis James Jackson III, known professionally as 50 Cent. More than 900 people purchased a bottle of Branson Cognac or his champagne, Le Chemin du Roi. A purchase of a bottle included a meet-and-greet and photo with the rapper.

SpartanNash has enlisted digital health technology specialist Bonum Health to provide telehealth services to pharmacies in all company-owned supermarkets, including Family Fare stores in Omaha.



Altria

Thank You!

for your support

NEBRASKA GROCERY INDUSTRY ASSOCIATION

from your partners at



WINE

SPIRITS



Brought to you by

RNDC



• DRINK RESPONSIBLY •

Fareway Opens New Store in Omaha

Fareway held a ribbon cutting ceremony for a new store located at 13150 Fort Street in Omaha. The 21,000 square foot grocery store provides only the best in fresh, highest quality meat; a second-to-none full-service butcher counter; farm-fresh produce; low, competitive prices; and the highest level of customer service, including to-you-car carryout. Additionally, the location also offers online shopping and curbside pick-up, available at Shop.Fareway.com.

“We are excited to join this vibrant and growing area of Omaha and look forward to serving neighborhood businesses and residents,” said Fareway President and CEO Reynolds W. Cramer. “We want to thank the

seller, developer, and other community leaders for their support in making this store a reality.”

“On behalf of the City of Omaha, I would like to warmly welcome this fourth Fareway location to the western Omaha community,” said Councilmember Aimee Melton. “Fareway is a great addition and will make for an even more desirable neighborhood for prospective businesses and residents.”

The new store will be managed by Grocery Manager Joel Wymore and Market Manager Steve Steinfeldt. The store will be open for normal business hours of 8 a.m. to 9 p.m. (CLOSED SUNDAYS)





BEST AT FRESH!

FAREWAY
MEAT & GROCERY

17070 Audrey St, Omaha
1325 Jersey St, Papillion
1738 S 11th St, Nebraska City

FAREWAY MEAT MARKET

8900 W. Center Road, Suite 106, Omaha
3033 S 84th St., Lincoln

100% FARMER OWNED

KEMPS
SINCE 1914

Good Comes Around™

From our farmers to your families.



Kemps Le Mars Dairy Plant
1188 Lincoln St SW,
Le Mars, IA 51031
866-926-5773

FARNER-BOCKEN
COMPANY
A division of Core-Mark

*Supporting the
Convenience and
Food Service Industry*

www.farner-bocken.com
www.core-mark.com

FARNER-BOCKEN COMPANY | 1751 HWY 30 EAST | PO BOX 368 | CARROLL, IOWA 51401 | 1-800-274-8692

NGIA Presents Awards to Industry Leaders During NGIA Legislative Dinner

Spirit of America Award



Kathy Siefken is the recipient of the 2021 Spirit of America Award and is also slated to receive the National Grocers Association's 2021 Spirit of America Award. Kathy served as NGIA Executive Director for nearly 30 years. She grew the Association into the

leading advocate for the food industry across the state of Nebraska. Those who have worked with or simply know her, understand that Kathy's tireless efforts led to countless legislative and regulatory victories, and the business-friendly climate across Nebraska wouldn't be the same without her. Kathy was instrumental on numerous pieces of legislation throughout her career. She also was a fierce defender of not taxing food in grocery stores in Nebraska, which included fighting multiple tax proposals on food, candy, soda, and bottled water.

new position has allowed Bob to work from his home in Omaha and spend more time with his wife Kathy.

Vendor of the Year



Thom Brittenham is the recipient of the 2021 Vendor of the Year. Thom, a new member of the NGIA Board of Directors, has been with Land O' Frost since 2011 where he currently serves as a Regional Manager. His portfolio includes Land O' Frost lunchmeat, Wimmer's,

and Fairbury and Ambassador sausages and hot dogs. Thom has also been directly responsible for Wimmer's international sausage sales to Japan and Guam. Thom is a four-time Land O' Frost Spirit of Leadership Award Winner for sales and leadership excellence within the company. In his spare time, Thom enjoys outdoor activities with his family and is an avid golfer and waterfowl hunter.

Distinguished Service Award



Bob Osborne is the recipient of the 2021 Distinguished Service Award in recognition of his service to the grocery industry and his community. Bob, a 37-year grocery veteran, got his start in the industry at the age of 16, working for Hy-Vee Food Stores in

Council Bluffs, IA. He remained with Hy-Vee for 30 years, serving several years in the Corporate Office working with new stores and remodels, then returning to retail as Store Director. Bob then redirected his knowledge of the industry and joined Affiliated Foods Midwest, serving over 500 independent grocers. When Affiliated Foods merged with Associated Wholesale Grocers (AWG), Bob continued supporting independent grocers as District Sales Manager, Director of Center Store Sales then Director of Member Services. Bob also represented AWG on the Nebraska Grocery Industry Association Board of Directors. Bob still is active within the industry and our Association as a National Account Manager for Arctic Glacier Premium Ice. This

Lifetime Achievement Award



Ted Stessman is the recipient of our Lifetime Achievement Award. Ted served the convenience industry for forty years, spending the last thirty with Farner-Bocken Company, a division of Core-Mark, in Omaha. He served as a board member of the

national Convenience Distribution Association and Peer Marketing Associates, was involved in grocery industry associations in Colorado, Illinois, Oklahoma, North Dakota, South Dakota and Iowa, and is a past president of the grocery industry associations in Nebraska and Missouri. Ted, now retired, and his wife Julie stay busy enjoying their children and grandchildren, as well as golf, music, and good books, and by supporting the Creighton Blue jays, the New York Yankees, and of course, the Cornhuskers. Ted is hopeful the industry will remain strong by working together. His advice is to "stay the course and treat everyone with the respect you expect in return."

REYNOLDS 
A BETTER TOMORROW

Repeal of the Independent Contractor Rule

By Jack L. Shultz and Sarah J. Kniep

O'NEILL, HEINRICH, DAMKROKER, BERGMEYER & SHULTZ, P.C., L.L.O.

In the final days of the Trump administration the U.S. Department of Labor (“DOL”) published a rule titled “Independent Contractor Status Under the Fair Labor Standards Act.” The rule aimed to simplify determining whether a worker was in business for himself or herself (i.e. an independent contractor) or if they are economically dependent on the employer for work (i.e. an employee). Importantly, though none of the factors would have been dispositive, the Trump-era rule would have given greater weight to the elements evaluating the degree of control asserted by the principal and the worker’s opportunities for profit and loss. Many businesses, especially those in the gig economy, would have benefitted significantly from this rule which de-emphasized the focus on whether the services are an integral part of the principal’s business, and other factors making it difficult to be classified as an independent contractor.

However, under the new Biden administration, DOL initially postponed the implementation of the rule and ultimately withdrew it altogether on May 6, 2021. For now, DOL will continue to consider the “economic realities” test as the standard, while states and enforcement agencies apply their own standards regarding classification as an independent

contractor or an employee. The U.S. Supreme Court has indicated on a number of occasions that there is no single rule for determining whether an individual is an independent contractor or an employee for purposes of the FLSA. Rather, the Court has held that the total activity or situation controls. Among the factors the Court has considered significant in the “economic realities” test, which now governs, are: (1) the extent to which the services rendered are an integral part of the principal’s business; (2) the permanency of the relationship; (3) the amount of the alleged contractor’s investment in facilities and equipment; (4) the nature and degree of control by the principal; (5) the alleged contractor’s opportunities for profit and loss; (6) the amount of initiative, judgement, or foresight in open market competition with others required for the success of the claimed independent contractor; and (7) the degree of independent business organization and operation.

With no clear statutory definition of “employee,” federal courts have been left to apply the economic realities test, resulting in variations of definitions and tests to differentiate between employees and independent contractors. This has led to a patchwork across the country and tests are often inconsistently applied. Now, due to the courts again having

BRENMAR 1-800-783-7759
 THE BRENMAR COMPANY, INC. brenmarco.com
 OMAHA, NE

thank you!

FOODS
 BBQ SAUCES, COOKING MIXES, GLUTEN FREE PRODUCTS, SNACKS,
 DRINKS, SALSA, DRESSINGS & MORE

GENERAL MERCHANDISE
 TOYS, CANDLES, BATH & BODY, SEASONAL, KITCHEN ACCESSORIES,
 SHIPPERS, COUNTER DISPLAYS & MORE

PACKAGING
 BAKERY, DELI, CATERING, RESTAURANT, PRODUCE PACKAGING, BAGS, LABELS,
 SIGNS, SEASONAL PACKAGING & MORE

PROCESSING SUPPLIES
 FOAM TRAYS, APPAREL, GLOVES, VACUUM BAGS, LABELS, FILM, KNIVES & MORE

"SWAGGER, NOT STAGGER."
 — TONY SINCLAIR

READY To Tanqueray?
 ALWAYS IN MODERATION
 TANQUERAY.COM

**WE'VE GIVEN
OVER \$800
MILLION
BACK TO
NEBRASKA,
BENEFITING
ALL 93
COUNTIES,
FROM ADAMS
TO YORK.**

- ADAMS
- ANTELOPE
- ARTHUR
- BANNER
- BLAINE
- BOONE
- BOYD
- BOYRN
- BOYLO
- BURT
- CASS
- CHASE
- CLAY
- COLFAX
- CUMING
- CUSTER
- DAKOTA
- DAWES
- DAWSON
- DEUEL
- DIXON
- DODGE
- DOUGLAS
- DUNDY
- FILLMORE
- FRANKLIN
- FRONTIER
- FURNAS
- GAGE
- GARDEN
- GARFIELD
- GOSPER
- GRANT
- GREELEY
- HALL
- HAMILTON
- HARLAN
- HAYES
- HITCHCOCK
- HOLT
- HOOKER
- HOWARD
- JEFFERSON
- JOHNSON
- KEARNEY
- KEITH
- KEYA PAHA
- KIMBALL
- LANCASTER
- LINCOLN
- LOGAN
- MADISON
- MORRILL
- NEMAHIA
- NUCKOLLS
- OTOE
- PAWNEE
- PERKINS
- PHELPS
- PIERCE
- PLATTE
- POLK
- RED WILLOW
- RICHARDSON
- ROCK
- SALINE
- SARPY
- SAUNDERS
- SCOTTS BLUFF
- SEWARD
- SHERIDAN
- SHERMAN
- SIoux
- STANTON
- THAYER
- THOMAS
- THURSTON
- VALLEY
- WASHINGTON
- WAYNE
- WEBSTER
- WHEELER
- YORK



nelottery.com

Must be 19. Free problem gambling help for Nebraskans at problemgambling.nebraska.gov.

substantial discretion to determine the weight of each factor based on the individual circumstances, employers are forced to make assessments about worker status without the benefit of the concrete guidance once contained in the Independent Contractor Rule. Instead, employers are forced to rely on the sometimes directly conflicting case law from jurisdiction to jurisdiction. This proves especially challenging for National employers who must navigate the possibility that different courts may come down on different sides of the issue when determining worker classification. Further challenging for employers, is the fact that a worker's classification may be different under the FLSA than it is under various state laws, the National Labor Relations Act and/or the Internal Revenue Code.

While DOL's withdrawal of the Trump-era rules simply mean that these changes will not take effect, employers should stay up to date on ongoing changes in this body of law, as they may signal that the Biden administration will seek more stringent requirements or interpretations of existing law.

U.S. Secretary of Labor Marty Walsh has already signaled that further changes are likely to be announced. While making public remarks he indicated that DOL will look very closely at questions of worker misclassifications and suggested that many workers – especially those in the gig economy – may be misclassified as independent contractors. Additionally, DOL indicates in Fact Sheet #13 that the most common areas for worker misclassification are the

construction and franchising industries. Stating specifically that, “depending on the level of control the franchisor has over the franchisee, employees of the latter may be considered to be employed by the franchisor.”

Considering the possibility for substantial changes in this area of the law, employers should carefully evaluate whether any of their independent contractors should be reclassified as employees. Employers can start by identifying any independent contractors who perform critical tasks for the company, whose work relates directly to the company's core business, or who the employer “can't live without.” Notably, the fact that an individual works a flexible schedule or works remotely is likely insufficient standing alone to support the individual's classification as an independent contractor.

DOL's Fact Sheet #13 can be found here: <https://www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship>.

Editor's Note: This article is not intended to provide legal advice to our readers. Rather, this article is intended to alert our readers to new and developing issues and to provide some common sense answers to complex legal questions. Readers are urged to consult their own legal counsel or the authors of this article if the reader wishes to obtain a specific legal opinion regarding how these legal standards may apply to their particular circumstances. The authors of this article, Jack L. Shultz and Sarah J. Kniep can be contacted at (402) 434-3000, or at O'Neill, Heinrich, Damkroger, Bergmeyer & Shultz, P.C., L.L.O., P.O. Box 82028, Lincoln, NE 68501-2028, jshultz@ohdbslaw.com and skniep@ohdbslaw.com.

**Locally Made.
Naturally Delicious.™**

Give your shoppers the dairy foods they've trusted for generations. Beloved by consumers everywhere, Hiland Dairy's locally-made dairy products are farm-fresh and naturally delicious.

Give them Hiland.

Hiland
DAIRY FOODS FARMER OWNED

HilandDairy.com/Retailers



BARREL O' FUN[®]

Cheddar & Sour Cream Bipples

Rachel's Kettle Chips Jalapeno


www.barrelofunsnacks.com




As a family and woman-owned organization, we've worked hard to provide safe, affordable and nutritious eggs for more than 60 years.



SPARBOE
Companies



Anheuser-Busch
Proud Supporters of the
Nebraska Grocery
Industry Association



BUD LIGHT

Budweiser

Michelob
ULTRA

BUSCH
-LIGHT-

THE LONG-STANDING
LEADER



Designed to Grow your OTP Category.

701 SOUTH BATTLEGROUND AVENUE, GROVER, NORTH CAROLINA 28073
T +1.704.937.7200 | sales@cheyenneintl.com | www.cheyenneintl.com
For business purposes only. Not to be displayed or distributed to consumers.



THE NGA SHOW 21

where *independents* gather
las vegas

SEPT. 19-21 / 2021

PARIS AND BALLY'S LAS VEGAS
HOTEL & CASINO

WWW.THENGASHOW.COM



60+ sessions led by retailers for retailers - all designed to give you actionable ideas to drive immediate growth in your business.



Over 400 exhibitors representing the diverse range of product categories you need to stay updated on new products and innovations.



Innovative and exciting special events - spanning from receptions and networking functions to competitions and awards - provide valuable opportunities to engage with your peers.

New registrations options, including the 'Bring the Team Bundle', provide the most cost-effective pricing for total team member education. Bring your entire team to the NGA Show and take home ideas that will drive growth for your organization.

Nebraska Grocery Industry Association Members
SAVE 15% with Discount Code: NE15

produced and managed by



in partnership with



#NGASHOW21 25

Nebraska Child Labor Law Issues

Child Labor Law: Employment Certificate Required

48-302. Children under sixteen; employment certificate required; enforcement of section.

No child under sixteen years of age shall be employed or permitted or suffered to work in any employment as defined in section 48-301 within this state unless the person or corporation employing the child procures and keeps on file, accessible to the attendance officers and to the Department of Labor and its assistants and employees, an employment certificate as prescribed in section 48-304 and keeps two complete lists of all such children employed in the building, one on file and one conspicuously posted near the principal entrance of the building in which such children are employed.

Upon the termination of the employment of a child so registered whose certificate is so filed, such certificate shall be transmitted by the employer to the person authorizing the certificate pursuant to section 48-303 and shall be turned over to the child named upon demand.

Any attendance officer or the Department of Labor or its assistants and employees may demand that any employer in whose place of business a child apparently under the age of sixteen years is employed or permitted or suffered to work, and whose employment certificate is not then filed as required by this section, either furnish within ten days satisfactory evidence that such child is in fact over sixteen years of age or cease to employ or permit or suffer such child to work in such place of business.

The same evidence of the age of such child may be required from such employer as is required on the issuance of an employment certificate as provided in section 48-304, and the employer furnishing such evidence shall not be required to furnish any further evidence of the age of the child.

In case such employer fails to produce and deliver to the attendance officer or the Commissioner of Labor within ten days after demand such evidence of the age of any child as may be required under the provisions of section 48-304 and continues to employ such child or permit or suffer such child to work in such place of business, proof of the giving of such notice and of such failure to produce and file such evidence shall be prima facie evidence in any prosecution brought for a violation of this section that such child is under sixteen years of age and is unlawfully employed.

16 & 17 Years of Age

Sixteen- and 17-year-olds may be employed for unlimited hours in any occupation other than those declared hazardous by the Secretary of Labor. Examples of equipment declared hazardous in food service establishments include:

Power-driven meat and poultry processing machines (meat slicers, meat saws, patty forming machines, meat grinders, and meat choppers), commercial mixers and certain power-driven bakery machines. Employees under 18 years of age are not permitted to operate, feed, setup, adjust, repair, or clean any of these machines or their disassembled parts.

Balers and Compactors. Minors under 18 years of age may not load, operate, or unload balers or compactors. Sixteen- and 17-year-olds may load, but not operate or unload, certain scrap paper balers and paper box compactors under certain specific circumstances.

Motor Vehicles. Generally, no employee under 18 years of age may drive on the job or serve as an outside helper on a motor vehicle on a public road, but 17-year-olds who meet certain specific requirements may drive automobiles and trucks that do not exceed 6,000 pounds gross vehicle weight for limited amounts of time as part of their job. Such minors are, however, prohibited from making time sensitive deliveries (such as pizza deliveries or other trips where time is of the essence) and from driving at night.

14 & 15 Years of Age

Fourteen- and 15- year-olds may be employed in restaurants and quick-service establishments outside school hours in a variety of jobs for limited periods of time and under specified conditions. Child Labor Regulations No. 3, 29 C.F.R. 570, Subpart C, limits both the time of day and number of hours this age group may be employed as well as the types of jobs they may perform. in non-agricultural occupations covered by the FLSA, including food service establishments. Permissible employment for such children is limited to work that is exempt from the FLSA (such as delivering newspapers to the consumer and acting). Children may also perform work not covered by the FLSA such as completing minor chores around private homes or casual babysitting.

Hours and times of day standards for the employment of 14- and 15-year-olds:

- outside school hours; school hours are determined by the local public school in the area the minor is residing while employed;
- no more than 3 hours on a school day, including Fridays;
- no more than 8 hours on a non-school day;
- no more than 18 hours during a week when school is in session;
- no more than 40 hours during a week when school is not in session;
- between 7 a.m. and 7 p.m.- except between June 1 and Labor Day when the evening hour is extended to 9 p.m.

Occupation standards for the employment of 14- and 15-year-olds:

- They may perform cashiering, shelf stocking, and the bagging and carrying out of customer orders.
- They may perform clean-up work, including the use of vacuum cleaners and floor waxers.
- They may perform limited cooking duties involving electric or gas grills that do not entail cooking over an open flame. They may also cook with deep fat fryers that are equipped with and utilize devices that automatically raise and lower the “baskets” into and out of the hot grease of oil. They may not operate NEICO broilers, rotisseries, pressure cookers, fryolators, high-speed ovens, or rapid toasters.
- They may not perform any baking activities.
- They may not work in warehousing or load or unload goods to or from trucks or conveyors.
- They may not operate, clean, set up, adjust, repair or oil power driven machines including food slicers, grinders, processors, or mixers.
- They may clean kitchen surfaces and non-power-driven equipment, and filter, transport and dispose of cooking oil, but only when the temperature of the surface and oils do not exceed 100° F.
- They may not operate power-driven lawn mowers or cutters, or load or unload goods to or from trucks or conveyors.
- They may not work in freezers or meat coolers, but they may occasionally enter a freezer momentarily to retrieve items.
- They are prohibited from working in any of the Hazardous Orders (discussed above for 16- and 17-year-olds).

Children under 14 years of age may not be employed.

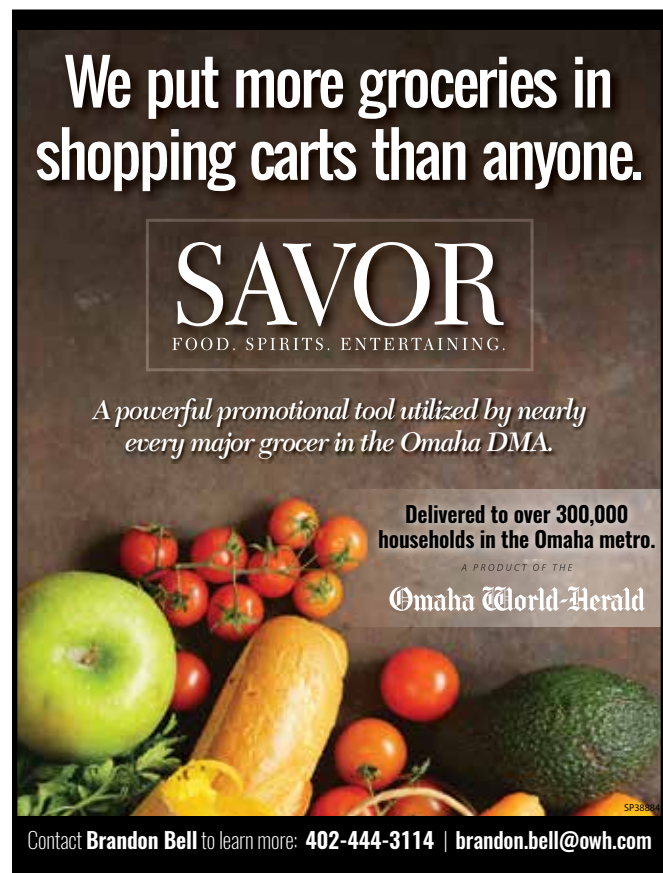


WINNING TOGETHER

Partner with Advantage Solutions for dynamic sales growth.

Advantage Solutions collaborates with clients to develop tailored, insight-based, integrated solutions designed to suit specific needs and maximize results—dramatically increased distribution and incremental case sales. Call (515) 278-1223, or visit advantagesolutions.net today.

 **ADVANTAGE SOLUTIONS**



We put more groceries in shopping carts than anyone.

SAVOR
FOOD. SPIRITS. ENTERTAINING.

A powerful promotional tool utilized by nearly every major grocer in the Omaha DMA.

Delivered to over 300,000 households in the Omaha metro.

A PRODUCT OF THE
Omaha World-Herald

Contact **Brandon Bell** to learn more: **402-444-3114** | brandon.bell@owh.com

Nebraska Grocery Industry Association
5935 South 56th, Suite B
Lincoln, Nebraska 68516-3301

Address Service Requested

PRSR STD
U.S. POSTAGE
PAID
Lincoln, NE
Permit No. 40



Dear _____,
[merchant services provider]

I need a partner who can
_____ me support my
[verb]

customers! I need _____
[noun]
to support traditional and
digital payments.

I'VE DECIDED TO PARTNER WITH SHAZAM.

SHAZAM's a leading provider of merchant products and services for businesses. We understand your business challenges including secure payments and new processing technologies for card, mobile and internet purchases.



855-314-1212 / SHAZAM.NET /     