

LEGISLATIVE BILL 788

Approved by the Governor March 3, 2010

Introduced by Karpisek, 32.

FOR AN ACT relating to the Nebraska Liquor Control Act; to amend section 53-125, Reissue Revised Statutes of Nebraska, and section 53-103, Revised Statutes Supplement, 2009; to change provisions relating to managers; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 53-103, Revised Statutes Supplement, 2009, is amended to read:

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

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

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

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

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

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

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

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

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

(9) Nonbeverage user means every manufacturer of any of the products set forth and described in subsection (4) of section 53-160, when such product contains alcoholic liquor, and all laboratories, hospitals, and sanatoria using alcoholic liquor for nonbeverage purposes;

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

(11) Wholesaler means a person importing or causing to be imported into the state or purchasing or causing to be purchased within the state alcoholic liquor for sale or resale to retailers licensed under the act, whether the business of the wholesaler is conducted under the terms of a franchise or any other form of an agreement with a manufacturer or manufacturers, or who has caused alcoholic liquor to be imported into the state or purchased in the state from a manufacturer or manufacturers and was

licensed to conduct such a business by the commission on May 1, 1970, or has been so licensed since that date. Wholesaler does not include any retailer licensed to sell alcoholic liquor for consumption off the premises who sells alcoholic liquor other than beer or wine to another retailer pursuant to section 53-175, except that any such retailer shall obtain the required federal wholesaler's basic permit and federal wholesale liquor dealer's special tax stamp. Wholesaler includes a distributor, distributorship, and jobber;

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

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

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

(15) Commission means the Nebraska Liquor Control Commission;

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

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

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

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

(20) Hotel means any building or other structure (a) which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, (b) in which twenty-five or more rooms are used for the sleeping accommodations of such guests, and (c) which has one or more public dining rooms where meals are served to such guests, such sleeping accommodations and dining rooms being conducted in the same buildings in connection therewith and such building or buildings or structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity;

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

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

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

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

brand, advertising, or other commercial symbol designating the manufacturer; and (e) a relationship by which the operation of the wholesaler's business is substantially reliant on the manufacturer for the continued supply of beer;

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

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

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

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

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

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

(31) Farm winery means any enterprise which produces and sells wines produced from grapes, other fruit, or other suitable agricultural products of which at least seventy-five percent of the finished product is grown in this state or which meets the requirements of section 53-123.13;

(32) Campus, as it pertains to the southern boundary of the main campus of the University of Nebraska-Lincoln, means the south right-of-way line of R Street and abandoned R Street from 10th to 17th streets and, as it pertains to the western boundary of the main campus of the University of Nebraska-Lincoln, means the east right-of-way line of 10th Street from R Street to Holdrege Street (Salt Creek Roadway);

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

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

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

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

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

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

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

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

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

(42) Cigar bar means an establishment operated by a holder of a Class C liquor license which:

(a) Does not sell food;

(b) In addition to selling alcohol, annually receives ten percent or more of its gross revenue from the sale of cigars and other tobacco products and tobacco-related products, except from the sale of cigarettes as defined in section 69-2702. A cigar bar shall not discount alcohol if sold in combination with cigars or other tobacco products and tobacco-related products;

(c) Has a walk-in humidor on the premises; and

(d) Does not permit the smoking of cigarettes.

Sec. 2. Section 53-125, Reissue Revised Statutes of Nebraska, is amended to read:

53-125 No license of any kind shall be issued to (1) a person who is not a resident of Nebraska, except in case of railroad, airline, or boat licenses, (2) a person who is not of good character and reputation in the community in which he or she resides, (3) a person who is not a citizen of the United States, (4) a person who has been convicted of or has pleaded guilty to a felony under the laws of this state, any other state, or the United States, (5) a person who has been convicted of or has pleaded guilty to any Class I misdemeanor pursuant to Chapter 28, article 3, 4, 7, 8, 10,

11, or 12, or any similar offense under a prior criminal statute or in another state, except that any additional requirements imposed by this subdivision on May 18, 1983, shall not prevent any person holding a license on such date from retaining or renewing such license if the conviction or plea occurred prior to May 18, 1983, (6) a person whose license issued under the Nebraska Liquor Control Act has been revoked for cause, (7) a person who at the time of application for renewal of any license issued under the act would not be eligible for such license upon initial application, (8) a partnership, unless one of the partners is a resident of Nebraska and unless all the members of such partnership are otherwise qualified to obtain a license, (9) a limited liability company, unless one of the members is a resident of Nebraska and unless all the members of such company are otherwise qualified to obtain a license, (10) a corporation, if any officer, ~~manager,~~ or director of the corporation or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, ~~except that or if a manager of a corporate licensee shall be a resident of Nebraska, would be ineligible to receive a license under this section for any reason.~~ This subdivision shall not apply to railroad licenses, (11) a person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee, (12) a person who does not own the premises for which a license is sought or does not have a lease or combination of leases on such premises for the full period for which the license is to be issued, (13) except as provided in this subdivision, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such applicant shall become eligible for a liquor license only if the commission finds from the evidence that the public interest will not be infringed upon if such license is granted. It shall be prima facie evidence that when a spouse is ineligible to receive a liquor license the applicant is also ineligible to receive a liquor license. Such prima facie evidence shall be overcome if it is shown to the satisfaction of the commission (a) that the licensed business will be the sole property of the applicant and (b) that such licensed premises will be properly operated, (14) a person seeking a license for premises which do not meet standards for fire safety as established by the State Fire Marshal, (15) a law enforcement officer, except that this subdivision shall not prohibit a law enforcement officer from holding membership in any nonprofit organization holding a liquor license or from participating in any manner in the management or administration of a nonprofit organization, or (16) a person less than twenty-one years of age.

When a trustee is the licensee, the beneficiary or beneficiaries of the trust shall comply with the requirements of this section, but nothing in this section shall prohibit any such beneficiary from being a minor or a person who is mentally incompetent.

Sec. 3. Original section 53-125, Reissue Revised Statutes of Nebraska, and section 53-103, Revised Statutes Supplement, 2009, are repealed.