

LEGISLATIVE BILL 56

Approved by the Governor February 10, 1984

Introduced by Nichol, 48; H. Peterson, 35

AN ACT relating to liquor; to amend sections 53-180.02, 53-180.04, and 53-180.05, Revised Statutes Supplement, 1982, and section 53-103, Revised Statutes Supplement, 1983; to redefine minor; to harmonize provisions; to provide an operative date; and to repeal the original section.

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

Section 1. That section 53-103, Revised Statutes Supplement, 1983, be amended to read as follows:

53-103. Unless the context otherwise requires, the definitions given in this section shall apply in all cases where any one of the defined terms appears in sections 53-101 to 53-124.10, 53-124.11, and 53-125 to 53-1,118.

(1) This act shall be construed as referring exclusively to such said sections.

(2) Alcohol shall mean the product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, and shall include synthetic ethyl alcohol. It shall not include denatured alcohol or wood alcohol.

(3) Spirits shall mean any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and shall include brandy, rum, whiskey, gin, or other spirituous liquors, and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances.

(4) Wine shall mean 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, as above defined.

(5) Beer shall mean a beverage obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt, and hops in water, and shall include, among other things, beer, ale, stout, lager beer, near beer, porter, and the like.

(6) Alcoholic liquor shall include the four varieties of liquor above defined, alcohol, spirits, wine, and beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer, and capable of being consumed as a beverage by a human being. The provisions of this act shall not apply to (a) alcohol used in the manufacture of denatured alcohol produced in

accordance with acts of Congress and regulations promulgated thereunder, (b) flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but shall not be construed to exclude or not apply to alcoholic liquor used in the manufacture, preparation, or compounding of such products, or (c) wine intended for use and used by any church or religious organization for sacramental purposes.

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

(8) Manufacturer shall mean 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 liquors as above defined, including a wholly owned affiliate or duly authorized agent for a manufacturer.

(9) Nonbeverage user shall mean every manufacturer of any of the products set forth and described in section 53-160, when the same contains alcoholic liquor, and all laboratories, hospitals, and sanatoria using alcoholic liquor for nonbeverage purposes.

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

(11) Distributor, distributorship, wholesaler, or jobber shall mean the person importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquors for sale or resale to retailers licensed under this act, whether the business of the distributor, distributorship, wholesaler, or jobber is conducted under the terms of a franchise or any other form of an agreement with a manufacturer or manufacturers, or has caused alcoholic liquors 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.

(12) Person shall mean any natural person, trustee, corporation, or partnership.

(13) Retailer shall mean a person who sells, or offers for sale, alcoholic liquors for use and consumption and not for resale in any form.

(14) Sell at retail and sale at retail shall

refer to and mean sales for use or consumption and not for resale in any form.

(15) Commission shall mean the Nebraska Liquor Control Commission.

(16) Sale shall mean any transfer, exchange, or barter in any manner or by any means whatsoever for a consideration, and shall include all sales made by any person, whether principal, proprietor, agent, servant, or employee.

(17) To sell shall mean to solicit or receive an order for, to keep or expose for sale, or to keep with intent to sell.

(18) Restaurant shall mean any public place 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, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and capacity and having employed therein a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests.

(19) Club shall mean a corporation 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 liquors, kept, used, and maintained by its members through the payment of annual dues, and owning, hiring, or leasing a building or space in a building, of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, and provided with suitable and adequate kitchen and dining room space and equipment and maintaining a sufficient number of servants and employees for cooking, preparing, and serving food and meals for its members and their guests. Such club shall file with the local governing body at the time of its application for a license under this act two copies of a list of names and residences of its members, and similarly shall file within ten days of the election of any additional member his or her name and address. 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 or any 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 the amount of such salary as may be fixed and voted at any annual meeting by the members or by its board of directors or other governing body out of the general revenue of the club.

(20) Hotel shall mean every building or other structure 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, in which twenty-five or more rooms are used for the sleeping accommodations of such guests and having 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, structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity.

(21) Nonprofit corporation shall mean a corporation, whether located within any incorporated city or village or not, organized under the laws of this state, not for profit, and which has been exempted from the payment of federal income taxes.

(22) Bottle club shall mean an operation, whether formally organized as a club having a regular membership list, dues, officers, and meetings or not, keeping and maintaining premises where persons who have made their own purchases of alcoholic liquors congregate for the express purpose of consuming such alcoholic liquors upon the payment of a fee or other consideration, including among other services the sale of foods, ice, mixes, or other fluids for alcoholic drinks and the maintenance of space for the storage of alcoholic liquors belonging to such persons and facilities for the dispensing of such liquors through a locker system, card system, or pool system, which shall not be deemed or considered a sale of alcoholic liquor. Such operation may be conducted by a club as defined in subdivision (19) of this section, or an individual, partnership, or corporation. An accurate and current membership list shall be maintained upon the premises which contains the names and residences of its members. Nothing in this section shall be deemed to make unlawful the sale of alcoholic liquors for consumption on the premises to any person who is not a current member of such bottle club.

(23) Minor shall mean any person, male or female, under twenty-one ~~twenty~~ years of age, regardless of marital status, except that any person who was ~~nineteen~~ twenty years of age or older on the operative date of this act July 19, 1980, shall not be deemed to be a minor.

(24) Brand shall mean alcoholic liquors which are identified as the product of a specific manufacturer.

(25) Franchise or agreement, when used with reference to the relationship between a manufacturer and distributor, shall include 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) the relationship whereby the franchisee is granted the right to offer and sell brands thereof by the

franchisor; (c) the relationship whereby the franchise, as an independent business, constitutes a component of the franchisor's distribution system; (d) the operation of the franchisee's business is substantially associated with the franchisor's brand, advertising, or other commercial symbol designating the franchisor; and (e) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of beer.

(26) Franchisor shall have the same meaning as the term manufacturer as defined in subdivision (8) of this section.

(27) Franchisee shall have the same meaning as the terms distributor, distributorship, wholesaler, or jobber as defined in subdivision (11) of this section.

(28) Territory or sales territory shall mean the franchisee's or distributor's area of sales responsibility for the brand or brands of the manufacturer.

(29) Price shall mean the maximum price per case or per container if sold in broken case lots to the retail licensee contained in the applicable schedules or amendments filed with the commission pursuant to sections 53-168.02 and 53-168.03 by the wholesaler, distributor, or manufacturer for the twelve-month period immediately preceding the latest filing of such schedules or amendments.

(30) Suspend shall mean to cause a temporary interruption of all rights and privileges of a license.

(31) Cancel shall mean to discontinue all rights and privileges of a license.

(32) Revoke shall mean to permanently void and recall all rights and privileges of a license.

(33) Generic label shall mean a label, which is not protected by a registered trademark, either in whole or in part, nor to which any person has acquired a right therein either pursuant to state or federal statutory or common law.

(34) Private label shall mean a label which the purchasing distributor, wholesaler, retailer, or bottle club licensee has protected, in whole or in part, by a trademark registration or which the purchasing distributor, wholesaler, retailer, or bottle club licensee has otherwise protected pursuant to state or federal statutory or common law.

(35) Beneficial interest shall mean an interest which will result in a direct profit, a direct risk of loss of profit, an ownership or share of ownership with or without legal title or claim of ownership, or a resulting right to use and enjoy the privileges according to one's own liking or so as to derive a direct profit or direct risk of loss.

Sec. 2. That section 53-180.02, Revised Statutes Supplement, 1982, be amended to read as follows:

53-180.02. Except as provided in section

53-102, no minor may sell or dispense or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place including public streets, alleys, roads, highways, upon property owned by the State of Nebraska or any subdivision thereof, or inside any vehicle while in or on any other place including but not limited to the public streets, alleys, roads, highways, or upon property owned by the State of Nebraska or any subdivision thereof, except that a minor may possess or have physical control of alcoholic liquor in his or her permanent place of residence.

The governing bodies of counties, cities, and villages shall have the power, and may by applicable resolution or ordinance, regulate, suppress, and control the transporting, knowingly possessing, or having under his or her control, beer or other alcoholic liquor in or transported by any motor vehicle, by persons under ~~twenty~~ twenty-one years of age, and may provide penalties for violations of such ordinance.

Sec. 3. That section 53-180.04, Revised Statutes Supplement, 1982, be amended to read as follows:

53-180.04. Every licensee of a place where alcoholic liquor is sold shall display at all times in a prominent place a printed card with a minimum height of twenty inches, and a width of fourteen inches with each letter to be a minimum of one-fourth inch in height, which shall read as follows:

WARNING TO MINORS
YOU ARE SUBJECT TO A FINE UP TO
\$500 FINE
3 MONTHS IN JAIL
OR BOTH
IF A MINOR AND YOU PURCHASE
OR ATTEMPT TO PURCHASE
OR HAVE IN YOUR POSSESSION
ALCOHOLIC LIQUOR IN THIS ESTABLISHMENT
AND
WARNING TO ADULTS
\$500 FINE AND
3 MONTHS IN JAIL
IF OVER ~~20~~ 21 AND YOU PURCHASE ALCOHOLIC LIQUOR
FOR A MINOR
LAWS OF THE STATE OF NEBRASKA

Sec. 4. That section 53-180.05, Revised Statutes Supplement, 1982, be amended to read as follows:

53-180.05. (1) Any person, except a person licensed pursuant to Chapter 53 or an employee of such licensee, violating any of the provisions of section 53-180 shall be guilty of a Class III misdemeanor. Any person violating any of the provisions of sections 53-180.01 to 53-180.04 not involving the use of false or altered identification shall be guilty of a Class III misdemeanor. Any person violating any of the provisions of

sections 53-180.01 to 53-180.04 involving the use of false or altered identification shall be guilty of a Class III misdemeanor. Any person violating subsection (2) of section 53-186.01 shall be guilty of a Class III misdemeanor. Any person violating any of the provisions of section 53-180.02 shall be guilty of a Class III misdemeanor, and in lieu of the above penalties, the court may sentence such person to work on public streets, parks, or other public property for a period not exceeding ten working days. Such work shall be under the supervision of the county sheriff. Upon the written certification by the county sheriff of the performance of such work, the sentence shall be deemed to be satisfied.

(2) Any licensee or employee thereof who violates any of the provisions of section 53-180 shall be guilty of a Class III misdemeanor. Prosecution pursuant to this subsection shall be limited to the person who is alleged to have been involved in the actual transaction with a minor, and there shall be no prosecution of a licensee as the result of actions by an employee without the knowledge of the licensee.

(3) Any person who knowingly manufactures, creates, or alters any form of identification for the purpose of sale or delivery of such form of identification to a person under the age of ~~twenty~~ twenty-one years shall be guilty of (a) a Class III misdemeanor for the first such offense, except that no person so convicted shall be sentenced to less than twenty-four hours in jail or fined one hundred dollars, or both, and (b) a Class II misdemeanor for any second or subsequent offense, except that no person so convicted shall be sentenced to less than forty-eight hours in jail or fined five hundred dollars, or both. No sentence or condition of probation shall be imposed on any person convicted under this subsection in a manner which reduces the actual term of imprisonment served by the convicted person and the actual fine paid by the convicted person to less than the minimum term or fine prescribed under this subsection. For purposes of this subsection, form of identification shall mean any card, paper, or legal document that may be used to establish the age of the person named thereon for the purposes of purchasing alcoholic liquors.

Sec. 5. This act shall become operative on January 1, 1985.

Sec. 6. That original sections 53-180.02, 53-180.04, and 53-180.05, Revised Statutes Supplement, 1982, and section 53-103, Revised Statutes Supplement, 1983, are repealed.