

LEGISLATIVE BILL 441

Approved by the Governor March 21, 1989

Introduced by Hannibal, 4; Pirsch, 10

AN ACT relating to alcoholic liquors; to amend sections 53-101, 53-103, 53-123.04, 53-123.08, 53-123.13, and 53-139, Reissue Revised Statutes of Nebraska, 1943; to define and redefine terms; to provide for regulation of near beer; to state an exception; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 53-101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-101. Sections 53-101 to 53-1,121 and section 7 of this act shall be known and may be cited as the Nebraska Liquor Control Act.

Sec. 2. That section 53-103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-103. Unless For purposes of the Nebraska Liquor Control Act, unless the context otherwise requires; the definitions given in this section shall apply in all cases when any one of the defined terms appears in the Nebraska Liquor Control Act.

(1) This act shall be construed as referring exclusively to such act; -

(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~~ Alcohol 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; - Spirits shall not include any beverage with less than five-tenths of one percent of alcohol by volume.

(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; - Wine shall not include any beverage with less than five-tenths of one percent of alcohol by volume-

(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 but not be limited to, beer, ale, stout, lager beer, porter, and near beer; the like- Beer shall not include any beverage with less than five-tenths of one percent of alcohol by volume-

(6) Alcoholic liquor shall include alcohol, spirits, wine, beer, and every 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 shall also include confections or candy with alcohol content of more than one-half of one percent alcohol. The act shall not apply to (a) alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations adopted and promulgated thereunder 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 shall not be construed to exclude or not apply 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; ; or (d) any beverage with less than five-tenths of one percent of alcohol by volume-

(7) Near beer shall mean beer containing less than one-half of one percent of alcohol by volume;

(8) 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)~~ (9) 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, including a wholly owned affiliate or duly authorized agent for a manufacturer; -

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

{10} (11) 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 the act to serve drinks for consumption on the premises where sold; -

{11} (12) 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 the 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 who 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} (13) Person shall mean any natural person, trustee, corporation, or partnership; -

{13} (14) Retailer shall mean a person who sells or offers for sale alcoholic liquors for use and or consumption and not for resale in any form; -

{14} (15) 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} (16) Commission shall mean the Nebraska Liquor Control Commission; -

{16} (17) 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} (18) 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} (19) 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 which has no sleeping accommodations, such place being provided with and which has adequate and sanitary kitchen and dining room equipment and capacity and having employed in such place a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests; -

~~(19)~~ (20) Club shall mean a corporation 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 liquors, which is kept, used, and maintained by its members through the payment of annual dues, and which owns, hires, or leases 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 which has 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 the 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 any salary as may be fixed and voted at any annual meeting by the members or by its board of directors or other the governing body of the club out of the general revenue of the club; -

~~(20)~~ (21) Hotel shall mean every any 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 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)~~ (22) Nonprofit corporation shall mean a any 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) (23) 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 feeds food, 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, or an individual, a partnership, or a 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 prohibit the sale of alcoholic liquors for consumption on the premises to any person who is not a current member of such bottle club;

~~(23)~~ (24) Minor shall mean any person, male or female, under twenty-one years of age, regardless of marital status; -

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

(25) (26) 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 by which the franchisee is granted the right to offer and sell the franchisor's brands by the franchisor; (c) the relationship by which 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} (27) Franchisor shall have the same meaning as the term manufacturer; -

{27} (28) Franchisee shall have the same meaning as the terms distributor, distributorship, wholesaler, or jobber; -

{28} (29) 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} (30) Suspend shall mean to cause a temporary interruption of all rights and privileges of a license; -

{30} (31) Cancel shall mean to discontinue all rights and privileges of a license; -

{31} (32) Revoke shall mean to permanently void and recall all rights and privileges of a license; -

{32} (33) Generic label shall mean a label which is not protected by a registered trademark, either in whole or in part, ~~nor~~ or to which ~~any~~ no person has acquired a right ~~either~~ pursuant to state or federal statutory or common law; -

{33} (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; -

{34} (35) Farm winery shall mean any enterprise which produces and sells wines produced from grapes, other fruit, or other suitable agricultural products ~~and~~ of which at least seventy-five percent ~~of such grapes, other fruit, or other suitable agricultural products~~ are ~~is~~ grown in this state; -

{35} (36) Campus, as it pertains to the southern boundary of the main campus of the University of Nebraska at Lincoln, shall mean the south right-of-way line of R Street and abandoned R Street from 10th to 17th streets; ~~and~~ -

{36} (37) Brewpub shall mean any restaurant or hotel which produces on its premises a maximum of five

thousand barrels of beer per year for sale at retail for consumption on the licensed premises and which sells not more than ten percent of its annual production for consumption off the premises.

Sec. 3. That section 53-123.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-123.04. A retailer's license shall allow the licensee to sell and offer for sale at retail either in the original package or otherwise, as prescribed in such license, in the premises specified in such license, or in the premises where catering is occurring, alcoholic liquors or beer for use or consumption but not for resale in any form, except that in all counties a holder of a bottle club license shall be authorized to sell alcoholic liquors for consumption on the premises without complying with that part of subdivision ~~(22)~~ (23) of section 53-103 pertaining to membership and maintaining membership lists.

Sec. 4. That section 53-123.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-123.08. A bottle club license shall allow the operation of a bottle club as defined in ~~subdivision (22)~~ of section 53-103 and shall allow the solicitation or acceptance of powers of attorney for the purchase of alcoholic liquor at wholesale for any member, and, when a liquor pool is maintained, shall permit the members of the pool to pay cash to the liquor pool for liquors dispensed therefrom.

Sec. 5. That section 53-123.13, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-123.13. (1) In the event the operator of a farm winery is unable to produce or purchase seventy-five percent of the grapes, fruit, or other suitable agricultural products used in the farm winery from within the state due to natural disaster which causes substantial loss to the Nebraska-grown crop, such operator may petition the commission to waive the seventy-five percent requirement, prescribed in subdivision ~~(34)~~ (35) of section 53-103, for one year.

(2) It shall be within the discretion of the commission to waive the seventy-five percent requirement taking into consideration the availability of products used in farm wineries in this area and the ability of such operator to produce wine from products that are abundant within the state.

Sec. 6. That section 53-139, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

53-139. No person shall receive a retail license to sell alcoholic liquor upon any premises used as a restaurant or as a club unless such premises or plan of operation strictly complies with the provisions of subsections ~~(18)~~ and (19) and (20) of section 53-103.

Sec. 7. The manufacture, distribution, sale, and purchase of near beer shall be subject to all provisions of the Nebraska Liquor Control Act, except taxation provisions, to which the manufacture, distribution, sale, and purchase of beer are subject.

Sec. 8. This act shall become operative on May 1, 1989.

Sec. 9. That original sections 53-101, 53-103, 53-123.04, 53-123.08, 53-123.13, and 53-139, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 10. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.