

LEGISLATIVE BILL 871

Approved by the Governor March 18, 1986

Introduced by Miscellaneous Subjects Committee, Hefner, 19, Chairperson; Pappas, 42; Hartnett, 45; V. Johnson, 8; Haberman, 44; Higgins, 9; Conway, 17; Morehead, 30

AN ACT relating to liquors; to amend section 53-125, Reissue Revised Statutes of Nebraska, 1943, and sections 53-103 and 53-123.13, Revised Statutes Supplement, 1985; to eliminate a definition; to eliminate certain provisions relating to beneficial interests; to harmonize provisions; and to repeal the original sections, and also sections 53-124.02 to 53-124.05, 53-124.07, and 53-124.09, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 53-103, Revised Statutes Supplement, 1985, be amended to read as follows:

53-103. 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 sections 53-101 to 53-1,118.

(1) This act shall be construed as referring exclusively to such 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 years of age, regardless of marital status, except that any person who was twenty years of age or older on January 1, 1985, 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) Suspend shall mean to cause a temporary interruption of all rights and privileges of a license.

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

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

(32) 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.

(33) 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) 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.

(35) (34) Farm winery shall mean any farm which produces and sells wines produced from grapes, other fruit, or other suitable agricultural products and of which at least seventy-five per cent of such grapes, other fruit, or other suitable agricultural products are grown in this state.

Sec. 2. That section 53-123.13, Revised Statutes Supplement, 1985, 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 per cent 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 per cent requirement, prescribed in subdivision (36) (34) of section 53-103, for one year.

(2) It shall be within the discretion of the commission to waive the seventy-five per cent 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. 3. That section 53-125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-125. No license of any kind shall be issued to (1) a person who is not a resident of the county in which the premises covered by the license are located, 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 the State of Nebraska, any other state, or of 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 this act has been revoked for cause, (7) a person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application, (8) a copartnership, unless one of the copartners is a resident of the county in which the premises covered by the license is located, and unless all the members of such copartnership shall otherwise be qualified to obtain a license, (9) a corporation, if any officer, manager, or director thereof, or any stockholder, owning in the aggregate more than twenty-five per cent of the stock of such corporation, would be ineligible to receive a license hereunder for any reason other than citizenship and residence within the governmental subdivision, except that the provisions of this - This subdivision shall not apply to railroad licenses, (10) 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, (11) a person who does not own the premises for which a license is sought, or does not have a lease thereon for the full period for which the license is to be issued, but if, because of a change in the renewal period provided for in section 53-124, the lease is for less than the full period for which the license is to be issued, the license shall be issued and a new lease covering the remainder of the license period must be filed with the

commission prior to expiration of the original lease or the license shall be canceled or revoked by the commission on ten days' written notice to the licensee, (12) except as provided in this subdivision, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such person 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 the following is shown to the satisfaction of the commission (a) that the licensed business will be the sole property of the applicant; and (b) it appears from the evidence that such licensed premises will be properly operated, (13) a person whose premises, for which a license is sought, do not meet standards for fire safety as established by the State Fire Marshal, (14) 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 (15) a person less than twenty-one years of age, 7 ~~or~~ (16) a person having a beneficial interest in a total of two alcoholic beverage retail licenses, except as provided in sections 53-124-02 to 53-124-09-

When Where 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. 4. That original section 53-125, Reissue Revised Statutes of Nebraska, 1943, and sections 53-103 and 53-123.13, Revised Statutes Supplement, 1985, and also sections 53-124.02 to 53-124.05, 53-124.07, and 53-124.09, Reissue Revised Statutes of Nebraska, 1943, are repealed.