

LEGISLATIVE BILL 154

Approved by the Governor March 27, 1989

Introduced by Pirsch, 10

AN ACT relating to the Nebraska Liquor Control Act; to amend sections 53-103, 53-123.04, 53-124, and 53-175, Reissue Revised Statutes of Nebraska, 1943; to redefine terms; to provide a license for the sale of wine only as prescribed; to provide a fee; to authorize certain sales of alcoholic liquor between retailers as prescribed; to state intent relating to certain collectors; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 53-103, Reissue Revised Statutes of Nebraska, 1943, 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 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 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, beer, ale, stout, lager beer, porter, and 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 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, (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, (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) 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, 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 such product 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 the 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 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. The terms shall 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.

(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 except as provided in section 53-175.

(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 except as provided in section 53-175.

(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 in such place a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests.

(19) 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 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 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 or 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 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.

(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 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 franchisee, 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.

(27) Franchisee shall have the same meaning as the terms distributor, distributorship, wholesaler, or jobber.

(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 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) 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 grown in this state.

(35) 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.

(36) 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. 2. 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 as provided in section 53-175, 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) of section 53-103 pertaining to membership and maintaining membership lists.

Sec. 3. That section 53-124, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-124. At the time application is made to the commission for a license of any class, the applicant shall pay the fee provided in this section. The fees for annual licenses finally issued by the commission shall be as follows:

- (1) For a license to manufacture alcohol and spirits \$1,000.00;
- (2) For a license to manufacture beer and wine or to operate a farm winery or brewpub:
 - A. Beer, excluding beer produced by a brewpub:
 - (a) 1 to 100 barrel daily capacity, or any part thereof \$100.00
 - (b) 100 to 150 barrel daily capacity 200.00
 - (c) 150 to 200 barrel daily capacity 350.00
 - (d) 200 to 300 barrel daily capacity 500.00
 - (e) 300 to 400 barrel daily capacity 650.00
 - (f) 400 to 500 barrel daily capacity 700.00
 - (g) 500 barrel daily capacity, or more 800.00;
 - B. Operation of a brewpub \$250.00;
 - C. Wines \$250.00;
 - D. Operation of a farm winery \$250.00.

The words daily capacity, as used in subdivision (2)A. of this section, shall mean the average daily barrel production for the previous twelve months of manufacturing operation. If no such basis for comparison exists, the manufacturing licensee shall pay

in advance for the first year's operation a fee of five hundred dollars;

(3) Alcoholic liquor distributor's license, for the first and each additional wholesale distributing place of business operated in this state by the same licensee and wholesaling or jobbing alcoholic liquors, except beer and wines produced from farm wineries..... \$500.00;

(4) Beer distributor's license, for the first and each additional wholesale distributing place of business operated in this state by the same licensee and wholesaling or jobbing beer only \$250.00;

(5) For a retailer's license:

A. Beer only except for brewpubs, within the corporate limits of cities and villages, for consumption on the premises, the sum of ten dollars in villages of five hundred population or less; twenty-five dollars in villages or cities, as the case may be, having a population of more than five hundred inhabitants and not more than twenty-five hundred inhabitants; fifty dollars in cities having a population of more than twenty-five hundred inhabitants and less than ten thousand inhabitants; and one hundred dollars in cities having a population of ten thousand inhabitants or more;

B. Beer only except for brewpubs, for consumption off the premises, sales in the original packages only, the sum of twenty-five dollars;

C. Alcoholic liquors within the corporate limits of cities and villages, for consumption on the premises and off the premises, sales in original packages only, the sum of two hundred fifty dollars, except for farm winery or brewpub sales outlets. If this license is held by a nonprofit corporation it shall be restricted to consumption on the premises only;

D. Alcoholic liquors, including beer, within the corporate limits of cities and villages, for consumption off the premises, sales in the original packages only, the sum of one hundred fifty dollars, except for farm winery or brewpub sales outlets;

E. Alcoholic liquors without the corporate limits of cities and villages, in counties mentioned in section 53-127, for consumption off the premises, sales in the original packages only, not less than one hundred fifty dollars for each license, except for farm winery or brewpub sales outlets;

F. Beer only except for brewpubs, without the corporate limits of cities and villages, for consumption on the premises, not less than twenty-five dollars for each license, the precise amount in each case to be such

sum as shall equal the amount of license fee fixed in this section plus the occupation tax fixed by ordinance, if any, in the nearest incorporated city or village in the same county;

G. Alcoholic liquors without the corporate limits of cities or villages in existing privately owned recreation areas, on which are located hotels or motels to be licensed in which twenty-five or more rooms are used for the sleeping accommodations of guests and having one or more public dining rooms where meals are served and which are of sufficient size to serve at least one hundred patrons, which recreational areas shall have, after licensing, a principal business purpose or purposes other than the sale of alcoholic liquors and have at least one hundred sixty acres of real estate of the area under contiguous single ownership or lease, for consumption on the premises and off the premises, sales in original packages only, the sum of two hundred fifty dollars. The commission shall first find that the proposed licensed premises are a part of an existing recreational area of substantial size and operation and that such area does, in fact, have a recreational purpose; subsequent to this finding the commission shall then determine that the issuance of the proposed license would be in the public interest;

H. Alcoholic liquors, including beer, issued to a nonprofit corporation, for consumption on the premises, which license shall not be issued to any corporation authorized by law to receive a license under subdivision (5)C. of this section, except that this provision shall not apply when the nonprofit corporation shall be open for sale of alcoholic liquors, including beer, for consumption on the premises not more than two days in any week:

(a) Within the corporate limits of cities and villages, for consumption on the premises, regardless of alcoholic content, the sum of twenty dollars in villages of five hundred population or less; fifty dollars in villages or cities, as the case may be, having a population of more than five hundred inhabitants and not more than twenty-five hundred inhabitants; one hundred dollars in cities having a population of more than twenty-five hundred inhabitants and less than ten thousand inhabitants; and two hundred dollars in cities having a population of ten thousand inhabitants or more; and

(b) Without the corporate limits of cities and villages, for consumption on the premises, not less than two hundred fifty dollars for each license, the precise

amount in each case to be such sum as shall equal the amount of license fee herein fixed plus the occupation tax fixed by ordinance, if any, in the nearest incorporated city or village in the same county. If the incorporated city or village does not have an occupation tax for nonprofit corporation licenses, then the licensee shall pay an amount equal to a class C license occupation tax for such city or village. The applicable fee shall be paid by the applicant or licensee, as the case may be, directly to the city or village treasurer in the case of class A, C, and H(a) licenses; directly to the city or village treasurer in the case of class B, I, and J licenses within the corporate limits of cities and villages; directly to the county treasurer in the case of class B and H(b) licenses outside of the corporate limits of cities and villages; directly to the commission in the case of class D and E licenses; and directly to the county treasurer in the case of class F and G licenses;

I. Alcoholic liquors, within the corporate limits of cities and villages, for consumption on the premises, the sum of two hundred dollars, except for farm winery or brewpub sales outlets;

J. Beer and wine only except for brewpubs, within the corporate limits of cities and villages, for consumption on the premises of restaurants only, the sum of fifty dollars in villages of five hundred population or less; seventy-five dollars in villages or cities, as the case may be, having a population of more than five hundred inhabitants and not more than twenty-five hundred inhabitants; one hundred twenty-five dollars in cities having a population of more than twenty-five hundred inhabitants and less than ten thousand inhabitants; and two hundred twenty-five dollars in cities having a population of ten thousand inhabitants or more;

K. Wine only, for consumption off the premises, sales in original packages only, the sum of one hundred twenty-five dollars;

- (6) For a railroad license \$100.00
- and \$1.00 for each duplicate;
- (7) For a boating license \$50.00;
- (8) For a nonbeverage user's license:
 - Class 1 \$5.00
 - Class 2 25.00
 - Class 3 50.00
 - Class 4 100.00
 - Class 5 250.00;
- (9) Bottle club license \$250.00

in any county having a population of less than five thousand five hundred inhabitants, and five hundred dollars in any county having a population of five thousand five hundred inhabitants or more. No such license shall be issued within the corporate limits of any city or village when a license as provided in subdivision (5)C. of this section has been issued in such city or village. The applicable fee shall be paid, by the applicant or licensee, directly to the city or village treasurer in the case of a bottle club license within the corporate limits of a city or village, and directly to the county treasurer in the case of a bottle club license outside the limits of any city or village; and

(10) For an airline license \$100.00 and \$1.00 for each duplicate.

The license year, unless otherwise provided in the Nebraska Liquor Control Act, shall commence on May 1 of each year and shall end on the following April 30 except for class C licenses which shall commence on November 1 of each year and shall end on the following October 31. During the license year, no license shall be issued for a sum less than the amount of the annual license fee as fixed in this section, regardless of the time when the application for such license shall have been made, except that when a class C license is renewed only for the period of May 1 to October 31 to adjust the expiration date, only one-half of the annual license fee shall be paid to the state and only one-half of the local occupation tax shall be paid.

Sec. 4. That section 53-175, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-175. It shall be unlawful for any person to purchase, receive, acquire, accept, or have possession of ~~possess~~ any alcoholic liquors which shall be acquired from any person other than one duly licensed to handle alcoholic liquors under the Nebraska Liquor Control Act unless within the specific exemptions or exceptions provided in the act. No licensed retailer of alcoholic liquors shall purchase such liquors other than from a ~~manufacturer or distributor who has the requisite certificate of authority,~~ is duly licensed under the laws of the state, and has his or her place of business within this state, except that a licensed retailer may purchase alcoholic liquor other than beer or wine from one or more retailers licensed to sell alcoholic liquor for consumption off the premises if the seller has the required federal wholesaler's basic permit and federal

wholesale liquor dealer's special tax stamp and has filed proof of possession of the permit and tax stamp with the commission prior to engaging in any such sales for resale. Retailers making such sales and retailers making such purchases from retailers shall keep accurate records of such sales and purchases and shall report all such sales and purchases on a quarterly basis on forms and in such manner as prescribed by the commission. No licensed retailer shall purchase in the aggregate more than three hundred dollars of alcoholic liquor as allowed under this section in any calendar year. Nothing in this section shall be construed to prohibit the sale or exchange among collectors of commemorative bottles or uniquely designed decanters which contain alcoholic liquor.

Sec. 5. That original sections 53-103, 53-123.04, 53-124, and 53-175, Reissue Revised Statutes of Nebraska, 1943, are repealed.