

LEGISLATIVE BILL 1313

Approved by the Governor April 18, 1994

Introduced by Bohlke, 33

AN ACT relating to retail liquor licenses; to amend sections 9-823, 53-103, and 53-124, Revised Statutes Supplement, 1993; to change provisions relating to sales of lottery tickets as prescribed; to define a term; to provide for a sampling designation on Class C liquor licenses; and to repeal the original sections.

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

Section 1. That section 9-823, Revised Statutes Supplement, 1993, be amended to read as follows:

9-823. The Tax Commissioner shall adopt and promulgate rules and regulations necessary to carry out the State Lottery Act. The rules and regulations shall include provisions relating to the following:

(1) The lottery games to be conducted subject to the following conditions:

(a) No lottery game shall use the theme of dog racing or horseracing;

(b) In any lottery game utilizing tickets, each ticket in such game shall bear a unique number distinguishing it from every other ticket in such lottery game;

(c) No name of an elected official shall appear on the tickets of any lottery game; and

(d) In any instant-win game, the overall estimated odds of winning some prize shall be printed on each ticket and shall also be available at the office of the division at the time such lottery game is offered for sale to the public;

(2) The retail sales price for lottery tickets;

(3) The types and manner of payment of prizes to be awarded for winning tickets in lottery games;

(4) The method for determining winners, the frequency of drawings, if any, or other selection of winning tickets subject to the following conditions:

(a) No lottery game shall be based on the results of a dog race, horserace, or other sports event;

(b) If the lottery game utilizes the drawing of winning numbers, a drawing among entries, or a drawing among finalists (i) such drawings shall be witnessed by an independent certified public accountant, (ii) any equipment used in such drawings shall be inspected by the independent certified public accountant and an employee of the division or designated agent both before and after such drawing, and (iii) such drawing shall be recorded on both videotape and audiotape; and

(c) Drawings in an instant-win game, other than grand prize drawings or other runoff drawings, shall not be held more often than weekly. Drawings or selections in an on-line game shall not be held more often than daily;

(5) The validation and manner of payment of prizes to the holders of winning tickets subject to the following conditions:

(a) The prize shall be given to the person who presents a winning ticket, except that for awards in excess of five hundred dollars, the winner shall also provide his or her social security number or tax identification number;

(b) A prize may be given to only one person per winning ticket, except that a prize shall be divided between the holders of winning tickets if there is more than one winning ticket per prize;

(c) For the convenience of the public, the director may authorize lottery game retailers to pay winners of up to five hundred dollars after performing validation procedures on their premises appropriate to the lottery game involved;

(d) No prize shall be paid to any person under nineteen years of age, and any prize resulting from a lottery ticket held by a person under nineteen years of age shall be awarded to the parent or guardian or custodian of such person under the Nebraska Uniform Transfers to Minors Act;

(e) No prize shall be paid for tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the division by acceptable deadlines, lacking in captions that confirm and agree with the lottery play symbols as appropriate to the lottery game involved, or not in compliance with such additional

specific rules and regulations and public or confidential validation and security tests appropriate to the particular lottery game involved;

(f) No particular prize in any lottery game shall be paid more than once. In the event of a binding determination by the director that more than one claimant is entitled to a particular prize, the sole right of such claimants shall be the award to each of them of an equal share in the prize; and

(g) After the expiration of the claim period for prizes for each lottery game, the director shall make available a detailed tabulation of the total number of tickets actually sold in the lottery game and the total number of prizes of each prize denomination that were actually claimed and paid;

(6) Requirements for eligibility for participation in grand-prize drawings or other runoff drawings, including requirements for submission of evidence of eligibility;

(7) The locations at which tickets may be sold except that no ticket may be sold at a retail liquor establishment holding a license for the sale of alcoholic liquor at retail for consumption on the licensed premises unless such establishment holds a Class C liquor license with a sampling designation as provided in subdivision (5) of section 53-124;

(8) The method to be used in selling tickets;

(9) The contracting with persons as lottery game retailers to sell tickets and the manner and amount of compensation to be paid to such retailers;

(10) The form and type of marketing of informational and educational material;

(11) Any arrangements or methods to be used in providing proper security in the storage and distribution of tickets or lottery games; and

(12) All other matters necessary or desirable for the efficient and economical operation and administration of lottery games and for the convenience of the purchasers of tickets and the holders of winning tickets.

Sec. 2. That section 53-103, Revised Statutes Supplement, 1993, be amended to read as follows:

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

(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 the origin thereof, and shall include synthetic ethyl alcohol. 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;

(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;

(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, but not be limited to, beer, ale, stout, lager beer, porter, and near beer;

(6) Alcoholic liquor shall include 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 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 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 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;

(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, hoghead, 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;

(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 liquor, including a wholly owned affiliate or duly authorized agent for a manufacturer;

(10) Nonbeverage user shall mean 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;

(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;

(12) Wholesaler shall mean 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 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. Wholesaler shall include a distributor, distributorship, and jobber;

(13) Person shall mean any natural person, trustee, corporation, partnership, or limited liability company;

(14) Retailer shall mean 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;

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

(16) Commission shall mean the Nebraska Liquor Control Commission;

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

(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;

(19) Restaurant shall mean 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;

(20) Club shall mean 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. Such club shall file with the local governing body at the time of 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, 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;

(21) Hotel shall mean 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;

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

(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 liquor congregate for the express purpose of consuming such alcoholic liquor upon the payment of a fee or other consideration, including among other services the sale of food, ice, mixes, or other fluids for alcoholic drinks and the maintenance of space for the storage of alcoholic liquor belonging to such persons and facilities for the dispensing of such liquor 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, an individual, a partnership, a limited liability company, 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 prohibit the sale of alcoholic liquor for consumption on the premises to any person who is not a current member of such bottle club;

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

(25) Brand shall mean alcoholic liquor identified as the product of a specific manufacturer;

(26) Franchise or agreement, with reference to the relationship between a manufacturer and wholesaler, 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) 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;

(27) Territory or sales territory shall mean the wholesaler's area of sales responsibility for the brand or brands of the manufacturer;

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

(29) Cancel shall mean to discontinue all rights and privileges of a license;

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

(31) Generic label shall mean 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;

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

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

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

(35) 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;

(36) Manager shall mean 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 residency and citizenship; and

(37) Shipping license shall mean a license granted pursuant to section 53-123.15; and

(38) Sampling shall mean 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.

Sec. 3. That section 53-124, Revised Statutes Supplement, 1993, be amended to read as follows:

53-124. At the time application is made to the commission for a

license of any type, 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) Manufacture of beer, excluding beer produced by a brewpub:
 - (i) 1 to 100 barrel daily capacity, or any part thereof \$100.00
 - (ii) 100 to 150 barrel daily capacity 200.00
 - (iii) 150 to 200 barrel daily capacity 350.00
 - (iv) 200 to 300 barrel daily capacity 500.00
 - (v) 300 to 400 barrel daily capacity 650.00
 - (vi) 400 to 500 barrel daily capacity 700.00
 - (vii) 500 barrel daily capacity, or more 800.00;
 - (b) Operation of a brewpub \$250.00;
 - (c) Manufacture of wines \$250.00;
 - (d) Operation of a farm winery \$250.00.

For purposes of subdivision (2)(a) of this section, daily capacity 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 wholesale license, for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling alcoholic liquor, except beer and wines produced from farm wineries \$500.00;

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

(5) For a retail license:

(a) Class A: Beer only except for brewpubs, inside the corporate limits of cities and villages, for consumption on the premises, the sum of ten dollars in villages having a population of five hundred inhabitants or less; twenty-five dollars in villages or cities 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) Class B: Beer only except for brewpubs, for consumption off the premises, sales in the original packages only, the sum of twenty-five dollars;

(c) Class C: Alcoholic liquor inside 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 a Class C license is held by a nonprofit corporation, it shall be restricted to consumption on the premises only. A Class C license may have a sampling designation restricting consumption on the premises to sampling, but such designation shall not affect sales for consumption off the premises under such license;

(d) Class D: Alcoholic liquor, including beer, inside the corporate limits of cities and villages, for consumption off the premises, sales in the

original packages only, except as provided in subsection (2) of section 53-123.04, the sum of one hundred fifty dollars, except for farm winery or brewpub sales outlets;

(e) Class E: Alcoholic liquor outside the corporate limits of cities and villages in any county in which there is no incorporated city or village or in which the county seat is not located in an incorporated city or village, 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) Class F: Beer only except for brewpubs, outside 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 equals 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) Class H: Alcoholic liquor, including beer, issued to a nonprofit corporation, for consumption on the premises:

(i) Inside the corporate limits of cities and villages, regardless of alcoholic content, the sum of twenty dollars in villages having a population of five hundred inhabitants or less; fifty dollars in villages or cities 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

(ii) Outside the corporate limits of cities and villages, not less than two hundred fifty dollars for each license, the precise amount in each case to be such sum as equals 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. 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.

A Class H license shall not be issued to any corporation authorized by law to receive a Class C license unless the nonprofit corporation is open for sale of alcoholic liquor, including beer, for consumption on the premises not more than two days in any week;

(h) Class I: Alcoholic liquor, inside 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;

(i) Class J: Beer and wine only except for brewpubs, inside the corporate limits of cities and villages, for consumption on the premises of restaurants only, the sum of fifty dollars in villages having a population of five hundred inhabitants or less; seventy-five dollars in villages or cities 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; and

(j) Class K: Wine only, for consumption off the premises, sales in original packages only, except as provided in subsection (2) of section 53-123.04, the sum of one hundred twenty-five dollars.

All applicable license fees shall be paid by the applicant or licensee directly to the city or village treasurer in the case of premises located inside the corporate limits of a city or village and directly to the county treasurer in the case of premises located outside the corporate limits of a city or village, except that the fee for a Class D license shall be paid directly to the commission;

(6) For a railroad license \$100.00 and \$1.00 for each duplicate;

(7) For a boat 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) For a bottle club license, two hundred fifty dollars 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;

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

(11) For a shipping license \$200.00.

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 that the license year for a Class C license 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 has been made.

Sec. 4. That original sections 9-823, 53-103, and 53-124, Revised Statutes Supplement, 1993, are repealed.