

LEGISLATIVE BILL 752

Approved by the Governor May 7, 1971

Introduced by Terry Carpenter, 48th District

AN ACT to amend section 53-125, Reissue Revised Statutes of Nebraska, 1943, and section 53-103, Revised Statutes Supplement, 1969, as amended by section 2, Legislative Bill 234, Eighty-second Legislature, First Session, 1971, relating to alcoholic liquors; to redefine person to include a trustee; to provide an exception; 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 53-103, Revised Statutes Supplement, 1969, as amended by section 2, Legislative Bill 234, Eighty-second Legislature, First Session, 1971, 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 53-1,118 and sections 1 and 3 to 17 of this act.

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

(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, partnership, or association.

(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; Provided, that such club files 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 files within ten days of the election of any additional member his name and address; and provided further, that its affairs and management are conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting, and that no member or any officer, agent, or employee of the club is paid, or directly or indirectly receives, 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, as provided by section 501 (c), (4), (7) or (8), Internal Revenue Code of 1954, on November 22, 1963.

(22) The words 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, 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.

(23) Minor shall mean any person, male or female, under twenty years of age, regardless of marital status.

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

(25) The terms 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 franchisor's distribution system; (d) the operation of 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) The term franchisor shall have the same meaning as the term manufacturer as defined in subdivision (8) of this section.

(27) The term franchisee shall have the same meaning as the terms distributor, distributorship, wholesaler or jobber as defined in subdivision (11) of

this section.

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

Sec. 2. 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 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 being the keeper of or is keeping a house of ill fame, (6) a person who has been convicted of or has pleaded guilty to being the proprietor of a gambling house, or of pandering or other crime or misdemeanor opposed to decency and morality, (7) a person whose license issued under this act has been revoked for cause, (8) 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, (9) 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, (10) 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; Provided, this subdivision shall not apply to railroad licenses; and provided further, that where the 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, (11) 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, or (12) 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.

Sec. 3. That original section 53-125, Reissue Revised Statutes of Nebraska, 1943, and section 53-103, Revised Statutes Supplement, 1969, as amended by section 2, Legislative Bill 234, Eighty-second Legislature, First Session, 1971, are repealed.

Sec. 4. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.