

## LEGISLATIVE BILL 183

Approved by the Governor May 3, 1985

Introduced by DeCamp, 40

AN ACT relating to liquors; to amend sections 53-103, 53-168, 53-168.01, 53-168.05, 53-169, and 53-170.01, Reissue Revised Statutes of Nebraska, 1943; to eliminate a definition; to change provisions relating to certain prohibited acts; to eliminate provisions for filing of certain price schedules; to harmonize provisions; to repeal the original sections, and also sections 53-168.02 to 53-168.04, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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 where 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 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 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) Price shall mean the maximum price per case or per container if sold in broken case lots to the retail licensee contained in the applicable schedules or amendments filed with the commission pursuant to sections 53-168-02 and 53-168-03 by the wholesaler, distributor, or manufacturer for the twelve-month period immediately preceding the latest filing of such schedules or amendments.~~

~~(30)~~ (29) Suspend shall mean to cause a temporary interruption of all rights and privileges of a license.

~~(31)~~ (30) Cancel shall mean to discontinue all rights and privileges of a license.

~~(32)~~ (31) Revoke shall mean to permanently void and recall all rights and privileges of a license.

~~(33)~~ (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.

~~(34)~~ (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.

~~(35)~~ (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.

Sec. 2. That section 53-168, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-168. (1) It shall be unlawful for any person having a retailer's license to sell beer to accept credit for the purchase of beer from any manufacturer, distributor, or wholesaler of beer and for any person having a retailer's license to sell alcoholic liquor, or any officer, associate, member, representative, or agent of such licensee, to accept, receive, or borrow money or anything else of value or to accept or to receive credit, other than merchandising credit in the ordinary course of business for a period not to exceed thirty days, ~~or to accept any discount, rebate, free goods, allowances, or other inducement of any kind whatsoever~~ directly or indirectly, from (a) any person, partnership, or corporation engaged in the manufacturing, distributing, or wholesaling of such liquor, (b) ~~from~~ any person connected with or in any way representing such manufacturer, distributor, or wholesaler, (c) ~~from~~ any member of the family of such manufacturer, distributor, or wholesaler, (d) ~~from~~ any stockholders in any corporation engaged in manufacturing, distributing, or wholesaling of such liquor, or (e) ~~from~~ any officer, manager, agent, or representative of such manufacturer, distributor, or wholesaler.

(2) It shall be unlawful for any manufacturer, distributor, or wholesaler to give or lend money ~~or anything of value~~ or otherwise loan or extend credit, except the merchandising credit referred to in subsection (1) of this section, directly or indirectly, to any such licensee or to the manager, representative, agent, officer, or director of such licensee. It shall be unlawful for any distributor or wholesaler to participate in any manner in a merchandising and coupon plan of any manufacturer involving alcoholic liquor and the redemption in cash. The redemption of any merchandising and coupon plan involving cash shall be made by the manufacturer to the consumer.

~~(3) It shall be unlawful for any manufacturer, distributor, or wholesaler to grant to a retailer licensed under this section to sell alcoholic liquors, directly or indirectly, any discount, rebate, free goods, allowances or other inducement of any kind whatsoever, except as provided in subsection (1) of this section.~~

~~(4)~~ (3) If any recipient of a license to sell alcoholic liquors at retail or wholesale shall violate any of the provisions of subsection (1), ~~or (2), or (3)~~ of this section, his or her license shall be suspended or revoked by the commission in the manner provided by law for revocation or suspension for other violations of the laws of the state.

(5) (4) It shall not be a violation of subsection (1), or (2), or (3) of this section for a manufacturer, distributor, or wholesaler to sell or provide alcoholic liquors exclusively or in minimum quantities in containers bearing a private label or to sell or provide alcoholic liquors in containers bearing a generic label to a distributor, wholesaler, retailer, or bottle club licensee.

(6) (5) It shall not be a violation of subsection (1), or (2), or (3) of this section for a distributor, wholesaler, retailer, or bottle club licensee to accept or purchase from a manufacturer, distributor, or wholesaler alcoholic liquors exclusively or in minimum quantities in containers bearing a private label or for a distributor, wholesaler, retailer, or bottle club licensee to accept or purchase from a manufacturer, distributor, or wholesaler alcoholic liquors in containers bearing a generic label.

Sec. 3. That section 53-168.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-168.01. It is the declared policy of the State of Nebraska that it is necessary to regulate and control the manufacture, sale, and distribution of alcoholic liquors within the state for the purpose of fostering temperance in their consumption and respect for and obedience to the law. The advertising material furnished by suppliers of alcoholic liquor to retail licensees is an integral part of the distribution and the sale of alcoholic liquor together with the pricing by the suppliers of their products to retail licensees. In the supplying of advertising materials to retail accounts certain confusion has resulted from the enactment of conflicting legislation and failure to clarify the regulation of advertising materials which can legally be supplied may result in the placing in retail establishments of advertising materials which are not primarily for advertising purposes, but which would, in fact, give to the retail licensee matters of considerable value resulting in a tied-house between suppliers and retailers. There is a need to clarify existing legislation regulating advertising matters to be furnished retail licensees to promote an orderly marketing of alcoholic liquor which, in turn, will serve to promote temperance. To further accomplish these objectives and the declared legislative policy of the state in the manufacture, distribution and sale of alcoholic liquor, it is necessary that legislation be enacted to provide for the suppliers of alcoholic liquor to file with the Nebraska Liquor Control Commission schedules of prices at which the suppliers' brands of alcoholic liquor are available for purchase by retail licensees. Sections 53-168.01 to 53-169 are not for the purpose of fixing the wholesalers' prices to be charged to retailers but are for the purpose of making known to retail licensees the price at which alcoholic liquor will

be sold to any retailer in the state. The further requirement that such schedules be posted thereof, at the supplier's place of business will promote the orderly marketing of alcoholic liquor. In part, this legislation will also implement section 53-168. In this implementation it is recognized that there are marketing factors which differ between beer and other alcoholic liquors. Some of these factors are the more frequent turnover of a retailer's beer inventory, the fact that wholesalers of other liquors handle more brands of their products than beer wholesalers, most of whom distribute only one of two major brands of beer, the shelf life of beer, and other factors. Because of these differences it is the declared policy of this state to have sections 53-168.01 to 53-169 apply to beer only as it pertains to the initial filing of price schedules and then have the marketing of beer governed by the provisions of section 53-168. Recognizing the marketing requirements of alcoholic liquor, except beer, it is the legislative intent to require the filing of price changes and in order to promote a more orderly marketing of alcoholic liquor, except beer, to allow only the posting down of the pricing of each brand thereof not more than two times each year. These provisions will enable the retail licensees to be advised of price changes and enable the Nebraska Liquor Control Commission to adequately enforce the provisions of section 53-168.

Sec. 4. That section 53-168.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-168.05. The Nebraska Liquor Control Commission may revoke or suspend the license of any manufacturer, wholesaler, distributor, or retailer found violating section the provisions of sections 53-168.01 or to 53-169 and all proceedings under sections 53-168.01 and to 53-169 shall be governed by the provisions of Chapter 53 governing the suspension or revocations of licenses and the appeals to the courts from any orders of the commission.

Sec. 5. That section 53-169, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-169. (1) No manufacturer, distributor, or wholesaler shall directly or indirectly: (a) Sell, supply, furnish, give, pay for, loan, or lease any furnishing, fixture, or equipment on the premises of a place of business of another licensee authorized under this act to sell alcoholic liquor at retail, either for consumption on or off the premises; (b) pay (1) Pay for any such license to sell alcoholic liquor at retail, or advance, furnish, lend, or give money for payment of such license; (c) (2) purchase or become the owner of any note, mortgage, or other evidence of indebtedness of such licensee or any form of security therefor; (d) (3) be interested in the ownership, conduct, or operation of the



business of any licensee authorized to sell alcoholic liquor at retail; or ~~(e)~~ (4) be interested directly or indirectly, or as owner, part owner, lessee, or lessor thereof, in any premises upon which alcoholic liquor is sold at retail.

(2) No manufacturer, distributor, or wholesaler shall, directly or indirectly or through a subsidiary or affiliate, or by any officer, director, or firm of such manufacturer, distributor, or wholesaler, furnish, give, lend, or rent any interior decorations other than advertising signs, or furnish, give, lend, or rent any signs or displays, for inside use, costing in the aggregate more than three hundred dollars in any one calendar year for use in or about or in connection with any one establishment on which products of the manufacturer, distributor, or wholesaler are sold; PROVIDED, that if such advertising signs are illuminated in any manner, they will be disconnected from their source of electrical energy during all times the retail premises are closed for business. Lawful advertising signs or displays shall include the following: (a) Pole displays, pole merchandisers, and stackers made of cardboard with or without metal feet, including cardboard bins designed to merchandise and advertise products and having no secondary value; (b) counter and floor racks, which are furnished by the manufacturer and are specifically identified with the manufacturer's brand, and ~~(c)~~ items and calendars advertising schedules of entertainment events or holidays and having no other secondary value. This subsection shall not apply to table tents, case cards, or paper signs, or to other advertising items which cost less than five dollars each and have no secondary value, and no records shall be required to be kept of such items. No person, engaged in the business of manufacturing, distributing, or wholesaling alcoholic liquors shall directly or indirectly pay for or advance, furnish any items for the individual use of the retail licensee's customers, or lend money for the payment of any licenses for another.

Sec. 6. That section 53-170.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-170.01. (1) Terms used in sections 53-170.01 to 53-170.04 shall have the meanings given in section 53-103. 7 except as provided in subsection (2) of this section.

(2) As used in sections 53-170.01 to 53-170.04, price shall mean the platform price at the point of origin, excluding differentials based on transportation costs, containers, or other costs not directly related to the quality and proof of the product, and adjusted to reflect excise taxes or license fees imposed by any state or the District of Columbia and all discounts, rebates, free goods, allowances, and any other inducement of any kind given or offered to any wholesaler, distributor, or jobber

in any state or the District of Columbia or to any state agency.

Sec. 7. That original sections 53-103, 53-168, 53-168.01, 53-168.05, 53-169, and 53-170.01, Reissue Revised Statutes of Nebraska, 1943, and also sections 53-168.02 to 53-168.04, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 8. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.