

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 702

Introduced by Synowiecki, 7

Read first time January 19, 2005

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 sections 53-103 and 53-168, Reissue Revised Statutes of
3 Nebraska; to define a term; to provide for use of cash or
4 cash equivalent as prescribed; and to repeal the original
5 sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 53-103, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 53-103. For purposes of the Nebraska Liquor Control Act,
4 unless the context otherwise requires:

5 (1) Alcohol means the product of distillation of any
6 fermented liquid, whether rectified or diluted, whatever the origin
7 thereof, and includes synthetic ethyl alcohol. Alcohol does not
8 include denatured alcohol or wood alcohol;

9 (2) Spirits means any beverage which contains alcohol
10 obtained by distillation, mixed with water or other substance in
11 solution, and includes brandy, rum, whiskey, gin, or other
12 spirituous liquors and such liquors when rectified, blended, or
13 otherwise mixed with alcohol or other substances;

14 (3) Wine means any alcoholic beverage obtained by the
15 fermentation of the natural contents of fruits or vegetables,
16 containing sugar, including such beverages when fortified by the
17 addition of alcohol or spirits;

18 (4) Beer means a beverage obtained by alcoholic
19 fermentation of an infusion or concoction of barley or other grain,
20 malt, and hops in water and includes, but is not limited to, beer,
21 ale, stout, lager beer, porter, and near beer;

22 (5) Alcoholic liquor includes alcohol, spirits, wine,
23 beer, and any liquid or solid, patented or not, containing alcohol,
24 spirits, wine, or beer and capable of being consumed as a beverage
25 by a human being. Alcoholic liquor also includes confections or
26 candy with alcohol content of more than one-half of one percent
27 alcohol. The act does not apply to (a) alcohol used in the
28 manufacture of denatured alcohol produced in accordance with acts

1 of Congress and regulations adopted and promulgated pursuant to
2 such acts, (b) flavoring extracts, syrups, medicinal, mechanical,
3 scientific, culinary, or toilet preparations, or food products
4 unfit for beverage purposes, but the act applies to alcoholic
5 liquor used in the manufacture, preparation, or compounding of such
6 products or confections or candy that contains more than one-half
7 of one percent alcohol, or (c) wine intended for use and used by
8 any church or religious organization for sacramental purposes;

9 (6) Near beer means beer containing less than one-half of
10 one percent of alcohol by volume;

11 (7) Original package means any bottle, flask, jug, can,
12 cask, barrel, keg, hogshead, or other receptacle or container used,
13 corked or capped, sealed, and labeled by the manufacturer of
14 alcoholic liquor to contain and to convey any alcoholic liquor;

15 (8) Manufacturer means every brewer, fermenter,
16 distiller, rectifier, winemaker, blender, processor, bottler, or
17 person who fills or refills an original package and others engaged
18 in brewing, fermenting, distilling, rectifying, or bottling
19 alcoholic liquor, including a wholly owned affiliate or duly
20 authorized agent for a manufacturer;

21 (9) Nonbeverage user means every manufacturer of any of
22 the products set forth and described in subsection (4) of section
23 53-160, when such product contains alcoholic liquor, and all
24 laboratories, hospitals, and sanatoria using alcoholic liquor for
25 nonbeverage purposes;

26 (10) Manufacture means to distill, rectify, ferment,
27 brew, make, mix, concoct, process, blend, bottle, or fill an
28 original package with any alcoholic liquor and includes blending

1 but does not include the mixing or other preparation of drinks for
2 serving by those persons authorized and permitted in the act to
3 serve drinks for consumption on the premises where sold;

4 (11) Wholesaler means a person importing or causing to be
5 imported into the state or purchasing or causing to be purchased
6 within the state alcoholic liquor for sale or resale to retailers
7 licensed under the act, whether the business of the wholesaler is
8 conducted under the terms of a franchise or any other form of an
9 agreement with a manufacturer or manufacturers, or who has caused
10 alcoholic liquor to be imported into the state or purchased in the
11 state from a manufacturer or manufacturers and was licensed to
12 conduct such a business by the commission on May 1, 1970, or has
13 been so licensed since that date. Wholesaler does not include any
14 retailer licensed to sell alcoholic liquor for consumption off the
15 premises who sells alcoholic liquor other than beer or wine to
16 another retailer pursuant to section 53-175, except that any such
17 retailer shall obtain the required federal wholesaler's basic
18 permit and federal wholesale liquor dealer's special tax stamp.
19 Wholesaler includes a distributor, distributorship, and jobber;

20 (12) Person means any natural person, trustee,
21 corporation, partnership, or limited liability company;

22 (13) Retailer means a person who sells or offers for sale
23 alcoholic liquor for use or consumption and not for resale in any
24 form except as provided in section 53-175;

25 (14) Sell at retail and sale at retail means sale for use
26 or consumption and not for resale in any form except as provided in
27 section 53-175;

28 (15) Commission means the Nebraska Liquor Control

1 Commission;

2 (16) Sale means any transfer, exchange, or barter in any
3 manner or by any means for a consideration and includes any sale
4 made by any person, whether principal, proprietor, agent, servant,
5 or employee;

6 (17) To sell means to solicit or receive an order for, to
7 keep or expose for sale, or to keep with intent to sell;

8 (18) Restaurant means any public place (a) which is kept,
9 used, maintained, advertised, and held out to the public as a place
10 where meals are served and where meals are actually and regularly
11 served, (b) which has no sleeping accommodations, and (c) which has
12 adequate and sanitary kitchen and dining room equipment and
13 capacity and a sufficient number and kind of employees to prepare,
14 cook, and serve suitable food for its guests;

15 (19) Club means a corporation (a) which is organized
16 under the laws of this state, not for pecuniary profit, solely for
17 the promotion of some common object other than the sale or
18 consumption of alcoholic liquor, (b) which is kept, used, and
19 maintained by its members through the payment of annual dues, (c)
20 which owns, hires, or leases a building or space in a building
21 suitable and adequate for the reasonable and comfortable use and
22 accommodation of its members and their guests, and (d) which has
23 suitable and adequate kitchen and dining room space and equipment
24 and a sufficient number of servants and employees for cooking,
25 preparing, and serving food and meals for its members and their
26 guests. The affairs and management of such club shall be conducted
27 by a board of directors, executive committee, or similar body
28 chosen by the members at their annual meeting, and no member,

1 officer, agent, or employee of the club shall be paid or shall
2 directly or indirectly receive, in the form of salary or other
3 compensation, any profits from the distribution or sale of
4 alcoholic liquor to the club or the members of the club or its
5 guests introduced by members other than any salary fixed and voted
6 at any annual meeting by the members or by the governing body of
7 the club out of the general revenue of the club;

8 (20) Hotel means any building or other structure (a)
9 which is kept, used, maintained, advertised, and held out to the
10 public to be a place where food is actually served and consumed and
11 sleeping accommodations are offered for adequate pay to travelers
12 and guests, whether transient, permanent, or residential, (b) in
13 which twenty-five or more rooms are used for the sleeping
14 accommodations of such guests, and (c) which has one or more public
15 dining rooms where meals are served to such guests, such sleeping
16 accommodations and dining rooms being conducted in the same
17 buildings in connection therewith and such building or buildings or
18 structure or structures being provided with adequate and sanitary
19 kitchen and dining room equipment and capacity;

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

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

25 (23) Brand means alcoholic liquor identified as the
26 product of a specific manufacturer;

27 (24) Franchise or agreement, with reference to the
28 relationship between a manufacturer and wholesaler, includes one or

1 more of the following: (a) A commercial relationship of a definite
2 duration or continuing indefinite duration which is not required to
3 be in writing; (b) a relationship by which the wholesaler is
4 granted the right to offer and sell the manufacturer's brands by
5 the manufacturer; (c) a relationship by which the franchise, as an
6 independent business, constitutes a component of the manufacturer's
7 distribution system; (d) a relationship by which the operation of
8 the wholesaler's business is substantially associated with the
9 manufacturer's brand, advertising, or other commercial symbol
10 designating the manufacturer; and (e) a relationship by which the
11 operation of the wholesaler's business is substantially reliant on
12 the manufacturer for the continued supply of beer;

13 (25) Territory or sales territory means the wholesaler's
14 area of sales responsibility for the brand or brands of the
15 manufacturer;

16 (26) Suspend means to cause a temporary interruption of
17 all rights and privileges of a license;

18 (27) Cancel means to discontinue all rights and
19 privileges of a license;

20 (28) Revoke means to permanently void and recall all
21 rights and privileges of a license;

22 (29) Generic label means a label which is not protected
23 by a registered trademark, either in whole or in part, or to which
24 no person has acquired a right pursuant to state or federal
25 statutory or common law;

26 (30) Private label means a label which the purchasing
27 wholesaler or retailer has protected, in whole or in part, by a
28 trademark registration or which the purchasing wholesaler or

1 retailer has otherwise protected pursuant to state or federal
2 statutory or common law;

3 (31) Farm winery means any enterprise which produces and
4 sells wines produced from grapes, other fruit, or other suitable
5 agricultural products of which at least seventy-five percent of the
6 finished product is grown in this state;

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

11 (33) Brewpub means any restaurant or hotel which produces
12 on its premises a maximum of ten thousand barrels of beer per year;

13 (34) Manager means a person appointed by a corporation to
14 oversee the daily operation of the business licensed in Nebraska.
15 A manager shall meet all the requirements of the act as though he
16 or she were the applicant, except for residency and citizenship;

17 (35) Shipping license means a license granted pursuant to
18 section 53-123.15;

19 (36) Sampling means consumption on the premises of a
20 retail licensee of not more than five samples of one fluid ounce or
21 less of alcoholic liquor by the same person in a twenty-four-hour
22 period;

23 (37) Microbrewery means any small brewery producing a
24 maximum of ten thousand barrels of beer per year;

25 (38) Craft brewery means a brewpub or a microbrewery;

26 (39) Local governing body means (a) the city council or
27 village board of trustees of a city or village within which the
28 licensed premises are located or (b) if the licensed premises are

1 not within the corporate limits of a city or village, the county
2 board of the county within which the licensed premises are located;
3 ~~and~~

4 (40) Consume means knowingly and intentionally drinking
5 or otherwise ingesting alcoholic liquor; and

6 (41) Cash or cash equivalent means coins, currency, a
7 debit card or credit card which carries the name of the business as
8 shown on the license, a licensee's business check signed by the
9 licensee or the licensee's authorized agent, a cashier's check, a
10 certified check, a traveler's check, or a bank money order remitted
11 by the licensee or the licensee's authorized agent.

12 Sec. 2. Section 53-168, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 53-168. (1) It shall be unlawful for any person having a
15 retail license to sell beer to accept credit for the purchase of
16 beer from any manufacturer or wholesaler of beer and for any person
17 having a retail license to sell alcoholic liquor or any officer,
18 associate, member, representative, or agent of such licensee to
19 accept, receive, or borrow money or anything else of value or to
20 accept or to receive credit, other than merchandising credit in the
21 ordinary course of business for a period not to exceed thirty days,
22 directly or indirectly, from (a) any person, partnership, limited
23 liability company, or corporation engaged in manufacturing or
24 wholesaling such liquor, (b) any person connected with or in any
25 way representing such manufacturer or wholesaler, (c) any member of
26 the family of such manufacturer or wholesaler, (d) any stockholders
27 in any corporation engaged in manufacturing or wholesaling such
28 liquor, or (e) any officer, manager, agent, member, or

1 representative of such manufacturer or wholesaler.

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

12 (3) If any holder of a license to sell alcoholic liquor
13 at retail or wholesale violates subsection (1) or (2) of this
14 section, such license shall be suspended or revoked by the
15 commission in the manner provided by the Nebraska Liquor Control
16 Act.

17 (4) It ~~shall not be~~ is not a violation of subsection (1)
18 or (2) of this section for a manufacturer or wholesaler to sell or
19 provide alcoholic liquor exclusively or in minimum quantities in
20 containers bearing a private label or to sell or provide alcoholic
21 liquor in containers bearing a generic label to a wholesaler or
22 retailer.

23 (5) It ~~shall not be~~ is not a violation of subsection (1)
24 or (2) of this section for a wholesaler or retailer to accept or
25 purchase from a manufacturer or wholesaler alcoholic liquor
26 exclusively or in minimum quantities in containers bearing a
27 private label or for a wholesaler or retailer to accept or purchase
28 from a manufacturer or wholesaler alcoholic liquor in containers

1 bearing a generic label.

2 (6) It is not a violation of subsection (1) or (2) of
3 this section for a wholesaler to accept cash or cash equivalent
4 from a retailer for the purchase of alcoholic liquor.

5 Sec. 3. Original sections 53-103 and 53-168, Reissue
6 Revised Statutes of Nebraska, are repealed.