

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 788

FINAL READING

Introduced by Karpisek, 32.

Read first time January 07, 2010

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 section 53-125, Reissue Revised Statutes of Nebraska,
3 and section 53-103, Revised Statutes Supplement, 2009; to
4 change provisions relating to managers; and to repeal the
5 original sections.

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

1 Section 1. Section 53-103, Revised Statutes Supplement,
2 2009, 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 and alcohol processed
8 or sold in a gaseous form. Alcohol does not include denatured
9 alcohol or wood alcohol;

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

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

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

23 (5) Alcoholic liquor includes alcohol, spirits, wine,
24 beer, and any liquid or solid, patented or not, containing alcohol,
25 spirits, wine, or beer and capable of being consumed as a beverage

1 by a human being. Alcoholic liquor also includes confections or
2 candy with alcohol content of more than one-half of one percent
3 alcohol. The act does not apply to (a) alcohol used in the
4 manufacture of denatured alcohol produced in accordance with acts
5 of Congress and regulations adopted and promulgated pursuant to
6 such acts, (b) flavoring extracts, syrups, medicinal, mechanical,
7 scientific, culinary, or toilet preparations, or food products
8 unfit for beverage purposes, but the act applies to alcoholic
9 liquor used in the manufacture, preparation, or compounding of such
10 products or confections or candy that contains more than one-half
11 of one percent alcohol, or (c) wine intended for use and used by
12 any church or religious organization for sacramental purposes;

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

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

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

25 (9) Nonbeverage user means every manufacturer of any

1 of the products set forth and described in subsection (4) of
2 section 53-160, when such product contains alcoholic liquor, and
3 all laboratories, hospitals, and sanatoria using alcoholic liquor
4 for nonbeverage purposes;

5 (10) Manufacture means to distill, rectify, ferment,
6 brew, make, mix, concoct, process, blend, bottle, or fill an
7 original package with any alcoholic liquor and includes blending
8 but does not include the mixing or other preparation of drinks for
9 serving by those persons authorized and permitted in the act to
10 serve drinks for consumption on the premises where sold;

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

1 Wholesaler includes a distributor, distributorship, and jobber;

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

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

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

10 (15) Commission means the Nebraska Liquor Control
11 Commission;

12 (16) Sale means any transfer, exchange, or barter in any
13 manner or by any means for a consideration and includes any sale
14 made by any person, whether principal, proprietor, agent, servant,
15 or employee;

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

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

25 (19) Club means a corporation (a) which is organized

1 under the laws of this state, not for pecuniary profit, solely
2 for the promotion of some common object other than the sale or
3 consumption of alcoholic liquor, (b) which is kept, used, and
4 maintained by its members through the payment of annual dues, (c)
5 which owns, hires, or leases a building or space in a building
6 suitable and adequate for the reasonable and comfortable use and
7 accommodation of its members and their guests, and (d) which
8 has suitable and adequate kitchen and dining room space and
9 equipment and a sufficient number of servants and employees for
10 cooking, preparing, and serving food and meals for its members
11 and their guests. The affairs and management of such club shall
12 be conducted by a board of directors, executive committee, or
13 similar body chosen by the members at their annual meeting, and
14 no member, officer, agent, or employee of the club shall be paid
15 or shall directly or indirectly receive, in the form of salary or
16 other compensation, any profits from the distribution or sale of
17 alcoholic liquor to the club or the members of the club or its
18 guests introduced by members other than any salary fixed and voted
19 at any annual meeting by the members or by the governing body of
20 the club out of the general revenue of the club;

21 (20) Hotel means any building or other structure (a)
22 which is kept, used, maintained, advertised, and held out to
23 the public to be a place where food is actually served and
24 consumed and sleeping accommodations are offered for adequate
25 pay to travelers and guests, whether transient, permanent, or

1 residential, (b) in which twenty-five or more rooms are used for
2 the sleeping accommodations of such guests, and (c) which has one
3 or more public dining rooms where meals are served to such guests,
4 such sleeping accommodations and dining rooms being conducted in
5 the same buildings in connection therewith and such building or
6 buildings or structure or structures being provided with adequate
7 and sanitary kitchen and dining room equipment and capacity;

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

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

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

15 (24) Franchise or agreement, with reference to the
16 relationship between a manufacturer and wholesaler, includes one or
17 more of the following: (a) A commercial relationship of a definite
18 duration or continuing indefinite duration which is not required
19 to be in writing; (b) a relationship by which the wholesaler is
20 granted the right to offer and sell the manufacturer's brands by
21 the manufacturer; (c) a relationship by which the franchise, as an
22 independent business, constitutes a component of the manufacturer's
23 distribution system; (d) a relationship by which the operation
24 of the wholesaler's business is substantially associated with
25 the manufacturer's brand, advertising, or other commercial symbol

1 designating the manufacturer; and (e) a relationship by which the
2 operation of the wholesaler's business is substantially reliant on
3 the manufacturer for the continued supply of beer;

4 (25) Territory or sales territory means the wholesaler's
5 area of sales responsibility for the brand or brands of the
6 manufacturer;

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

9 (27) Cancel means to discontinue all rights and
10 privileges of a license;

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

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

17 (30) Private label means a label which the purchasing
18 wholesaler or retailer has protected, in whole or in part, by
19 a trademark registration or which the purchasing wholesaler or
20 retailer has otherwise protected pursuant to state or federal
21 statutory or common law;

22 (31) Farm winery means any enterprise which produces and
23 sells wines produced from grapes, other fruit, or other suitable
24 agricultural products of which at least seventy-five percent of
25 the finished product is grown in this state or which meets the

1 requirements of section 53-123.13;

2 (32) Campus, as it pertains to the southern boundary of
3 the main campus of the University of Nebraska-Lincoln, means the
4 south right-of-way line of R Street and abandoned R Street from
5 10th to 17th streets and, as it pertains to the western boundary
6 of the main campus of the University of Nebraska-Lincoln, means the
7 east right-of-way line of 10th Street from R Street to Holdrege
8 Street (Salt Creek Roadway);

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

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

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

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

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

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

25 (39) Local governing body means (a) the city council or

1 village board of trustees of a city or village within which the
2 licensed premises are located or (b) if the licensed premises are
3 not within the corporate limits of a city or village, the county
4 board of the county within which the licensed premises are located;

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

7 (41) Microdistillery means a distillery located in
8 Nebraska that is licensed to distill liquor on the premises of the
9 distillery licensee and produces ten thousand or fewer gallons of
10 liquor annually; and

11 (42) Cigar bar means an establishment operated by a
12 holder of a Class C liquor license which:

13 (a) Does not sell food;

14 (b) In addition to selling alcohol, annually receives ten
15 percent or more of its gross revenue from the sale of cigars and
16 other tobacco products and tobacco-related products, except from
17 the sale of cigarettes as defined in section 69-2702. A cigar bar
18 shall not discount alcohol if sold in combination with cigars or
19 other tobacco products and tobacco-related products;

20 (c) Has a walk-in humidor on the premises; and

21 (d) Does not permit the smoking of cigarettes.

22 Sec. 2. Section 53-125, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 53-125 No license of any kind shall be issued to (1)
25 a person who is not a resident of Nebraska, except in case of

1 railroad, airline, or boat licenses, (2) a person who is not of
2 good character and reputation in the community in which he or
3 she resides, (3) a person who is not a citizen of the United
4 States, (4) a person who has been convicted of or has pleaded
5 guilty to a felony under the laws of this state, any other state,
6 or the United States, (5) a person who has been convicted of or
7 has pleaded guilty to any Class I misdemeanor pursuant to Chapter
8 28, article 3, 4, 7, 8, 10, 11, or 12, or any similar offense
9 under a prior criminal statute or in another state, except that
10 any additional requirements imposed by this subdivision on May
11 18, 1983, shall not prevent any person holding a license on such
12 date from retaining or renewing such license if the conviction or
13 plea occurred prior to May 18, 1983, (6) a person whose license
14 issued under the Nebraska Liquor Control Act has been revoked for
15 cause, (7) a person who at the time of application for renewal of
16 any license issued under the act would not be eligible for such
17 license upon initial application, (8) a partnership, unless one of
18 the partners is a resident of Nebraska and unless all the members
19 of such partnership are otherwise qualified to obtain a license,
20 (9) a limited liability company, unless one of the members is a
21 resident of Nebraska and unless all the members of such company are
22 otherwise qualified to obtain a license, (10) a corporation, if any
23 officer, ~~manager~~, or director of the corporation or any stockholder
24 owning in the aggregate more than twenty-five percent of the stock
25 of such corporation would be ineligible to receive a license under

1 this section for any reason other than the reasons stated in
2 subdivisions (1) and (3) of this section, ~~except that~~ or if a
3 ~~manager of a corporate licensee shall be a resident of Nebraska.~~
4 would be ineligible to receive a license under this section for any
5 reason. This subdivision shall not apply to railroad licenses, (11)
6 a person whose place of business is conducted by a manager or agent
7 unless such manager or agent possesses the same qualifications
8 required of the licensee, (12) a person who does not own the
9 premises for which a license is sought or does not have a lease
10 or combination of leases on such premises for the full period
11 for which the license is to be issued, (13) except as provided
12 in this subdivision, an applicant whose spouse is ineligible
13 under this section to receive and hold a liquor license. Such
14 applicant shall become eligible for a liquor license only if the
15 commission finds from the evidence that the public interest will
16 not be infringed upon if such license is granted. It shall be
17 prima facie evidence that when a spouse is ineligible to receive
18 a liquor license the applicant is also ineligible to receive a
19 liquor license. Such prima facie evidence shall be overcome if
20 it is shown to the satisfaction of the commission (a) that the
21 licensed business will be the sole property of the applicant and
22 (b) that such licensed premises will be properly operated, (14) a
23 person seeking a license for premises which do not meet standards
24 for fire safety as established by the State Fire Marshal, (15)
25 a law enforcement officer, except that this subdivision shall

1 not prohibit a law enforcement officer from holding membership
2 in any nonprofit organization holding a liquor license or from
3 participating in any manner in the management or administration of
4 a nonprofit organization, or (16) a person less than twenty-one
5 years of age.

6 When a trustee is the licensee, the beneficiary or
7 beneficiaries of the trust shall comply with the requirements
8 of this section, but nothing in this section shall prohibit any
9 such beneficiary from being a minor or a person who is mentally
10 incompetent.

11 Sec. 3. Original section 53-125, Reissue Revised Statutes
12 of Nebraska, and section 53-103, Revised Statutes Supplement, 2009,
13 are repealed.