

LEGISLATIVE BILL 901

Approved by the Governor March 21, 1988

Introduced by General Affairs Committee, Morehead, 30,
Chairperson; Elmer, 38; R. Johnson, 34;
Weihsing, 48; Higgins, 9; Smith, 33;
Miller, 37

AN ACT relating to the Nebraska Liquor Control Act; to amend section 53-101, Reissue Revised Statutes of Nebraska, 1943, section 53-160, Revised Statutes Supplement, 1986, and section 53-103, Revised Statutes Supplement, 1987; to redefine a term; to require licensure and labeling of certain confections and candy as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 53-101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-101. ~~This act Sections 53-101 to 53-1,121 and section 4 of this act shall be known and may be cited as the Nebraska Liquor Control Act.~~

Sec. 2. That section 53-103, Revised Statutes Supplement, 1987, be amended to read as follows:

53-103. Unless the context otherwise requires, the definitions given in this section shall apply in all cases when any one of the defined terms appears in ~~sections 53-101 to 53-1,118~~ the Nebraska Liquor Control Act.

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

(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. Alcoholic liquor shall also include confections or candy with alcohol content of more than one-half of one percent alcohol. 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 adopted and promulgated thereunder, (b) flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but the act shall not be construed to exclude or not 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) 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 such product 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 the 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 the 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 who 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 in such place a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests.

(19) Club shall mean a corporation 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 liquors, which is kept, used, and maintained by its members through the payment of annual dues, and ~~owning, hiring, or leasing which owns, hires, or leases~~ 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~~ 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 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, or 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 by which~~ the franchisee is granted the right to offer and sell ~~the franchisor's~~ brands ~~thereof~~ by the franchisor; (c) the relationship ~~whereby by which~~ the franchise, 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) Suspend shall mean to cause a temporary interruption of all rights and privileges of a license.

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

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

(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.

(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.

(34) Farm winery shall mean any farm which produces and sells wines produced from grapes, other fruit, or other suitable agricultural products and of which at least seventy-five percent of such grapes, other fruit, or other suitable agricultural products are grown in this state.

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

Sec. 3. That section 53-160, Revised Statutes Supplement, 1986, be amended to read as follows:

53-160. For the purpose of raising revenue, a tax is imposed upon the privilege of engaging in business as a manufacturer or a distributor at wholesale at a rate of twenty cents per gallon beginning October 1, 1985, and twenty-three cents per gallon beginning October 1, 1987, on all beer, regardless of alcoholic content; seventy-five cents per gallon for wine

containing fourteen percent or less of alcohol by volume and one dollar and thirty-five cents per gallon for wines and other dilute alcoholic beverages containing more than fourteen percent of alcohol by volume, except for wines produced in farm wineries; five cents per gallon for wine produced in farm wineries; and ~~beginning October 1, 1985, two dollars and ninety cents per gallon and beginning October 1, 1987, three dollars per gallon~~ on alcohol and spirits manufactured and sold by such manufacturer or imported for sale in this state by such distributor at wholesale in the course of such business. The tax imposed by this section shall be imposed only on alcoholic liquor upon which a federal excise tax is imposed. Manufacturers or distributors at wholesale of alcoholic liquors shall be exempt from the payment of such gallonage tax imposed on such liquors, upon satisfactory proof, including bills of lading furnished to the commission by affidavit or otherwise as the commission may require, that such liquors were manufactured in this state but were shipped out of the state for sale and consumption outside the State of Nebraska. Dry wines or fortified wines manufactured or imported solely and exclusively for sacramental purposes and uses shall not be subject to the tax provided in this section. This tax shall not be imposed upon any alcoholic liquor, whether manufactured in or imported into this state when sold to a nonbeverage user, ~~as defined in section 53-103~~, licensed by the state for use in the manufacture of any of the following when they are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic, and toilet preparations; flavoring extracts, syrups, ~~and food products, and confections or candy~~; scientific, industrial, and chemical products, excepting denatured alcohol; or for scientific, chemical, experimental, or mechanical purposes. The tax shall not be imposed upon the privilege of engaging in any business in interstate commerce or otherwise, which business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this state. The tax ~~herein~~ imposed by this section shall be in addition to all other occupation or privilege taxes imposed by the State of Nebraska or by any municipal corporation or political subdivision thereof. Notwithstanding any ordinance or charter power to the contrary, no city or village shall impose an occupation tax on the business of any person, firm, or corporation licensed under ~~this act~~ the Nebraska Liquor Control Act and doing business within the boundaries of such city or village in any sum which

exceeds double the amount of the license fee required to be paid under ~~this the~~ act to obtain such license. The commission is hereby directed and authorized to collect the taxes herein imposed and to account for and turn over to the State Treasurer at least once each week all money collected as herein provided. If any alcoholic liquor manufactured in or imported into this state is sold to a licensed manufacturer or distributor of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon such manufacturer or distributor shall be reduced by the amount of the taxes which have been paid as to such alcoholic liquor so used under ~~this the~~ act. The net proceeds of all revenue arising hereunder shall inure to the state General Fund.

Sec. 4. No person, firm, or corporation shall sell or offer for sale any confections or candy that contains more than one-half of one percent alcohol rendered unfit for beverage purposes unless licensed under the Nebraska Liquor Control Act.

Any confections or candy sold in this state that contains more than one-half of one percent alcohol rendered unfit for beverage purposes shall bear a label containing the following statement: Sale of this product to persons under the legal age for purchasing alcoholic liquor is unlawful.

Sec. 5. That original section 53-101, Reissue Revised Statutes of Nebraska, 1943, section 53-160, Revised Statutes Supplement, 1986, and section 53-103, Revised Statutes Supplement, 1987, are repealed.