

LEGISLATIVE BILL 859

Approved by the Governor February 8, 1994

Introduced by Executive Board: Hall, 7, Chairperson

AN ACT relating to the Nebraska Liquor Control Act; to amend sections 53-121, 53-170, 53-189, 53-198, 53-199, 53-1,101 to 53-1,103, 53-1,107 to 53-1,111, and 53-1,113, Reissue Revised Statutes of Nebraska, 1943, sections 53-123.13 and 53-139, Revised Statutes Supplement, 1992, and sections 48-1902, 53-103, and 53-123.04, Revised Statutes Supplement, 1993; to change internal references; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 48-1902, Revised Statutes Supplement, 1993, be amended to read as follows:

48-1902. For purposes of sections 48-1901 to 48-1910, unless the context otherwise requires:

(1) Alcohol shall mean any product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, synthetic ethyl alcohol, the four varieties of liquor defined in subdivisions ~~(2)~~ (1) through ~~(5)~~ (4) of section 53-103, alcohol, spirits, wine, and beer, every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer, and alcohol used in the manufacture of denatured alcohol, flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary, and toilet preparations;

(2) Breath-testing device shall mean intoxilyzer model 4011AS or other scientific testing equivalent as approved by and operated in accordance with the department rules and regulations;

(3) Breath-testing-device operator shall mean a person who has obtained or been issued a permit pursuant to the department rules and regulations;

(4) Department shall mean the Department of Health;

(5) Department rules and regulations shall mean the techniques and methods authorized pursuant to section 60-6,201;

(6) Drug shall mean any substance, chemical, or compound as described, defined, or delineated in sections 28-405 and 28-419 or any metabolite or conjugated form thereof, except that any substance, chemical, or compound containing any product as defined in subdivision (1) of this section may also be defined as alcohol;

(7) Employee shall mean any person who receives any remuneration, commission, bonus, or other form of wages in return for such person's actions which directly or indirectly benefit an employer; and

(8) Employer shall mean the State of Nebraska and its political subdivisions, all other governmental entities, or any individual, association, corporation, or other organization doing business in the State of Nebraska unless it, he, or she employs a total of less than six full-time and part-time employees at any one time.

Sec. 2. That section 53-103, Revised Statutes Supplement, 1993, be amended to read as follows:

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

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

~~(2)~~ (2) Alcohol shall mean the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and shall include synthetic ethyl alcohol. Alcohol shall not include denatured alcohol or wood alcohol;

~~(3)~~ (2) 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)~~ (3) 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;

~~(5)~~ (4) 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, but not be limited to, beer, ale, stout,

lager beer, porter, and near beer;

~~(4)~~ (5) Alcoholic liquor shall include alcohol, spirits, wine, beer, and any 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 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 pursuant to such acts, (b) flavoring extracts, syrups, medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but the act shall 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)~~ (6) Near beer shall mean beer containing less than one-half of one percent of alcohol by volume;

~~(8)~~ (7) Original package shall mean any bottle, flask, jug, can, cask, barrel, keg, hogshead, or other receptacle or container used, corked or capped, sealed, and labeled by the manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor;

~~(9)~~ (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 liquor, including a wholly owned affiliate or duly authorized agent for a manufacturer;

~~(10)~~ (9) Nonbeverage user shall mean every manufacturer of any of the products set forth and described in subsection (4) of section 53-160, when such product contains alcoholic liquor, and all laboratories, hospitals, and sanatoria using alcoholic liquor for nonbeverage purposes;

~~(11)~~ (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 the act to serve drinks for consumption on the premises where sold;

~~(12)~~ (11) Wholesaler shall mean a person importing or causing to be imported into the state or purchasing or causing to be purchased within the state alcoholic liquor for sale or resale to retailers licensed under the act, whether the business of the wholesaler 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 liquor 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. Wholesaler shall not include any retailer licensed to sell alcoholic liquor for consumption off the premises who sells alcoholic liquor other than beer or wine to another retailer pursuant to section 53-175, except that any such retailer shall obtain the required federal wholesaler's basic permit and federal wholesale liquor dealer's special tax stamp. Wholesaler shall include a distributor, distributorship, and jobber;

~~(13)~~ (12) Person shall mean any natural person, trustee, corporation, partnership, or limited liability company;

~~(14)~~ (13) Retailer shall mean a person who sells or offers for sale alcoholic liquor for use or consumption and not for resale in any form except as provided in section 53-175;

~~(15)~~ (14) Sell at retail and sale at retail shall mean sale for use or consumption and not for resale in any form except as provided in section 53-175;

~~(16)~~ (15) Commission shall mean the Nebraska Liquor Control Commission;

~~(17)~~ (16) Sale shall mean any transfer, exchange, or barter in any manner or by any means for a consideration and shall include any sale made by any person, whether principal, proprietor, agent, servant, or employee;

~~(18)~~ (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;

~~(19)~~ (18) Restaurant shall mean any public place (a) which is 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, (b) which has no sleeping accommodations, and (c) which has adequate and sanitary kitchen and dining room equipment and capacity and a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests;

~~(20)~~ (19) Club shall mean a corporation (a) 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 liquor, (b) which is kept, used, and maintained by its members through the payment of annual dues, (c) which owns, hires, or leases a building or space in a building suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, and (d) which has suitable and adequate kitchen and dining room space and equipment and 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 application for a license under 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, 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 any salary fixed and voted at any annual meeting by the members or by the governing body of the club out of the general revenue of the club;

(21) (20) Hotel shall mean any building or other structure (a) which is 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, (b) in which twenty-five or more rooms are used for the sleeping accommodations of such guests, and (c) which has 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;

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

(23) (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 liquor congregate for the express purpose of consuming such alcoholic liquor upon the payment of a fee or other consideration, including among other services the sale of food, ice, mixes, or other fluids for alcoholic drinks and the maintenance of space for the storage of alcoholic liquor belonging to such persons and facilities for the dispensing of such liquor 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, an individual, a partnership, a limited liability company, or a 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 prohibit the sale of alcoholic liquor for consumption on the premises to any person who is not a current member of such bottle club;

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

(25) (24) Brand shall mean alcoholic liquor identified as the product of a specific manufacturer;

(26) (25) Franchise or agreement, with reference to the relationship between a manufacturer and wholesaler, 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) a relationship by which the wholesaler is granted the right to offer and sell the manufacturer's brands by the manufacturer; (c) a relationship by which the franchise, as an independent business, constitutes a component of the manufacturer's distribution system; (d) a relationship by which the operation of the wholesaler's business is substantially associated with the manufacturer's brand, advertising, or other commercial symbol designating the manufacturer; and (e) a relationship by which the operation of the wholesaler's business is substantially reliant on the manufacturer for the continued supply of beer;

(27) (26) Territory or sales territory shall mean the wholesaler's area of sales responsibility for the brand or brands of the manufacturer;

(28) (27) Suspend shall mean to cause a temporary interruption of all rights and privileges of a license;

{29} (28) Cancel shall mean to discontinue all rights and privileges of a license;

{30} (29) Revoke shall mean to permanently void and recall all rights and privileges of a license;

{31} (30) Generic label shall mean a label which is not protected by a registered trademark, either in whole or in part, or to which no person has acquired a right pursuant to state or federal statutory or common law;

{32} (31) Private label shall mean a label which the purchasing wholesaler, retailer, or bottle club licensee has protected, in whole or in part, by a trademark registration or which the purchasing wholesaler, retailer, or bottle club licensee has otherwise protected pursuant to state or federal statutory or common law;

{33} (32) Farm winery shall mean any enterprise which produces and sells wines produced from grapes, other fruit, or other suitable agricultural products of which at least seventy-five percent is grown in this state;

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

{35} (34) Brewpub shall mean any restaurant or hotel which produces on its premises a maximum of five thousand barrels of beer per year for sale at retail for consumption on the licensed premises and which sells not more than ten percent of its annual production for consumption off the premises;

{36} (35) Manager shall mean a person appointed by a corporation to oversee the daily operation of the business licensed in Nebraska. A manager shall meet all the requirements of the act as though he or she were the applicant, except for residency and citizenship; and

{37} (36) Shipping license shall mean a license granted pursuant to section 53-123.15.

Sec. 3. That section 53-121, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-121. The question of licensing the sale of alcoholic liquors, other than beer, by the package may be submitted at the general municipal election every two years after 1937; in such cities or villages. The proposal shall be submitted and voted upon in the same manner as the submission of the proposal to sell such alcoholic liquors by the drink as provided in section 53-122. The proposition shall be stated as follows:

Shall the sale of alcoholic liquors by the package, other than beer, be licensed in (here insert the name of the city or village)?

..... For license to sell by the package.

..... Against license to sell by the package.

The majority of those voting on the question shall be mandatory upon the commission insofar as licensing the sale of such liquors therein by the package is concerned. In the absence of any vote on the question of licensing the sale of such liquors in such cities or villages by the package, the commission shall continue to issue licenses to sell the same by the package therein for periods of one year, subject to all the terms and conditions of ~~this act~~ the Nebraska Liquor Control Act.

Sec. 4. That section 53-123.04, Revised Statutes Supplement, 1993, be amended to read as follows:

53-123.04. (1) A retail license shall allow the licensee to sell and offer for sale at retail either in the original package or otherwise, as prescribed in the license, on the premises specified in the license or on the premises where catering is occurring, alcoholic liquor or beer for use or consumption but not for resale in any form except as provided in section 53-175, except that in all counties a holder of a bottle club license shall be authorized to sell alcoholic liquor for consumption on the premises without complying with that part of subdivision {23} (22) of section 53-103 pertaining to membership and maintaining membership lists.

(2) Nothing in the Nebraska Liquor Control Act shall prohibit a holder of a Class D or Class K license from allowing the sampling of tax-paid wine for consumption on the premises by such licensee or his or her employees in cooperation with a licensed wholesaler in the manner prescribed by the commission.

Sec. 5. That section 53-123.13, Revised Statutes Supplement, 1992, be amended to read as follows:

53-123.13. (1) In the event the operator of a farm winery is unable to produce or purchase seventy-five percent of the grapes, fruit, or other suitable agricultural products used in the farm winery from within the state due to natural disaster which causes substantial loss to the Nebraska-grown crop, such operator may petition the commission to waive the seventy-five-percent requirement, prescribed in subdivision {33} (32) of

section 53-103~~7~~ for one year.

(2) It shall be within the discretion of the commission to waive the seventy-five-percent requirement taking into consideration the availability of products used in farm wineries in this area and the ability of such operator to produce wine from products that are abundant within the state.

Sec. 6. That section 53-139, Revised Statutes Supplement, 1992, be amended to read as follows:

53-139. No person shall receive a retail license to sell alcoholic liquor upon any premises used as a restaurant or as a club unless such premises or plan of operation strictly complies with the provisions of subsections subdivisions (18) and (19) and (20) of section 53-103.

Sec. 7. That section 53-170, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-170. Any licensee who ~~shall permit or assent, or be permits, assents, or is a party in any way to any violation or infringement of the provisions of section 53-169 or 53-169.01 Nebraska Liquor Control Act~~ shall be deemed guilty of a violation of this the act. ~~Any τ and any money loaned contrary to a provision of this the act shall not be recovered back, Any τ or any note, mortgage, or other evidence of indebtedness, or any security, or any lease or contract obtained or made contrary to this the act shall be unenforceable and void.~~

Sec. 8. That section 53-189, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-189. The giving away or delivery of any alcoholic liquor for the purpose of evading any provision of section 53-188~~7~~ or the taking of orders or the making of agreements, at or within any governmental subdivision, while such sales are prohibited, for the sale or delivery of any alcoholic liquor, or any other shift or device to evade any provision of this act the Nebraska Liquor Control Act, shall be held to be an unlawful selling.

Sec. 9. That section 53-198, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-198. Any room, house, building, boat, structure, or place of any kind where alcoholic liquors are sold, manufactured, bartered, or given away~~7~~ in violation of this act, the Nebraska Liquor Control Act or where persons are permitted to resort for the purpose of drinking same~~7~~, in violation of this the act, or any place where such liquors are kept for sale, barter, or gift~~7~~ in violation of this the act, and all such liquors, and all property kept in and used in maintaining such a place, are each and all of them hereby declared to be a common nuisance. ~~Any τ and any person who maintains or assists in maintaining such common nuisance shall be guilty of a violation of this the act. If it shall be is proved that the owner of any building or premises has knowingly suffered the same to be used or occupied for the manufacture, sale, or possession of such alcoholic liquors~~7~~ contrary to the provisions of this the act, such building or premises shall be subject to a lien for~~7~~ and may be sold to pay all fines and costs assessed against the occupant of such building or premises for any violation of this the act. Such τ and such lien shall be immediately enforced by civil action~~7~~ in any court having jurisdiction~~7~~ by the county attorney of the county wherein such building or premises may be is located~~7~~ or by one of the assistant attorneys general assigned to the commission~~7~~ when directed by the commission.~~

Sec. 10. That section 53-199, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-199. The Attorney General, any one of the assistant attorneys general assigned to the commission~~7~~ when directed by the commission, or the county attorney in the county where such nuisance exists~~7~~ or is kept or maintained~~7~~ may maintain an action by injunction, in the name of the State of Nebraska, to abate and temporarily or permanently to enjoin such nuisance. The court shall have the right to make temporary and final orders as in other injunction proceedings. The plaintiff shall not be required to give bond in such action, and~~7~~ upon final judgment against the defendant, such court shall also order that such room, house, building, structure, boat, or place of any kind shall be closed and padlocked for a period of not less than three months nor more than two years~~7~~ and until the owner, lessee, tenant, or occupant thereof ~~shall give gives~~ bond with sufficient surety to be approved by the court making the order, in the penal sum of not less than one thousand dollars, payable to the State of Nebraska~~7~~ and conditioned that no alcoholic liquors will thereafter be manufactured, possessed, sold, bartered, or given away, or furnished, or otherwise disposed of thereon or therein, or kept thereon or therein with intent to sell, barter, give away, or otherwise dispose of the same, contrary to this act the Nebraska Liquor Control Act, and that he ~~and his or she and his or her~~ surety will pay all fines and costs assessed against ~~him~~ for any violation of this the act. If any condition of

County of)

COMPLAINT FOR SEARCH WARRANT

The complaint and affidavit of (name of complainant), of (his or her residence), made before (name of officer) one of the (official title of officer), in and for said (county, city or village, as the case may be), on this day of 19...., being first duly sworn, upon his oath says: That he or she has just and reasonable grounds to believe, and does believe, that alcoholic liquor is now unlawfully (manufactured, possessed, used, disposed of, or kept for sale, or any mash, still or other property designed for the illegal manufacture of alcoholic liquor is possessed therein, as the case may be), to wit: At and within a certain (here describe the house, building, premises, boat, vehicle, receptacle, or other place to be searched, with particulars as to the location sufficiently to identify it, stating the name of the person occupying the same, if known), in the (county, city or village, as the case may be, of) in the county and state aforesaid; that the following are the reasons for his or her belief, to wit: (here insert the facts upon which such belief is based).

WHEREFORE he or she prays that a search warrant may issue according to law.

(Signature of complainant)

Subscribed and sworn to before me this day of 19....

(Name of officer)

(Official title of officer)

Sec. 16. That section 53-1,109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-1,109. If the judge before whom any such complaint is made is satisfied that there is reasonable cause for such belief, he or she shall issue a warrant directed to any peace officer having jurisdiction, commanding him forthwith or her to enter the house, building, premises, boat, vehicle, receptacle, or other place therein described and designated with particularity, and to make diligent and careful search for alcoholic liquor manufactured, possessed, or kept for sale, contrary to this act the Nebraska Liquor Control Act, and if any such alcoholic liquor be there is found, to seize the same, together with the vessels containing the same, and all property, implements, furniture, and vehicles kept or used for the purpose of violating, or with which to violate any of the provisions of this the act, and bringing to bring the same and any and all persons, if there be any, in whose possession they are found, before the judge who issued the warrant, or some other judge having cognizance of the case.

Sec. 17. That section 53-1,110, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-1,110. Nothing shall be construed to prevent any officer, whose duty it is to make arrests, from arresting with or without a warrant any person or persons found violating any of the provisions of this act the Nebraska Liquor Control Act.

Sec. 18. That section 53-1,111, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-1,111. Upon the issuance of any such search warrant pursuant to section 53-1,108, it shall be the duty of the officers executing the same to forthwith enter the house, building, premises, boat, vehicle, receptacle, or other place therein described, either in the daytime or nighttime, by force, if necessary, and to remove therefrom and confiscate any alcoholic liquor manufactured, possessed, or kept for sale, contrary to the terms of this act, the Nebraska Liquor Control Act and any machinery, equipment, or material used in connection therewith, and to hold such property until all prosecution arising out of such search and seizure shall have ended and determined. It and it shall be the duty of the officers executing such search warrant to arrest any person or persons found using or in possession or control of such alcoholic liquor, articles, or things. All alcoholic liquor unlawfully manufactured, stored, kept, sold, or otherwise disposed of, and the containers thereof, and all equipment used or fit for use in the manufacture or production of the same which are found at or about any still or outfit for the unlawful manufacture of alcoholic liquor on unlicensed premises are hereby declared contraband, and no right of property shall be or exist in any person

owning, furnishing, or possessing any such property, liquor, material, or equipment, but all such property, articles, and things, including alcoholic liquor, shall be sold upon an order of the court, in the manner hereinafter provided, and the proceeds thereof shall be disposed of in the manner provided for the disposition of license money under the Constitution of Nebraska.

Sec. 19. That section 53-1,113, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-1,113. It shall be the duty of the officer who has seized and is holding any of the property mentioned in section 53-1,111 to make application to the court on final determination of any prosecution arising under such search and seizure, and in which such prosecution ~~shall have~~ has been commenced or prosecuted, for an order to sell such property. ~~The~~ and the court, if satisfied that the property so seized and held was, at the time of its seizure, being kept or used, or was fit for use in the unlawful manufacture or production of alcoholic liquor, ~~then the court~~ shall make an order that such property and effects be sold by such officer and shall fix the time, place, manner, and notice of such sale. ~~Nothing~~ PROVIDED, HOWEVER, ~~that nothing contained in this act~~ the Nebraska Liquor Control Act shall be considered to authorize the sale of any alcoholic liquor unlawfully manufactured fit for human consumption which comes into the possession of any officer by seizure, confiscation, or forfeiture under the provisions of ~~this~~ the act without the payment of all taxes and inspection fees required by the laws of this state and of the United States, and ~~AND PROVIDED FURTHER,~~ ~~that~~ all such unlawfully manufactured alcoholic liquor which is unfit for human consumption shall be destroyed.

Sec. 20. That original sections 53-121, 53-170, 53-189, 53-198, 53-199, 53-1,101 to 53-1,103, 53-1,107 to 53-1,111, and 53-1,113, Reissue Revised Statutes of Nebraska, 1943, sections 53-123.13 and 53-139, Revised Statutes Supplement, 1992, and sections 48-1902, 53-103, and 53-123.04, Revised Statutes Supplement, 1993, are repealed.