

LEGISLATIVE BILL 490

Approved by the Governor February 24, 1988

Introduced by Landis, 46

AN ACT relating to liquors; to amend sections 53-101 and 53-124.11, Reissue Revised Statutes of Nebraska, 1943, and section 53-103, Revised Statutes Supplement, 1987; to authorize catering by certain retail licensees as prescribed; to provide notice; to define terms; to harmonize provisions; and to repeal the original sections.

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

Section 1. (1) The holder of a license issued under subdivision (5)C., (5)D., or (5)I. of section 53-124 may obtain an annual catering permit as prescribed in this section. The catering permit shall be issued for the same period as the license held by the permittee and may be renewed in the same manner as the license held by the permittee.

(2) Any person desiring to obtain a catering permit shall file with the commission:

(a) An application in triplicate original upon such forms as the commission shall from time to time prescribe; and

(b) A permit fee of seventy-five dollars payable to the commission, which fee shall be returned to the applicant if the application is denied. Permit fees shall be paid by certified or cashier's check of a bank within this state, United States post office money order, or cash in the full amount of such fee.

(3) When an application for a catering permit is filed, the commission shall notify, by registered or certified mail marked return receipt requested with postage prepaid, the municipal clerk of the city or incorporated village in which such applicant is located or, if the applicant is not located within a city or incorporated village, the county clerk of the county in which such applicant is located of the receipt of the application. The commission shall enclose with such notice one copy of the application. During the period of forty-five days from the date of receiving such application from the commission, the local governing body of such city, village, or county may make and submit to the commission recommendations relative to the

granting or refusal to grant such permit to the applicant. If the local governing body recommends approving or denying the issuance of a permit, the recommendation shall be binding on the commission. If the local governing body does not make a recommendation, the commission may approve or deny the issuance of a permit. Catering permits shall be delivered to the permittee in the same manner as provided in subsection (4) of section 53-132 for delivery of licenses.

(4) If the local governing body does not make a recommendation to the commission, any decision of the commission to deny the issuance of a permit may be appealed to the district court of Lancaster County by the applicant for a permit. If the local governing body recommends that the commission deny the issuance of a catering permit, the decision of the commission based upon the recommendation of the local governing body may be appealed to the district court of the county in which the local governing body is located. When applicable, section 53-1.116 shall govern all appeals.

(5) The local governing body with respect to permittees within its corporate limits may cancel a permit for cause for the remainder of the period for which the permit is issued. Any person whose permit is canceled may appeal to the district court of the county in which the local governing body is located.

(6) For purposes of this section, local governing body shall mean the governing body of the city in which the permittee is located or, if the permittee is not located within a city or village, the governing body of the county in which the permittee is located.

(7) The city, village, or county in which the permittee is located may impose an occupation tax on the business of any person, firm, or corporation receiving a catering permit pursuant to this section and doing business within such city, village, or county. Such tax may not exceed double the permit fee to be paid under this section.

Sec. 2. (1) The holder of a catering permit may deliver, sell, or dispense alcoholic liquors, including beer, for consumption at a location designated in a special designated permit issued pursuant to section 53-124.11.

(2) At least twenty-one days prior to the event for which the permit is to be used, the holder of a catering permit shall file an application seeking a special designated permit for the event. In addition to the information required by subsection (3) of section 53-124.11, the holder of a catering permit shall inform

the commission of (a) the time of the event, (b) the name of the person or organization requesting the permittee's services, (c) the opening and closing dates of the event, and (d) any other information the commission or local governing body deems necessary. A permittee shall not cater an event unless such permittee receives a special designated permit for the event.

(3) If the organization for whom the permittee is catering is a nonprofit organization exempted from the payment of federal income taxes, such organization may share with the permittee a part or all of the proceeds from the sale of any alcoholic liquors sold and dispensed pursuant to this section.

(4) For purposes of this section, local governing body shall mean the governing body of the city or village in which the event will be held or, if the event will not be held within the corporate limits of a city or village, the governing body of the county in which such event will be held.

(5) Only the permittee or employees of the permittee may dispense alcoholic liquor at the event which is being catered by the permittee. Violation of any provision of section 1 or 2 of this act or any rules or regulations adopted and promulgated pursuant to such sections occurring during an event being catered by the permittee may be cause to revoke, cancel, or suspend the retail license held by the permittee.

Sec. 3. That section 53-101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-101. This act Sections 53-101 to 53-1121 and sections 1 and 2 of this act shall be known and may be cited as the Nebraska Liquor Control Act.

Sec. 4. 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 53-1118 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. ~~The provisions of this~~ The 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 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 (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 act~~ 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 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) 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. 5. That section 53-124.11, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-124.11. (1) The commission may issue a special designated permit for consumption of alcoholic liquors at a designated location to a licensee, a municipal corporation, a fine arts museum incorporated

as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, a political organizations which have organization which has been exempted from the payment of federal income taxes, or any other nonprofit corporations whose corporation the purpose of which is fraternal, charitable, or public service and have which has been exempted from the payment of federal income taxes, under conditions specified in this section.

(2) No licensee, organization, or corporation enumerated in this section may be provided a special designated permit under this section for more than six calendar days in any one calendar year. Only one permit shall be required for any application for two or more consecutive days. This subsection shall not apply to any licensee holding a catering permit.

(3) There Except for any special designated permit issued to a licensee holding a catering permit, there shall be a fee of twenty-five dollars for each day identified in the special designated permit. Such fee shall be submitted with the application for the special designated permit, and collected by the commission and deposited with the State Treasurer who shall credit the same fee to the State General Fund. The applicant shall be exempt from the provisions of the Nebraska Liquor Control Act requiring a registration fee and the provisions that require an expiration of forty-five days from the time the application is received by the commission prior to the issuance of a permit, if granted by the commission. The licensees, municipal corporations, organizations, and nonprofit corporations enumerated in this section seeking a special designated permit shall file an application on such forms as the commission may prescribe. Such forms shall contain, along with other information as required by the commission, (a) the name of the applicant, (b) the particular place for which a special designated permit is requested, identified by street and number if practicable, and, if not, by some other appropriate description which definitely locates the place, (c) the name of the owner or lessee of the premises for which the special designated permit is requested, (d) sufficient evidence that the holder of the special designated permit, if issued, will carry on the activities and business authorized by the special designated permit for him, her, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (e) a statement of the type of activity to be carried on

during the time period for which a permit is requested, and (f) sufficient evidence that the activity will be supervised by persons or management who are agents of and directly responsible to the permittee.

(4) No special designated permit provided for by this section shall be issued by the commission without the approval of the local governing body. The local governing body may establish criteria for approving or denying a special designated permit. The local governing body may designate an agent to determine whether a special designated permit is to be approved or denied. Such agent shall follow criteria established by the local governing body in making his or her determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body. For the purposes of this section, the local governing body shall be the city or village within which the particular place for which the special designated permit is requested is located, or if such place is not within the corporate limits of a city or village, then the local governing body shall be the county within which the place for which the special designated permit is requested is located.

(5) If the applicant meets the requirements of this section, a special designated permit shall be granted and issued by the commission for use by the permittee. All statutory provisions and rules and regulations of the commission that apply to a retail licensee shall apply to such permittee, with the exception of such statutory provisions and rules and regulations of the commission so designated by the commission and stated upon the issued permit, except that the commission may not designate exemption of sections 53-180 to 53-180.07. The decision of the commission shall be final. If the applicant does not qualify for a special designated permit, the permit shall be denied by the commission.

(6) A special designated permit issued by the commission shall be mailed or delivered to the city, village, or county clerk, as the case may be, who shall deliver the same such permit to the permittee upon receipt of any fee or tax imposed by such city, village, or county.

Sec. 6. That original sections 53-101 and 53-124.11, Reissue Revised Statutes of Nebraska, 1943, and section 53-103, Revised Statutes Supplement, 1987, are repealed.