

LEGISLATIVE BILL 1090

Approved by the Governor April 12, 1996

Introduced by Pirsch, 10; Hilgert, 7

AN ACT relating to alcoholic liquor; to amend section 53-103, Revised Statutes Supplement, 1994; to eliminate a requirement for submission of a club membership list at the time of application for a license; and to repeal the original section.

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

Section 1. Section 53-103, Revised Statutes Supplement, 1994, is amended to read:

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

(1) 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;

(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;

(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;

(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;

(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;

(6) Near beer shall mean beer containing less than one-half of one percent of alcohol by volume;

(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;

(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;

(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;

(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;

(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;

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

(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;

(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;

(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 for a consideration and shall include any sale 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 (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;

(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;

(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;

(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;

(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;

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

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

(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;

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

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

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

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

(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;

(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;

(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;

(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;

(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;

(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;

(36) Shipping license shall mean a license granted pursuant to section 53-123.15; and

(37) Sampling shall mean consumption on the premises of a retail licensee of not more than five samples of one fluid ounce or less of alcoholic liquor by the same person in a twenty-four-hour period.

Sec. 2. Original section 53-103, Revised Statutes Supplement, 1994, is repealed.