

LEGISLATIVE BILL 114

Approved by the Governor April 4, 2001

Introduced by Quandahl, 31; Aguilar, 35; Redfield, 12; Brown, 6; Bruning, 3; Burling, 33; Cudaback, 36; Cunningham, 18; Erdman, 47; Hilgert, 7; Hudkins, 21; Kremer, 34; Kruse, 13; Dw. Pedersen, 39; Schimek, 27

AN ACT relating to the Nebraska Liquor Control Act; to amend sections 53-168.06, 53-180.02, 53-180.04, and 53-180.05, Reissue Revised Statutes of Nebraska, and sections 53-101 and 53-103, Revised Statutes Supplement, 2000; to define a term; to change provisions relating to the sale, possession, and consumption of alcoholic liquor; to change provisions relating to enforcement of violations of provisions on sales to minors; to authorize minors to assist law enforcement officers as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 53-101, Revised Statutes Supplement, 2000, is amended to read:

53-101. Sections 53-101 to 53-1,121 and section 7 of this act shall be known and may be cited as the Nebraska Liquor Control Act.

Sec. 2. Section 53-103, Revised Statutes Supplement, 2000, is amended to read:

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

(1) Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol. Alcohol does not include denatured alcohol or wood alcohol;

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

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

(5) Alcoholic liquor includes 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 also includes confections or candy with alcohol content of more than one-half of one percent alcohol. The act does 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 applies 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 means beer containing less than one-half of one percent of alcohol by volume;

(7) Original package means 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 means 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 means 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 means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor and includes blending but does 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 means 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 does 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 includes a distributor, distributorship, and jobber;

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

(13) Retailer means 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 means sale for use or consumption and not for resale in any form except as provided in section 53-175;

(15) Commission means the Nebraska Liquor Control Commission;

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

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

(18) Restaurant means 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 means 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. 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 means 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 means 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 means 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. This section does not 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 means any person, male or female, under twenty-one years of age, regardless of marital status;

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

(25) Franchise or agreement, with reference to the relationship between a manufacturer and wholesaler, includes 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 means the wholesaler's area of sales responsibility for the brand or brands of the manufacturer;

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

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

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

(30) Generic label means 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 means 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 means 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, means the south right-of-way line of R Street and abandoned R Street from 10th to 17th streets;

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

(35) Manager means 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 means a license granted pursuant to section 53-123.15;

(37) Sampling means 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;

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

(39) Craft brewery means a brewpub or a microbrewery; ~~and~~

(40) Local governing body means the city council or village board of trustees of a city or village within which the licensed premises are located or, if such premises are not within the corporate limits of a city or village, the county board of the county within which the licensed premises are located;

and

(41) Consume means knowingly and intentionally drinking or otherwise ingesting alcoholic liquor.

Sec. 3. Section 53-168.06, Reissue Revised Statutes of Nebraska, is amended to read:

53-168.06. No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish, or possess any alcoholic liquor for beverage purposes except as specifically provided in the Nebraska Liquor Control Act. Nothing in the act shall prevent (1) the possession of alcoholic liquor legally obtained as provided in the act for the personal use of the possessor and his or her family and guests; (2) the making of wine, cider, or other alcoholic liquor by a person from fruits, vegetables, or grains, or the product thereof, by simple fermentation and without distillation, if made solely for the use of the maker and his or her family and guests; (3) any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession, any hospital or other institution caring for the sick and diseased persons from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution, or any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in the compounding of prescriptions of licensed physicians; (4) the possession and dispensation of wine alcoholic liquor by an authorized representative of any ~~church~~ religion on the premises of a place of worship, for the purpose of conducting any bona fide ~~rite or religious ceremony conducted by such church rite, ritual, or ceremony~~; (5) persons who are sixteen years old or older from carrying alcoholic liquor from licensed establishments when they are accompanied by a person not a minor; (6) persons who are sixteen years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment; (7) persons who are sixteen years old or older from removing and disposing of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment; or (8) persons who are nineteen years old or older from serving or selling alcoholic liquor in the course of their employment.

Sec. 4. Section 53-180.02, Reissue Revised Statutes of Nebraska, is amended to read:

53-180.02. Except as provided in section 53-168.06, no minor may sell, ~~or~~ dispense, consume, or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place, including public streets, alleys, roads, or highways, upon property owned by the State of Nebraska or any subdivision thereof, or inside any vehicle while in or on any other place, including, but not limited to, the public streets, alleys, roads, or highways, or upon property owned by the State of Nebraska or any subdivision thereof, except that a minor may consume, possess, or have physical control of alcoholic liquor in his or her permanent place of residence or on the premises of a place of religious worship on which premises alcoholic liquor is consumed as a part of a religious rite, ritual, or ceremony.

The governing bodies of counties, cities, and villages shall have the power to, and may by applicable resolution or ordinance, regulate, suppress, and control the ~~transporting, knowingly possessing, or having under his or her control, transportation, consumption, or knowing possession of or having under his or her control~~ beer or other alcoholic liquor in or transported by any motor vehicle, by ~~persons~~ any person under twenty-one years of age, and may provide penalties for violations of such resolution or ordinance.

Sec. 5. Section 53-180.04, Reissue Revised Statutes of Nebraska, is amended to read:

53-180.04. Every licensee of a place where alcoholic liquor is sold at retail shall display at all times in a prominent place a printed card with a minimum height of twenty inches and a width of fourteen inches, with each letter to be a minimum of one-fourth inch in height, which shall read as follows:

WARNING TO PERSONS UNDER 21
YOU ARE SUBJECT TO
NOTIFICATION OF PARENTS OR GUARDIAN
AND
YOU ARE SUBJECT TO A PENALTY OF UP TO
~~YOU ARE SUBJECT TO A PENALTY UP TO~~
\$500 FINE
3 MONTHS IN JAIL
OR BOTH
~~IF YOU ARE UNDER 21 AND YOU PURCHASE~~
~~OR ATTEMPT TO PURCHASE~~

IF YOU ARE UNDER 21 AND YOU CONSUME,
PURCHASE, ATTEMPT TO PURCHASE,
 OR HAVE IN YOUR POSSESSION
 ALCOHOLIC LIQUOR IN THIS ESTABLISHMENT
 AND
 WARNING TO ADULTS
YOU ARE SUBJECT TO A PENALTY UP TO
YOU ARE SUBJECT TO A PENALTY OF UP TO
 \$1000 FINE
 1 YEAR IN JAIL
 OR BOTH
 IF YOU ARE 21 OR OVER AND YOU PURCHASE
 ALCOHOLIC LIQUOR
 FOR A PERSON UNDER 21
 AND
 WARNING TO PURCHASERS OF BEER KEGS
 PROPER IDENTIFICATION AND PURCHASER'S SIGNATURE
 ARE REQUIRED

LAWS OF THE STATE OF NEBRASKA

Sec. 6. Section 53-180.05, Reissue Revised Statutes of Nebraska, is amended to read:

53-180.05. (1) Any person violating section 53-180 shall be guilty of a Class I misdemeanor. Any person violating any of the provisions of sections 53-180.01 to 53-180.03 shall be guilty of a Class III misdemeanor. ~~Any person violating section 53-180.02, in lieu of the other penalties set out in this subsection, may be sentenced to work on public streets, in parks, or on other public property for a period not exceeding ten working days. Such work shall be under the supervision of the county sheriff. Upon the written certification by the county sheriff of the performance of such work, the sentence shall be satisfied.~~

(2) Any person who knowingly manufactures, creates, or alters any form of identification for the purpose of sale or delivery of such form of identification to a person under the age of twenty-one years shall be guilty of a Class I misdemeanor. For purposes of this subsection, form of identification ~~shall mean~~ means any card, paper, or legal document that may be used to establish the age of the person named thereon for the purpose of purchasing alcoholic liquor.

(3) When a minor is arrested for a violation of sections 53-180 to 53-180.02 or subsection (2) of this section, the law enforcement agency employing the arresting peace officer shall make a reasonable attempt to notify such minor's parent or guardian of the arrest.

Sec. 7. In order to further the public policy of deterring minors from illegally obtaining or consuming alcoholic liquor, persons under twenty-one years of age may be authorized to assist duly authorized law enforcement officers to determine compliance with sections 53-180 and 53-180.02. Such compliance checks shall be conducted pursuant to guidelines adopted and promulgated by the Nebraska State Patrol with input from the commission. Unless a person is an emancipated minor at least eighteen years of age, no person under twenty-one years of age shall be authorized to participate or assist law enforcement officers in such compliance checks without the written consent of his or her parents or legal guardian.

Sec. 8. Original sections 53-168.06, 53-180.02, 53-180.04, and 53-180.05, Reissue Revised Statutes of Nebraska, and sections 53-101 and 53-103, Revised Statutes Supplement, 2000, are repealed.