

LEGISLATIVE BILL 66

Approved by the Governor March 21, 1972

Introduced by Willard H. Waldo, 31st District; David H. Stahmer, 8th District

AN ACT to amend sections 53-160 and 53-164.01, Reissue Revised Statutes of Nebraska, 1943, and sections 53-118, 53-130, 53-166.01, 53-166.02, and 53-166.17, Revised Statutes Supplement, 1971, relating to liquors; to provide an exception to the size of containers; to extend provisions to all alcoholic liquors rather than beer only; to increase the tax on liquors and change the method of payment; to provide transition; to increase a fee; to provide for personal bond; and to repeal the original sections.

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

Section 1. That section 53-118, Revised Statutes Supplement, 1971, be amended to read as follows:

53-118. The rules and regulations established by the commission shall include, among such other things as the commission may determine, the following: (1) Fixing and determining the nature, form, and capacity of all containers used for alcoholic liquors, which rules and regulations shall provide for the sale of imported beer in such capacity of containers as are provided by the producer thereof; (2) determining the nature of and the representations to be shown upon the labels attached to the containers; Provided, that the commission shall require that the labels attached to all original packages of alcoholic liquors sold or offered for sale in this state shall set forth in plain and legible print in the English language the quantity of such liquors in full gallons, quarts, pints, or half pints, exclusive of the original package containing it, or in fractions or in multiples thereof; and provided further, that no original package of alcoholic liquor, except wine in the original package containing six and four-tenths ounces and six and one-tenth ounces and beer, sold or offered for sale in the original package in this state shall contain less than one half pint, except that licensees holding a railroad or airline license may dispense on the railroad or airline alcoholic liquor from miniature containers; (3) prescribing the conditions as to the issuance of duplicate licenses in lieu of those lost or destroyed; (4) determining for what violations of the rules and

regulations licenses shall be suspended or revoked; (5) establishing standards of purity, sanitation, honest advertising, and representation; and (6) including any and all the other details which are necessary or convenient to the enforcement of the intent, purpose, and requirements of this act. In the case of manufacturers and distributors of alcoholic liquors, the commission shall require that the labels attached to all containers of such liquors, which are intended for sale in this state, shall set forth, among other things, in plain legible print in the English language the grade and quality of such liquors, together with their alcoholic content, except in the case of beer, and their age and, if the liquors to be sold in this state be a blended product, also the other ingredients contained in such blended product.

Sec. 2. That section 53-130, Revised Statutes Supplement, 1971, be amended to read as follows:

53-130. New licenses to manufacturers, distributors, railroads, airlines, boats, and nonbeverage users of alcoholic liquors may be issued by the commission upon (1) written application in duplicate, to be filed in the manner and on such forms as the commission shall from time to time prescribe, and in which the applicant for a beer or alcoholic liquor distributor's license shall set forth the sales territory in Nebraska in which it is authorized by a manufacturer or manufacturers to sell their brand or brands and the name of such brand or brands, (2) receipt of bond as provided in section 53-138.02, (3) payment in advance of the state registration fee and the license fee, and (4) such notice and hearing as the commission by its own order shall fix and a notice of such application shall be served upon the manufacturer or manufacturers listed in any application for a beer or alcoholic liquor distributor's license and upon any existing distributor licensed to sell the brand or brands in the described sales territory. A license so issued may be renewed without formal application upon payment of license and registration fees; Provided, that the payment thereof shall be an affirmative representation and certification by the licensee that all answers contained in an application, if submitted, would be the same in all material respects as the answers contained in the last previous application; and provided further, that the commission may at any time require a licensee to submit an application.

Sec. 3. That section 53-160, Reissue Revised Statutes of Nebraska, 1943, 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 as a distributor at wholesale at a rate of eight ten cents per gallon on all beer, regardless of alcoholic content; twenty seventy-five cents per gallon for wine and other dilute alcoholic beverages; containing fourteen--per--cent--or--less--of--alcohol;--by--volume; fifty-five-cents-per-gallon-for--wine--and--other--dilute alcoholic-beverages-containing--more--than--fourteen--per cent-of-alcohol;--by--volume; and one--dollar--and--sixty cents two 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; Provided, 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; and provided further, that 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 is not 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 and syrups and food products; scientific, industrial and chemical products, excepting denatured alcohol; or for scientific, chemical, experimental or mechanical purposes; nor is the tax 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 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; Provided, 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 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 act to obtain such license, nor shall any city or village impose any occupation tax whatsoever on the business of any person, firm, or corporation holding a bottle club license issued

under this act and doing business under such license within the boundaries of such city or village. 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 act. The net proceeds of all revenue arising hereunder shall inure to the state General Fund.

Sec. 4. That section 53-164.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-164.01. Payment of the tax provided for in section 53-160 on alcoholic liquors shall be paid by the manufacturer or distributor as herein provided. All aforesaid manufacturers or distributors, whether within or without this state, shall, on or before the twenty-fifth day of each calendar month commencing on the twenty-fifth day of the calendar month following the month in which the aforesaid shipments are made, make a report under oath to the Nebraska Liquor Control Commission upon forms to be furnished by the Nebraska Liquor Control Commission for the purpose of showing the exact total amount in gallons of alcoholic liquors or fractional parts thereof shipped by such aforesaid manufacturer or distributor whether within or without the State of Nebraska, during the preceding calendar month. Such report shall also contain a statement of the exact total amount in gallons, or fractional parts thereof, of alcoholic liquors, except beer, shipped to holders of retailer's licenses within this state. All reports submitted by such manufacturer or distributor, as required by the provisions of this section, shall contain such other information as the Nebraska Liquor Control Commission may require. The manufacturer or distributor shall, at the time of the filing of the report, pay to the Nebraska Liquor Control Commission the amount of the tax due on said--alcoholic--liquors beer shipped to distributors within this state and on alcoholic liquors, except beer, shipped to holders of retailer's licenses within this state at the rate fixed in accordance with the provisions of section 53-160; said tax to be due on the date the aforesaid report is due, less a discount of one per cent of such tax on alcoholic liquors as defined by subdivision (6) of section 53-103, and which discount

shall be deducted from the payment of such tax before remittance thereof to the Nebraska Liquor Control Commission, which discount shall be shown in such report to the Nebraska Liquor Control Commission as required in this section, and which discount shall be a commission for the making of such report, for the timely payment of such tax, and for making the advance payment of tax as provided in section 53-160.02 but if such tax is not paid within the time provided herein, then such discount shall not be allowed and the same shall not be deducted from the payment of such tax.

A penalty of ten per cent of the amount of the tax shall be collected by the Nebraska Liquor Control Commission if the aforesaid report is not filed by the twenty-fifth day of the calendar month or if the tax is not paid to the Nebraska Liquor Control Commission by the twenty-fifth day of the calendar month and in addition thereto, interest on the tax shall be collected at the rate of one per cent per month, or fraction of a month, from the date the tax became due until paid.

No tax shall be levied or collected on alcoholic liquors manufactured within the State of Nebraska and shipped or transported outside the State of Nebraska for sale and consumption outside the State of Nebraska.

In order to insure the payment of all state taxes imposed by law on alcoholic liquors together with all interest and penalties thereon, all persons required to make reports and payment of such tax shall first enter into a surety bond with corporate surety, both such bond form and surety to be approved by the Nebraska Liquor Control Commission. In lieu of such corporate surety bond, there may be filed a personal bond in such form as the commission may prescribe and secured by the pledge of property having a net value over and above any encumbrance or encumbrances thereon at least double the amount of the bond required. Subject to the limitations hereinafter specified, the amount of such bond required of any taxpayer shall be fixed by the Nebraska Liquor Control Commission and may be increased or reduced by it at any time; Provided, that in fixing the amount, the Nebraska Liquor Control Commission shall require a bond in a total amount equal to the amount of the taxpayer's estimated maximum monthly excise tax, ascertained in such manner as the Nebraska Liquor Control Commission may deem proper; and provided further, nothing contained in this section shall be construed to prevent or prohibit the commission from accepting and approving bonds which run for a term longer than the license period. In any event, the amount of such bond required of any one taxpayer shall not be less than one thousand dollars nor more than

one hundred thousand dollars. These bonds shall be filed with the Nebraska Liquor Control Commission.

No person shall order or receive alcoholic liquors in this state which have been shipped directly to him from outside this state by any person other than a holder of a permit for a license year issued by the Nebraska Liquor Control Commission. The Nebraska Liquor Control Commission may issue such permits to out-of-state shippers which shall allow the permittee to ship alcoholic liquors to and only to holders of a distributor's license issued under the provisions of this section. A fee of twenty-five one hundred dollars shall be charged by the Nebraska Liquor Control Commission for each permit issued. The application for such permit and the permit shall be in such form as the Nebraska Liquor Control Commission shall prescribe. The application shall contain all such provisions as the Nebraska Liquor Control Commission shall deem proper and necessary to effectuate the purpose of this section and shall include, but without limitation by reason of this special mention, a provision that the permittee in consideration of the issuance of a permit, agrees:

(1) To comply with and be bound by the provisions of this section pertaining to the making and filing of a bond and the making and filing of returns, the payment of taxes, penalties, interest, and the keeping of records;

(2) That he will permit and be subject to all of the powers granted by the provisions of this section to the Nebraska Liquor Control Commission or its duly authorized employees or agents for inspection and examination of his premises and his records; and to pay his actual expenses excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the Nebraska Liquor Control Commission, if within the United States; and

(3) If any such permittee violates any of the provisions of his application or of the provisions of this section, or the rules of the Nebraska Liquor Control Commission, the Nebraska Liquor Control Commission may revoke or suspend such permit for such period of time as it may determine.

Where a manufacturer or distributor shall sell and deliver beer upon which the tax has been paid to any instrumentality of the armed forces of the United States engaged in resale activities as provided in section 53-160.01, the manufacturer or distributor shall be entitled to a credit in the amount of the tax paid upon such beer sold and delivered to such person or persons in

the event no tax is due on said beer as provided in section 53-160.01, and the amount of said credit, if any, shall be deducted from the tax due on the following monthly report, as provided by the provisions of this section to be filed, or shall be allowed as a credit on subsequent reports until liquidated.

Sec. 5. Within ten days after the effective date of this act, each manufacturer or distributor shall file with the Nebraska Liquor Control Commission, on forms to be prescribed by the commission, a report of all alcoholic liquors on hand as of the close of business on the day immediately preceding the effective date of this act and on which the tax imposed by section 53-160 has been paid. The manufacturer or distributor shall collect from the retailer and be liable for payment to the commission of the tax as increased by this act, but shall be allowed a credit against such liability for tax paid prior to the effective date of this act. Five per cent of such credit may be taken each month against further tax payments, but such monthly credit may not exceed the amount of tax actually due for any month. If any manufacturer or distributor fails to file the report required by this section, or files a false report, or improperly claims credit against any tax liability, the commission may revoke or suspend his license after notice and hearing pursuant to rules of the commission.

Sec. 6. That section 53-166.01, Revised Statutes Supplement, 1971, be amended to read as follows:

53-166.01. It is the declared policy of the State of Nebraska that it is necessary to regulate and control the agreements, franchises and relationships between manufacturers of beer and alcoholic liquors and their distributors for the purpose of fostering and promoting temperance in consumption thereof and to promote respect for and obedience to the laws controlling the distribution and sale of beer and alcoholic liquors. It is necessary to accomplish the declared policy in order to eliminate the undue stimulation of sales of beer and alcoholic liquors in this state by manufacturers inducing, coercing or attempting to induce or coerce distributors of beer and alcoholic liquors to do acts detrimental to the orderly and lawful distribution thereof by threatened or actual termination of the manufacturer and distributor relationship, directly or indirectly, or by the establishment of dual distributors of a brand or brands thereof in a territory presently served by a distributor. It is the further declared policy of the State of Nebraska that temperance and the obedience to the laws controlling the distribution and ultimate sale of beer and alcoholic liquors is promoted

by legislation encouraging distributors of beer and alcoholic liquors to make investments in their facilities to serve retail licensees by providing for the succession of their distributorships and to protect them against the terminations of such distributorships or other acts described herein without the manufacturers' establishing good cause for such termination or other such acts in proceedings before the Nebraska Liquor Control Commission or before the courts of this state, as the case may be. ~~The Legislature further recognizes the distinction between the nature of the distribution of beer and other alcoholic liquors in that the other distributors are franchised by manufacturers to distribute many brands of various kinds of alcoholic liquors and are not as vulnerable to the economic pressures of the manufacturers as beer distributors, which traditionally handle mainly one brand of beer or, in rare instances, only two or three brands of beer in their distributorships.~~

Sec. 7. That section 53-166.02, Revised Statutes Supplement, 1971, be amended to read as follows:

53-166.02. No manufacturer shall (1) induce or coerce, or attempt to induce or coerce, any distributor to accept delivery of any alcoholic liquor, any form of advertisement, or any other commodity which shall not have been ordered by the distributor; (2) induce or coerce, or attempt to induce or coerce, any distributor to enter into any agreement with such manufacturer, or do any other act unfair to the distributor, by threatening to cancel any distributorship existing between such manufacturer, or representative thereof, and such distributor, or to add competition in the distribution of the brand or brands of beer and alcoholic liquors in the established territory of the existing distributor; (3) unfairly, without due regard to the equities of the distributor, cancel, induce, coerce, or attempt to induce or coerce any distributor to resign its distributorship relationship with such manufacturer, or fail to renew the distributorship of any distributor; (4) fail or refuse to deliver to a distributor having a distributorship, or contractual arrangement for the distribution of alcoholic liquor for the manufacturer, any alcoholic liquor publicly advertised for immediate sale within sixty days after such distributor's order shall have been received.

Sec. 8. That section 53-166.17, Revised Statutes Supplement, 1971, be amended to read as follows:

53-166.17. The provisions of sections 53-166.01 to 53-166.16 shall apply to franchises, agreements, or distributorships for beer only and alcoholic liquors and nothing in this act shall prevent any manufacturer newly

licensed under this act from appointing original distributorships in this state.

Sec. 9. That original sections 53-160 and 53-164.01, Reissue Revised Statutes of Nebraska, 1943, and sections 53-118, 53-130, 53-166.01, 53-166.02, and 53-166.17, Revised Statutes Supplement, 1971, are repealed.