

LEGISLATIVE BILL 359

Approved by the Governor April 15, 1985

Introduced by DeCamp, 40

AN ACT relating to liquors; to amend sections 53-102, 53-160.01, and 53-164.01, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to alcoholic liquors taxes; to change provisions relating to the transportation of alcoholic liquors; to provide a penalty; to provide duties for the Revisor of Statutes; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 53-102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-102. No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish, or possess any alcoholic liquor for beverage purposes, except as specifically provided in this act. ~~Nothing~~ ~~PROVIDED,~~ ~~nothing~~ herein contained shall prevent the possession and transportation of alcoholic liquor legally obtained as provided in the Nebraska Liquor Control Act for the personal use of the possessor, his or her family, and guests; nor prevent 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 it is made solely for the use of the maker, his or her family, and guests; nor prevent any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession, or 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 liquors in the compounding of prescriptions of duly licensed physicians; nor prevent the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church; nor prevent persons who are sixteen years old or older from carrying beer from grocery stores when they are accompanied by a person not a minor; nor prevent persons who are sixteen years old or older from handling beer containers and beer in the course of their employment in grocery stores; nor prevent persons who are sixteen years or older from removing and disposing of alcoholic liquor

containers for the convenience of the employer and customers in the course of their employment as waiters, waitresses, or busboys, by any restaurant, club, hotel, or similar organization; nor prevent persons who are nineteen years or older from serving or selling alcoholic liquor in the course of their employment.

Sec. 2. That section 53-160.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

53-160.01. No excise taxes of this state, direct or indirect, ~~other than those on distilled spirits or wine,~~ shall be imposed upon the sale, use, delivery, or storage of articles of merchandise to any instrumentality of the armed forces of the United States engaged in resale activities, except those state excise taxes which may be specifically authorized by the various acts of the Congress of the United States.

Sec. 3. 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~~ such 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 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 retailers' licenses within this state. All reports submitted by each manufacturer or distributor, as required by ~~the provisions of~~ this section, shall contain such other information as the commission may require. The manufacturer or distributor shall, at the time of the filing of the report, pay to the commission the amount of the tax due on beer shipped to distributors within this state and on alcoholic liquors, except beer, shipped to holders of retailers' licenses within this state at the rate fixed in accordance with ~~the provisions of~~ section 53-160. Such ~~tax~~ ~~to~~ ~~shall~~ 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. Such ~~and which~~ discount shall be deducted from the payment of such tax before remittance thereof to the commission, ~~which discount~~ shall be shown in such report to the commission as required in this section, and ~~which discount~~ shall be a commission for the making of

such report, and for the timely payment of such tax, 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 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 commission by the twenty-fifth day of the calendar month, and in addition, ~~therefor~~, 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 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 commission and may be increased or reduced by it at any time. In fixing the amount, the 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 commission may deem proper. 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. These bonds shall be filed with the commission.

No person shall order or receive alcoholic liquors in this state which have been shipped directly to him or her from outside this state by any person other than a holder of a permit for a license year issued by the commission. The commission may issue such permits to manufacturers 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 two hundred dollars shall be charged by the commission for each permit issued. The application for such permit and the permit shall be in such form as the commission shall prescribe. The application shall contain all such provisions as the commission shall deem proper and

necessary to effectuate the purpose of any section of the Nebraska Liquor Control Act and the rules and regulations of ~~that~~ the commission that apply to manufacturers, 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 in ~~pertaining to~~ the making and filing of a bond, and the making and filing of returns, the payment of taxes, penalties, and interest, and the keeping of records;

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

(3) ~~if~~ That if any such permittee violates any of the provisions of his or her application or of any section of the Nebraska Liquor Control Act, or the rules and regulations of the commission that apply to manufacturers, the commission may revoke or suspend such permit for such period of time as it may determine.

Where ~~When~~ a manufacturer or distributor shall sell and deliver beer alcoholic liquor 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 alcoholic liquor sold and delivered to such person or persons in the event no tax is due on ~~said beer~~ such alcoholic liquor as provided in section 53-160.01, and the amount of ~~said the~~ credit, if any, shall be deducted from the tax due on the following monthly report, as provided by this section to be filed, or shall be allowed as a credit on subsequent reports until liquidated.

Sec. 4. (1) It shall be unlawful for any person to transport, import, bring, ship, or cause to be transported, imported, brought, or shipped into the state of Nebraska for the personal use of the possessor, his or her family, or guests a quantity of alcoholic liquor in excess of one gallon at any one time or in excess of two gallons in any one calendar month.

(2) Alcoholic liquor transported, imported, brought, or shipped into the state of Nebraska in violation of this section shall be seized by the commission and disposed of in the manner provided for contraband. Any person violating this section shall be guilty of a Class IV misdemeanor.

Sec. 5. The Revisor of Statutes shall assign

section 4 of this act to Chapter 53, article 1, and any reference to Chapter 53, article 1, to the Nebraska Liquor Control Act, or to this act within Chapter 53, article 1, shall be construed to include section 4 of this act.

Sec. 6. That original sections 53-102, 53-160.01, and 53-164.01, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.