

LEGISLATIVE BILL 777

Approved by the Governor April 20, 1989

Introduced by General Affairs Committee, Smith, 33,  
Chairperson; Elmer, 38; Hartnett, 45;  
Hall, 7; Beck, 8

AN ACT relating to the Nebraska Liquor Control Act; to amend section 53-164.01, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to the shipment of alcoholic liquor as prescribed; and to repeal the original section.

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

Section 1. 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~~ liquor shall be paid by the manufacturer or distributor as provided in this section. All such manufacturers or distributors, except for farm winery producers, 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 shipments are made, make a report under oath to the commission upon forms to be furnished by the commission for the purpose of showing the exact total amount in gallons of alcoholic ~~liquors~~ liquor, or fractional parts thereof, shipped by such manufacturer or distributor, whether within or without the State of Nebraska, during the preceding calendar month. All beer distributors shall, on or before the twenty-fifth day of each calendar month following the month in which the shipments are made, make a report under oath to the commission upon forms furnished by the commission for the purpose of showing the exact total amount in gallons of beer, or fractional parts thereof, shipped by all manufacturers, whether within or without the State of Nebraska, during the preceding calendar month to such distributor. Farm winery producers 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 wine is packaged or bottled for sale, make a report under oath to the commission upon forms furnished by the commission for the purpose of

showing the exact total amount in gallons of wine, or fractional parts thereof, packaged or bottled by such producer 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 ~~liquers~~ liquor, except beer, shipped to holders of retailers' licenses within this state. All reports submitted by each manufacturer, distributor, or farm winery producer, as required by this section, shall contain such other information as the commission may require.

The distributor or farm winery producer shall, at the time of the filing of the report, pay to the commission the amount of the tax due on alcoholic ~~liquers~~ liquor, except beer, shipped to holders of retailers' licenses within this state at the rate fixed in accordance with section 53-160. The tax due on beer shall be paid by the distributor on beer shipped from all manufacturers. Such tax shall be due on the date the report is due, less a discount of one percent of such tax on alcoholic ~~liquers~~ liquor. Such discount shall be deducted from the payment of such tax before remittance of the tax to the commission, shall be shown in such report to the commission as required in this section, and 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 in this section, then such discount shall not be allowed and the discount shall not be deducted from the payment of such tax.

A penalty of ten percent of the amount of the tax shall be collected by the commission if the 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 thereto interest on the tax shall be collected at the rate of one percent 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 ~~liquers~~ liquor 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 ~~liquers~~ liquor 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 specified in this section, 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 deems 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 ~~liquers~~ liquor in this state which have has 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 ~~liquers~~ liquor to and only to holders of a distributor's license issued under this section, except that a licensed distributor may, without a permit and for the purposes of subdivision (2) of section 53-161, receive alcoholic liquor in this state which has been shipped from outside the state by a manufacturer in accordance with the Nebraska Liquor Control Act to the distributor, then transported by the distributor to another state for retail distribution, and then returned by the retailer to such distributor. 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 deems proper and necessary to effectuate the purpose of any section of the Nebraska Liquor Control Act and the rules and regulations of 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 this

section in the making and filing of a bond, 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 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) That if any such permittee violates any of the provisions of his or her application, 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.

When a manufacturer or distributor shall sell and deliver 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 alcoholic liquor sold and delivered to such person or persons in the event no tax is due on such alcoholic liquor as provided in section 53-160.01, and the amount of 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. 2. That original section 53-164.01, Reissue Revised Statutes of Nebraska, 1943, is repealed.