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FEDERAL ALCOHOL CONTROL ACT

JULY 29 (calendar day, AUGUST 9), 1935.—Ordered to be printed

Mr. GEORGE, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 8870]

The Committee on Finance, to whom was referred the bill (H. R. 8870) to further protect the revenue derived from distilled spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

GENERAL STATEMENT

This bill covers the industries engaged in the distilling, blending, rectifying, or other production of distilled spirits and wine, or in the importing or wholesaling of such products, or in the bottling, or warehousing and bottling, of distilled spirits. The bill is designed to supplement the present Federal laws relating to such industries so as to provide for the further protection of the revenue derived therefrom, regulate interstate and foreign commerce in nonindustrial distilled spirits and wine, enforce the postal laws with respect thereto, and enforce the twenty-first amendment.

The bill is founded on the principle that, for the protection of the public and adequate conservation of the revenue, Federal regulation is necessary. These industries are Nation-wide in their extent, profoundly affect many phases of national life, and present problems national in their scope. State regulation is inadequate, by reason of practical and constitutional limitations, to meet the problems presented. Federal regulation, in the field in which the Constitution permits the exercise of Federal authority, is necessary to deal with these problems.

Experience prior to prohibition demonstrated that the individual States, by reason of the diversity of their laws and the fact that practically all alcoholic beverage producers and large-scale distribu-

tors did an interstate business, could not alone provide those safeguards necessary for the protection of the revenue of the United States, prevent the use of the facilities of interstate and foreign commerce and the mails to carry on unlawful and deceptive practices, and protect their own citizens from the evils which are always present in an inadequately regulated liquor traffic. That situation holds true today. Further, during prohibition, unscrupulous persons entered into the liquor business with the consequences known to all. The bootlegger and the racketeer have not yet disappeared from our national life. Under existing Federal law there is no means of keeping the criminal from entering the legalized liquor field. The executive branch of the Government (except to a limited extent in the case of distilleries) is powerless to prevent the most notorious criminal from entering into the business of production or distribution of alcoholic beverages. The revenue cannot be adequately protected, the "tied-house" control cannot be curbed, the public cannot be protected from unscrupulous advertising, the consumer cannot be protected from deceptive labeling practices; in short, the legalized liquor traffic cannot be effectively regulated, if the door is left open for highly financed gangs of criminals and racketeers to enter into the business of liquor production and distribution.

Even if the present Federal law were adequate to prevent the criminal from entering the liquor field, there would still remain the problem of control of the unethical minority in the business, the activities of which are beyond State power and require regulation in the public interest. The internal revenue, Federal trade, and food and drug laws are insufficient for this purpose. Protection of the consumer and the elimination of improper practices in this industry are imperative, and additional legislation to accomplish these purposes is necessary.

The codes of fair competition for the liquor industry under the National Industrial Recovery Act represented efforts to meet many of the evils outlined above and to accomplish many of the purposes of this bill. The adoption of the twenty-first amendment took place with unexpected speed. When repeal became effective on December 5, 1933, Congress was not in session, nor was there legislation on the books adequate to control the alcoholic beverage industries. Codes of fair competition under the National Industrial Recovery Act were availed of to meet the situation until Congress had had an opportunity to legislate. This view as to the temporary character of the codes appears in their preamble. It was expected that Congress would, at the next session, enact appropriate legislation. Nevertheless the code system continued in effect, without the enactment of legislation by Congress, from December 1933, until May 27 last, when the Supreme Court handed down its decision in the case of *Schechter Poultry Corporation v. United States*. As a result of that decision, the codes are no longer being enforced, and since that date the several alcoholic beverage industries have been without Federal supervision, except such as is incident to the collection of the revenues.

Under the code system a voluntary code for the brewing industry (already in existence at the time of repeal as a result of 3.2 beer legislation of Mar. 22, 1933) was approved by the President. At the same time, the President imposed codes upon the other alcoholic

beverage industries, namely, the distillers, rectifiers, importers, wholesalers, and wine producers. By Executive order under the National Industrial Recovery Act the President established the Federal Alcohol Control Administration to administer these codes and certain related functions. The bill embodies in statutory form so much of the former code system as the committee now deems appropriate and within the constitutional power of Congress to enact. In general, it may be said that except with respect to malt beverages the bill as amended by the committee incorporates the greater part of the system of Federal control which was enforced by the Government under the codes.

The outstanding exceptions are that all provisions relating to open-price competition, including posting of prices and prohibition of guarantees against decline in price and of refunds, rebates, and concessions, have been omitted, together with the system of code authorities, divisional committees, and regional boards to aid in administering the codes.

The proposed legislation, by providing a Federal agency to supervise the aspects of the liquor industry within the range of Federal power, a permit system under which that supervision can be effective, and methods to restrict unlawful and unfair practices in the liquor business, will, it is believed, do much to protect the revenue and to prevent the recurrence of those evils known to be present in the liquor traffic in the past and which no fair-minded citizen wishes to be restored and maintained.

A more detailed discussion of the objectives of the bill, together with a section by section analysis of its provisions (subject to modifications made on the floor of the House), will be found in the report of the Ways and Means Committee of the House of Representatives (H. Rept. No. 1542, 74th Cong.). The bill reported by your committee adopts, in general, the plan of control embodied in the House bill. However, the committee has made a number of amendments, many of which are substantial in character. At the same time it should be said that a large number of amendments shown are clerical in character, made necessary by changing the administrative agency to a commission and eliminating malt beverages (hereinafter discussed). A discussion of the more important of the amendments follows.

FEDERAL ALCOHOL COMMISSION

The House bill (sec. 2) established the Federal Alcohol Administration as a division of the Treasury Department. The Administrator was to be appointed by the President, by and with the advice and consent of the Senate, but his rules and regulations were subject to the approval of the Secretary of the Treasury. The compensation of his employees was subject to like approval. Both the Treasury Department and the Federal Alcohol Control Administration vigorously opposed these provisions on the ground that while the provisions of the bill would be of great assistance in preventing evasion of taxes and facilitating collection of the revenue, the provisions did not involve the levying and collection of taxes which is the Treasury Department's sole function with regard to liquor. The provisions of the House bill were also opposed on the ground that authority and responsibility were divorced under the set-up proposed and that

thereby sound and efficient administration would be seriously hampered.

The committee has amended these provisions so as to create an independent agency similar to the Federal Alcohol Control Administration which was charged with the administration of the several codes. The committee has provided for a Federal Alcohol Commission, composed of three members. Such a commission, instead of a single director provided by the House bill, will, it is believed, aid in preventing arbitrary and improper action in one of the most difficult fields of government administration. In the interest of economy the principal officials of the new agency, namely, the chairman, vice chairman, and general counsel, are to constitute the commission. The salaries are fixed at \$10,000, the same salary as that of the members of the Federal Alcohol Control Administration, and that fixed by the House bill for the Administrator. The Commissioners will be appointed by the President, subject to Senate confirmation.

The Commissioners will hold terms of office of 3 years except that the Commissioners first appointed will be on a staggered basis of 1, 2, and 3 years.

The bill retains the House provision abolishing the Federal Alcohol Control Administration which agency has remained in existence pursuant to the recent legislation extending the National Recovery Administration.

Under the House bill the employees of the Administration were exempt from both the civil-service laws and the Classification Act of 1923. The amendment recommended by the committee requires the salaries of employees of the Commission to be fixed in accordance with the Classification Act and makes the further provision that no employee shall receive a salary of \$5,000 or more unless appointed by the President, by and with the advice and consent of the Senate. Employees of a less salary will be appointed by the Commission.

The amendment recommended by the committee also authorizes the commission to make certain investigations and studies and report thereon to the President and to the Congress. It is believed that such investigations and studies and voluntary activities of the Commission in connection therewith will prove as valuable in obtaining law observance by the alcohol beverage industries as the regulatory provisions of the bill. The Commission is also required to make an annual report to the Congress which shall, among other matters, include the names and compensation of employees of the Commission.

BULK SALES AND BOTTLING

The House bill (sec. 4 (e)) permitted the distribution of distilled spirits in bulk, i. e., in containers having a capacity of more than 1 wine gallon, to wholesalers, retailers (including hotels, restaurants, clubs and saloons), and to consumers, as well as to distillers and rectifiers, provided the barrel, cask, keg, or other container was made of wood. The only exception related to bulk distribution into States whose laws prohibited bulk sales. On the other hand, while bulk sales were freely permitted, only a limited class of persons receiving bulk goods were permitted to bottle them, principally distillers, rectifiers, and certain warehousemen. Further, while bulk goods could

be sold to the consumer by retailers the only retailers who could dispense bulk goods by the drink were bona fide hotels and clubs.

The committee recommends an amendment eliminating the House provisions and prohibiting bulk distribution. The committee is of the opinion that restriction of bulk distribution is necessary for the following reasons:

First. Bulk liquor in the hands of wholesalers, retailers, and other persons whose plants are not subject to constant Treasury supervision and at whose plants Treasury inspectors are not stationed makes it likely that rectifying, blending, or bottling operations will be carried on in violation of law, and also that the bottling of liquors under improper labels and the bottling of liquors that have been tampered with in various ways not disclosed to the purchaser, will be engaged in. Control of bulk distribution and the privilege of bottling is essential if labeling requirements are to be adequately enforced, evasion of rectifiers' tax prevented, and adulteration of liquor controlled.

Second. The right of wholesalers and retailers to have bulk goods on the premises facilitates the use of wholesale and retail outlets for the disposition of bootleg liquor. The refilling of bulk containers for legitimate liquor with liquor from bootleg sources is an easy matter. With the possession of bulk liquors limited principally to distillers, rectifiers, and certain warehousemen, the presence of such liquors on other premises indicates that the liquors were obtained from illegitimate sources. The Treasury Department estimates approximately \$5,000,000 additional appropriation would be necessary annually for adequate policing of wholesale and retail outlets if wholesale and retail outlets were permitted to handle bulk goods.

Third. Some 18 States now have legislation affirmatively prohibiting bulk sales within the State to wholesalers, retailers, or consumers. The laws of 9 States still prohibit all sale of distilled spirits, and the laws of 11 States by reason of establishment of liquor monopolies or State stores systems control bulk sales within the State. If the Federal Government is to adequately enforce the protection afforded by the twenty-first amendment with respect to these States, bulk distribution must be prohibited. Such distribution, despite local laws relating to bulk sales, makes possible the bringing of bulk goods into the State or into adjoining States and greatly facilitates the violation of the local laws.

Fourth. Bulk distribution breaks down the control over bottling established by the Treasury Department through its licensing of bottle manufacturers and the control over the use of bottles established by that Department pursuant to the Bottling Act passed at the last session of Congress.

The committee amendment prohibits all bulk distribution except to distillers, rectifiers, operators of internal-revenue bonded warehouses or customs manipulation bonded warehouses, proprietors of industrial alcohol plants, and State agencies. It thereby prohibits the dispensing of liquor from bulk packages and, of course, eliminates necessity for consideration of the preferential treatment given to hotels and clubs by the House bill. The committee amendment retains a valuable feature of the House bill under which bottling was controlled and limits bottling to those persons named above who are entitled to receive bulk goods. The committee amendment does not

discriminate between distribution in glass, wood, steel, or other containers. So far as the committee amendment is concerned containers of any material can be used for distribution both in bulk and in packages of a gallon or less. Any limitations as to the kind of materials that can be used for containers will flow not from the committee amendment, but from the provisions of the Bottling Act previously passed by Congress.

The restriction of bulk distribution was urged by the Federal Alcohol Control Administration, the Treasury Department, the National Conference of State Liquor Control Officials, various State liquor control authorities, and, with the exception of one group of wholesalers, by all the liquor trade associations appearing before the committee. Under the codes of fair competition for distillers, rectifiers, importers, and wholesalers, bulk distribution of distilled spirits was prohibited substantially in accordance with the principles set forth in the committee amendment, and these provisions, it is understood, were fully acquiesced in by the several industries as represented by their respective code authorities. Since the termination of the codes the Treasury has attempted to control certain phases of the bulk distribution and bottling problem through regulations recently promulgated. The validity of these regulations has been seriously questioned.

MALT BEVERAGES

Under the house bill the various branches of the malt-beverage industry were subjected to varying degrees of regulation. Importers and wholesalers, for instance, of malt beverages were required to obtain basic permits before doing business; and the provisions against unfair competition and unlawful practices applied to brewers and importers and wholesalers of malt beverages. It was emphasized before your committee that a comparatively small percentage of brewers distributed their products in interstate or foreign commerce, and the power to regulate such commerce afforded the constitutional basis for the provisions relating to unfair competition and unlawful practices. It may be observed in this connection that the brewing industry operated under a voluntary code under the code system, whereas the President imposed codes upon the other alcoholic beverage industries, namely, the distillers, rectifiers, importers, wholesalers, and wine producers. Aside from these facts, however, your committee took the position that the application of the bill should be limited to distilled spirits and wines.

TRADE PRACTICES

The House bill (sec. 5) prohibited two classes of trade practices. The first class of these prohibited practices were those which tended to produce monopolistic control of retail outlets, such as arrangements for exclusive outlets, creation of tied houses, commercial bribery, and sales on consignment or with the privilege of return. The reports of the National Commission on Law Observance and Enforcement (Wickersham Commission) and of other agencies that conducted surveys of liquor enforcement problems, all indicated that control by producers and wholesalers of retail outlets through the various devices such as those prohibited by the bill has been productive

not only of monopoly but also of serious social and political evils which were in large measure responsible for bringing on prohibition. The bill seeks to prevent the recurrence of these evils in the fields that cannot be reached by the States, provided the evils occur in interstate commerce or reach such an extent in the particular case that they constitute a substantial restraint on interstate commerce or deterrent to the free flow of interstate commerce in distilled spirits and wines.

The second class of unfair practices prohibited by the bill are those relating to false labeling and false advertising or labeling or advertising that is not adequately informative, to the end of affording the consumer adequate protection and of preventing unfair competition.

The bill as reported by the committee retains the House unfair practice provisions with certain amendments. The prohibitions against creation of tied houses through furnishing of signs, supplies, and the like have been modified by two exceptions. The first is that an industry member may furnish a retailer signs to an amount not exceeding \$100 in aggregate value in any calendar year. The second exception is that the prohibition shall not apply to the furnishing of advertising specialties of paper or paper-like substance or graphic arts items of similar materials. The tied-house provisions, it should be noted, relate to the acquisition by industry members of control over theretofore independent retail establishments and do not prohibit industry members from continuing to operate retail outlets heretofore established by them and wholly owned and operated by them, nor the establishment by industry members of new retail outlets of such character.

The committee has recommended the insertion of a new provision in the false-labeling and false-advertising provisions so as to make it clear that in the case of gin whether produced by a process of original distillation in a distillery or by blending or rectification in a rectifying plant, the gin shall show the percentage of the neutral spirits contained therein that are derived from each of the respective raw material sources, such as grain, fruit, and sugarcane and its products such as molasses. The amendment also provides similar requirements as to the source of neutral spirits sold straight without blending. The requirement of the House bill that other blended and rectified distilled spirits, except cordials, liqueurs, and specialties, shall be labeled so as to inform the consumer of the percentage of neutral spirits contained therein and the percentage of such neutral spirits derived from each of the respective commodity sources, is retained without change.

The committee amendments eliminate the requirement as to the labeling of distilled spirits and wine purchased at Government sales after seizure by the Government for violation of law. In lieu thereof it is provided (see new sec. 9) that distilled spirits and wine forfeited and condemned summarily or pursuant to court decree or otherwise, by or under any law of the United States, shall not be disposed of publicly or privately, but shall be destroyed.

This provision will protect the public from the placing upon the market of seized bootleg liquor and other liquor from unknown sources. Such liquor may be of inferior quality or adulterated. Moreover, the wholesaler or retailer purchasing such liquor from the Government is, by reason of lack of information as to its origin and character

(neither of which can be adequately supplied by data obtained through chemical analysis), unable properly to label or relabel the goods in conformity with law. In consequence, the consumer purchasing these goods from a wholesaler or retailer is usually in the position of buying a pig in the poke. The amendment will also prevent the present situation whereby legitimate distributors and importers who pay internal-revenue taxes and import duties have to meet competition from goods sold by the Government, frequently at prices less than the amount of tax owed to the Government. Such goods also often bear labels identical with those handled by the legitimate distributor or importer in circumstances under which the authenticity of the label and the genuineness of the goods is open to most serious doubts.

An exception is made to the destruction of the forfeited and condemned liquors whereby, if they are found to be of United States Pharmacopoeia quality or suitable for medicinal purposes, they may be distributed under the direction of the Surgeon General of the Public Health Service to Government hospitals for medicinal use only.

The committee amendments include a clarifying provision which makes it definite that the industry member, and not the newspaper or periodical publisher or radio broadcaster, is responsible for any advertising of liquor or wines that fails to conform to the commission's regulations requiring informative and prohibiting false advertising.

