

# MODIFICATION OF VOLSTEAD ACT

## HEARING

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

SEVENTY-SECOND CONGRESS

SECOND SESSION

ON

### H. R. 13742

AN ACT TO PROVIDE REVENUE BY THE TAXATION OF CERTAIN  
NONINTOXICATING LIQUOR, AND FOR OTHER PURPOSES

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JANUARY 30, 1933

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Printed for the use of the Committee on Finance



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1933

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## PREFACE

H. R. 13742, to provide revenue by the taxation of certain non-intoxicating liquor, and for other purposes, passed the House of Representatives on December 21, 1932. It was received in the Senate and referred to the Committee on the Judiciary on December 22, 1932. The Committee on the Judiciary reported the same to the Senate and it was referred to the Committee on Finance on January 23, 1933. The Committee on Finance met on January 30, 1933, for the purpose of considering the bill. It was decided, after due deliberation, that hearings would be confined to the revenue features only. Extensive hearings were held by the House Ways and Means Committee, by the Senate Committee on Judiciary and also by the Senate Committee on Manufactures on a similar measure. The committee felt, therefore, that to have open hearings giving audience to those desiring to be heard would amount to repetition and duplication of testimony already available. The hearing was accordingly held in closed session and limited to representatives of the Treasury Department.

I. M. STEWART, *Clerk.*



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# MODIFICATION OF VOLSTEAD ACT

MONDAY, JANUARY 30, 1933

UNITED STATES SENATE,  
COMMITTEE ON FINANCE,  
Washington, D. C.

The committee met, pursuant to call, at 10 o'clock a. m., in its committee room in the Senate Office Building, Senator Reed Smoot presiding.

Present: Senators Smoot (chairman), Watson, Reed, Shortridge, Couzens, Keyes, Bingham, La Follette, Hastings, Harrison, King, George, Walsh of Massachusetts, Barkley, Connally, Gore, Costigan, and Hull.

The CHAIRMAN. I have called the committee together this morning to consider H. R. 13742, which has been referred to this committee for consideration, and which will be made a part of the record at this point.

[H. R. 13742, Seventy-second Congress, second session]

[Strike out all after the enacting clause inclosed in black brackets and insert the part printed in italic]

AN ACT To provide revenue by taxation of certain nonintoxicating liquor, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* [That (a) there shall be levied and collected on all beer, lager beer, ale, porter, and other similar fermented liquor, containing one-half of 1 per centum or more of alcohol by volume, and not more than 3.2 per centum of alcohol by weight, brewed or manufactured and, after the effective date of this act, sold, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, in lieu of the internal-revenue tax imposed thereon by section 608 of the revenue act of 1918 (U. S. C., title 26, sec. 506), a tax of \$5 for every barrel containing not more than thirty-one gallons, and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law, to be collected under the provisions of existing law. Nothing in this section shall in any manner affect the internal-revenue tax on beer, lager beer, ale, porter, or other similar fermented liquor, containing more than 3.2 per centum of alcohol by weight, or less than one-half of 1 per centum of alcohol by volume.

(b) Paragraph "First" of section 3244 of the Revised Statutes (U. S. C., title 26, sec. 202) is amended to read as follows:

"First. Brewers shall pay \$1,000. Every person who manufactures fermented liquors of any name or description for sale, from malt, wholly or in part, or from any substitute therefor, shall be deemed a brewer."

SEC. 2. Wherever used in the national prohibition act, as amended and supplemented, the following terms shall, so far as relating to beer, ale, porter, or similar fermented liquor, have the following meanings:

(1) The term "one-half of 1 per centum or more of alcohol by volume" shall mean "more than 3.2 per centum of alcohol by weight."

(2) The term "less than one-half of 1 per centum of alcohol by volume" shall mean "not more than 3.2 per centum of alcohol by weight."

(3) The term "more than one-half of 1 per centum of alcohol by volume" shall mean "more than 3.2 per centum of alcohol by weight."

(4) The term "below such one-half of 1 per centum" and the term "below such one-half of 1 per centum of alcohol" shall mean "to 3.2 per centum or less of alcohol by weight."

SEC. 3. (a) Subdivision (1) of section 1 of Title II of the national prohibition act, as amended and supplemented (relating to the definition of liquor and intoxicating liquor) (U. S. C., title 27, sec. 4), is amended by striking out "and is otherwise denominated than as beer, ale, or porter," and by striking out the period at the end thereof and inserting in lieu thereof a colon and the following: "Provided further, That the terms 'liquor,' 'intoxicating liquor,' 'beer,' 'ale,' and 'porter' as used in this act shall not include beer, ale, porter, or similar fermented liquor, containing 3.2 per centum or less of alcohol by weight, and such beer, ale, porter, or similar fermented liquor may be sold in or from bottles, casks, barrels, kegs, or other containers, but such bottles, casks, barrels, kegs, or other containers shall be labeled and sealed as the commissioner may by regulation prescribe."

(b) The term "intoxicating liquor", as used in the act entitled "An act to prohibit the sale, manufacture, and importation of intoxicating liquors in the Territory of Hawaii during the period of the war, except as hereinafter provided", approved May 23, 1918 (U. S. C., title 48, sec. 520), and the term "intoxicating drink", as used in section 2 of the act entitled "An act to provide a civil government for Porto Rico, and for other purposes", approved March 2, 1917, shall not be construed to include beer, ale, porter, or similar fermented liquor, containing 3.2 per centum or less of alcohol by weight; and the provisions of the act entitled "An act to prohibit the manufacture or sale of alcoholic liquors in the Territory of Alaska, and for other purposes", approved February 14, 1917 (U. S. C., title 48, secs. 261 to 291, both inclusive), shall not be construed to apply to beer, ale, porter, or similar fermented liquor, containing 3.2 per centum or less of alcohol by weight.

SEC. 4. The manufacturer of any beer, ale, porter, or similar fermented liquor containing one-half of 1 per centum or more of alcohol by volume, shall for the purposes of the internal revenue laws be considered a brewer. Before engaging in business he shall, besides qualifying as a brewer under the internal revenue laws, also secure a permit under the national prohibition act, as amended and supplemented (including the amendments made by this act), authorizing him to engage in such manufacture, which permit shall be obtained in the same manner as a permit to manufacture intoxicating liquor, and be subject to all the provisions of law relating to such a permit. No permit shall be issued for the manufacture of such fermented liquor in any State, Territory, or the District of Columbia, or political subdivision of any State or Territory, if such manufacture is prohibited by the law thereof. Whoever engages in such manufacture without such permit, or in violation of such permit, shall be subject to the penalties provided by law in the case of similar violations of the national prohibition act, as amended and supplemented.

SEC. 5. Nothing in section 1 or 4 of this Act shall be construed as in any manner authorizing or making lawful the manufacture of any beer, ale, porter, or similar fermented liquor, which at the time of sale or removal for consumption or sale contains more than 3.2 per centum of alcohol by weight.

SEC. 6. In order that beer, ale, porter, and similar fermented liquor, containing 3.2 per centum or less of alcohol by weight, may be divested of their interstate character in certain cases, the shipment or transportation thereof in any manner or by any means whatsoever, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country, into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which fermented liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited. Nothing in this section shall be construed as making lawful the shipment or transportation of any liquor, the shipment or transportation of which is prohibited by the act of March 1, 1913, entitled "An act diversing intoxicating liquors of their interstate character in certain cases" (U. S. C., Sup. V. title 27, sec. 122).

SEC. 7. Whoever orders, purchases, or causes beer, ale, porter, or similar fermented liquor, containing 3.2 per centum or less of alcohol by weight, to be transported in interstate commerce, except for scientific, sacramental, medicinal, or mechanical purposes, into any State, Territory, or the District of Columbia, the laws of which State, Territory, or District prohibit the manufacture or sale therein of such fermented liquors for beverage purposes, shall be fined not more than \$1,000 or imprisoned not more than six months, or both; and for any subsequent offense shall be imprisoned for not more than one year. Nothing in this



section shall be construed as making lawful the shipment or transportation of any liquor the shipment or transportation of which is prohibited by section 5 of the act entitled "An act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes", approved March 3, 1917, as amended and supplemented (U. S. C., Sup. V., title 27, sec. 123).

SEC. 8. Any offense committed, or any right accrued, or any penalty or obligation incurred, or any seizure or forfeiture made, prior to the effective date of this act, under the provisions of the national prohibition act, as amended and supplemented, or under any permit or regulation issued thereunder, may be prosecuted or enforced in the same manner and with the same effect as if this act had not been enacted.

SEC. 9. This act shall take effect on the expiration of thirty days after the date of its enactment except that permits referred to under section 4 may be issued at any time after the date of enactment.

SEC. 10. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby. That (a) there shall be levied and collected on all beer, lager beer, ale, porter, wine, similar fermented malt or vinous liquor, and fruit juice, containing one-half of 1 per centum or more of alcohol by volume, and not more than 3.05 per centum of alcohol by weight, brewed or manufactured and, on or after the effective date of this act, sold, or removed for consumption or sale, within the United States, by whatever name such liquors may be called, in lieu of the internal-revenue tax, if any, imposed thereon by law in force on the date of enactment of his act, a tax of \$5 for every barrel containing not more than thirty-one gallons, and at a like rate for any other quantity or for the fractional parts of a barrel authorized and defined by law, to be collected under the provisions of existing law. Nothing in this section shall in any manner affect the internal-revenue tax on beer, lager beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice, containing more than 3.05 per centum of alcohol by weight, or less than one-half of 1 per centum of alcohol by volume. As used in this section the term "United States" includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(b) Paragraph "First" of section 3244 of the Revised Statutes (U. S. C., title 26, sec. 202) is amended to read as follows:

"First. Brewers shall pay \$1,000. Every person who manufactures fermented liquors of any name or description for sale, from malt, wholly or in part, or from any substitute therefor, containing one-half of 1 per centum or more of alcohol by volume, shall be deemed a brewer."

SEC. 2. The following sections of the national prohibition act, as amended and supplemented, are hereby repealed:

(a) The second paragraph of section 37 of Title II (U. S. C., title 27, sec. 58).

(b) The fourth or last paragraph of section 37 of Title II (U. S. C., title 27, sec. 60).

SEC. 3. (a) Nothing in the national prohibition act, as amended and supplemented, shall apply to any of the following, or to any act or failure to act in respect of any of the following, containing not more than 3.05 per centum of alcohol by weight: Beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice: but the national prohibition act, as amended and supplemented, shall apply to any of the foregoing, or to any act or failure to act in respect of any of the foregoing, contained in bottles, casks, barrels, kegs, or other containers, not labeled and sealed as may be prescribed by regulations.

(b) The following acts and parts of acts shall be subject to a like limitation as to their application:

(1) The act entitled "An act to prohibit the sale, manufacture, and importation of intoxicating liquors in the Territory of Hawaii during the period of the war, except as hereinafter provided," approved May 23, 1918 (U. S. C., title 48, sec. 520):

(2) Section 2 of the act entitled "An act to provide a civil government for Porto Rico, and for other purposes," approved March 2, 1917:

(3) The act entitled "An act to prohibit the manufacture or sale of alcoholic liquors in the Territory of Alaska, and for other purposes," approved February 14, 1917 (U. S. C., title 48, secs. 261 to 291, both inclusive):

(c) It shall be unlawful to advertise by any means or method any of the liquors or fruit juices described in subsection (a) of this section, or the manufacture, sale, keeping for sale, or furnishing the same, or where, how, from whom, or at what price the same may be obtained, in any State, Territory, or District of the United States, if by the law in force at the time in such State, Territory, or District, it is unlawful

to manufacture or sell such liquors or fruit juices: Provided, however, That nothing in this subsection shall apply to newspapers published in foreign countries when mailed to this country. Any violation of the provisions of this subsection shall be punished in the manner provided by law for violations of section 17 of the national prohibition act.

SEC. 4. (a) The manufacturer for sale of beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice, containing one-half of 1 per centum of alcohol by volume and not more than 3.05 per centum of alcohol by weight, shall, before engaging in business, secure a permit under the national prohibition act, as amended and supplemented, authorizing him to engage in such manufacture, which permit shall be obtained in the same manner as a permit to manufacture intoxicating liquor, and be subject to all the provisions of law relating to such a permit. Such permit may be issued to a manufacturer for sale of any such fermented malt or vinous liquor or fruit juice, containing less than one-half of 1 per centum of alcohol by volume, if he desires to take advantage of the provisions of paragraph (2) of subsection (b) of this section. No permit shall be issued for the manufacture of such fermented malt or vinous liquor or fruit juice in any State, Territory, or the District of Columbia, or political subdivision of any State or Territory, if such manufacture is prohibited by the law thereof.

(b) (1) Such permit shall specify a maximum alcoholic content permissible for such fermented malt or vinous liquor or fruit juice at the time of withdrawal from the factory or other disposition, which shall not be greater than 3.05 per centum of alcohol by weight, nor greater than the maximum alcoholic content permissible under the law of the State, Territory, or the District of Columbia, or the political subdivision of a State or Territory in which such liquor or fruit juice is manufactured.

(2) In such permit may be included permission to develop in the manufacture of such fermented malt or vinous liquor or fruit juice by the usual methods of fermentation and fortification or otherwise a liquid such as beer, ale, porter, wine, or fruit juice, of an alcoholic content in excess of the maximum specified in the permit: but before any such liquid is withdrawn from the factory or otherwise disposed of the alcoholic content shall, if in excess of the maximum specified in the permit, be reduced, under such regulations as may be prescribed, to or below such maximum: but such liquid may be removed and transported, under bond and under such regulations as may be prescribed, from one bonded plant or warehouse to another for the purpose of having the percentage of alcohol reduced to the maximum specified in the permit by dilution or extraction. Such liquids may be developed, under permit, by persons other than manufacturers of beverages containing not more than 3.05 per centum of alcohol by weight, and sold to such manufacturers for conversion into such beverages. The alcohol removed from such liquid, if evaporated, and not condensed and saved, shall not be subject to tax: if saved, it shall be subject to the same law as other alcoholic liquors. Credit shall be allowed on the tax due on any alcohol so saved to the amount of any tax paid upon distilled spirits or brandy used in the fortification of the liquor from which the same is saved.

(3) In any case where the manufacturer is charged with manufacturing or selling for beverage purposes any beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice, containing more than 3.05 per centum of alcohol by weight, the burden of proof shall be on such manufacturer to show that the liquid so manufactured or sold contained not more than 3.05 per centum of alcohol by weight. In any case where a manufacturer, who has been permitted to develop a liquid such as beer, ale, porter, wine, or fruit juice, containing more than the maximum alcoholic content specified in the permit, is charged with failure to reduce the alcoholic content to or below such maximum before such liquid was withdrawn from the factory or otherwise disposed of, then the burden of proof shall be on such manufacturer to show that the alcoholic content of such liquid so manufactured, sold, withdrawn, or otherwise disposed of did not exceed the maximum specified in the permit. In any suit or proceeding involving the alcoholic content of any beverage, the reasonable expense of analysis of such beverage shall be taxed as costs in the case.

(c) Whoever engages in the manufacture for sale of beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice, without such permit if such permit is required, or violates any permit issued to him, shall be subject to the penalties provided by law in the case of similar violations of the national prohibition act, as amended and supplemented.

(d) This section shall have the same geographical application as the national prohibition act, as amended and supplemented.

SEC. 5. Except to the extent provided in section 4 (b)(2), nothing in section 1 or 4 of this act shall be construed as in any manner authorizing or making lawful the manufacture of any beer, ale, porter, wine, similar fermented malt or vinous liquor,

or fruit juice, which at the time of sale or removal for consumption or sale contains more than 3.05 per centum of alcohol by weight.

SEC. 6. In order that beer, ale, porter, wine, similar fermented malt or vinous liquor, and fruit juice, containing 3.05 per centum or less of alcohol by weight, may be divested of their interstate character in certain cases, the shipment or transportation thereof in any manner or by any means whatsoever, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which fermented malt or vinous liquor or fruit juice is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited. Nothing in this section shall be construed as making lawful the shipment or transportation of any liquor the shipment or transportation of which is prohibited by the act of March 1, 1913, entitled "An act divesting intoxicating liquors of their interstate character in certain cases" (U. S. C., Supp. V, title 27, sec. 122).

SEC. 7. Whoever orders, purchases, or causes beer, ale, porter, wine, similar fermented malt or vinous liquor, or fruit juice, containing 3.05 per centum or less of alcohol by weight, to be transported in interstate commerce, except for scientific, sacramental, medicinal, or mechanical purposes, into any State, Territory, or the District of Columbia, the laws of which State, Territory, or District prohibit the manufacture or sale therein of such fermented malt or vinous liquors or fruit juices for beverage purposes, shall be fined not more than \$1,000 or imprisoned not more than six months, or both; and for any subsequent offense shall be imprisoned for not more than one year. If any person is convicted under this section any permit issued to him shall be revoked. Nothing in this section shall be construed as making lawful the shipment or transportation of any liquor the shipment or transportation of which is prohibited by section 5 of the act entitled "An act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1918, and for other purposes," approved March 3, 1917, as amended and supplemented (U. S. C., Supp. V, title 27, sec. 123).

SEC. 8. (a) It shall be unlawful to give or sell any of the above beverages to persons under twenty-one years of age. Any person violating this provision shall be subject to a fine not exceeding \$100 or be imprisoned not to exceed six months.

(b) Any offense committed, or any right accrued, or any penalty or obligation incurred, or any seizure or forfeiture made, prior to the effective date of this act, under the provisions of the national prohibition act, as amended and supplemented, or under any permit or regulation issued thereunder, may be prosecuted or enforced in the same manner and with the same effect as if this act had not been enacted.

SEC. 9. This act shall take effect on the expiration of thirty days after the date of its enactment, except that permits referred to under section 4 may be issued at any time after the date of enactment.

SEC. 10. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Passed the House of Representatives December 21, 1932.

Attest:

SOUTH TRIMBLE, *Clerk*

The CHAIRMAN. The Secretary of the Treasury is present. What is the pleasure of the committee?

Senator HARRISON. Mr. Chairman, I move that we restrict this hearing to the revenue features of the bill.

The CHAIRMAN. Senator Harrison, do you think that is quite fair to some persons interested in the bill and who have requested an opportunity to be heard? Of course, I would not suggest that we hear anybody who testified before the House Ways and Means Committee.

Senator HARRISON. Well, Mr. Chairman, I do not think we ought to open the subject up broadly, for instance, to a discussion of the moral features of the bill. When the bill came over from the House we divided it up into two channels, for one feature of it to be studied by the Judiciary Committee, and they have reported on the constitutional features of the measure, and then it was referred to this

committee to study the revenue features of it. And so in that situation I do not think we ought to go into a whole lot of other questions.

The CHAIRMAN. I do not think it is going to take very long to consider it, limiting it as we ought to in the circumstances and as we certainly will I take it.

Senator BINGHAM. Mr. Chairman, last year we had long hearings before the Committee on Manufactures. The prohibition people had a full chance to present their side of the question without restriction, and to put in everything they wanted to put in as to why we should not have beer. The other side had an equal opportunity to put in what they desired to put in. That was not accepted by the Senate. And then this bill came over from the House, and it was referred to the Judiciary Committee. It has now come out of the Judiciary Committee and was referred to this committee for a report on the revenue features of it. I therefore think that Senator Harrison's motion should prevail.

Senator HARRISON. I will say very frankly that there are some features of the bill passed in the House that I will vote against when it comes up on the floor, that is, as to the structural part of it. For instance, I think we should permit certain advertising, just as broadcasting is done, and when the bill reaches the floor no doubt there are many members of this committee who will have amendments to offer. I think it might very well be handled there instead of our attempting any considerable hearings here. So that after considering any purely revenue features of the bill I think we should vote to report the bill and then handle it on the floor of the Senate.

Senator SHORTRIDGE. Mr. Chairman, assuming that our functions in this committee are to be limited to the narrow question of revenue raising, in order to determine that point it might call for material amendment, or amendments to the bill as it appears here before us. As, for example, the bill here, as I understand it, legalizes or permits the manufacture and so forth of "wine" at 3.05 per cent of alcohol. Well, does anybody suppose that "wine," so called, of that percentage would yield any revenue at all? It would not. Whereas, if another percentage as to wine should be agreed upon, it might yield a very considerable revenue. Hence, I want it understood that if we are directing our minds immediately to the revenue features of the bill, it might reasonably call for discussion, and perhaps for some hearing as to logically related features of the bill.

Senator WALSH of Massachusetts. After the Judiciary Committee, at least in substance, has said that wine of an alcoholic content in excess of 3.05 per cent would be unconstitutional?

Senator SHORTRIDGE. No; it has not said so in express terms.

Senator WALSH of Massachusetts. But it has said so inferentially. It seems to me that in substance they have said that.

Senator SHORTRIDGE. But we are to consider this bill from a revenue-raising standpoint.

Senator GEORGE. The bill has been voted out, and all that we have to consider is, if this bill will produce revenue, and if so, how much.

Senator WALSH of Massachusetts. It ought not to take us more than five minutes to consider that proposition.

Senator SHORTRIDGE. Wouldn't we be at liberty to suggest changes which would yield revenue?

Senator GEORGE. I do not think we have any jurisdiction on that point. We are to consider this bill.

Senator HARRISON. Oh, if you want to have it \$6 or \$7 per barrel, or make it higher in the matter of changing the percentage, you would have the right to do that, I take it.

Senator BINGHAM. I think you would have the right to consider whether the bill as drawn is in fact a revenue producing bill, provided we do not go contrary to the provisions as laid down by the Judiciary Committee.

The CHAIRMAN. Then let us decide whether we will consider the Judiciary Committee's report.

Senator SHORTRIDGE. I do not think that in our discussion we ought to be limited to the report of the Judiciary Committee.

The CHAIRMAN. Gentlemen of the committee, Senator Harrison has made a motion that the only hearings we will have upon the pending measure will be upon the revenue provisions of it. All in favor of that motion will make it known by saying aye. [Several ayes.] Those opposed will say no. [A few noes.] The ayes have it and it is so ordered.

Senator CONNALLY. I suggest that we hear Secretary Mills.

The CHAIRMAN. Before we hear the Secretary of the Treasury, do the members of the committee want a public hearing, or shall we hear the Secretary in executive session?

Senator KING. I move that he be heard in executive session.

Senator GEORGE. Why so?

Senator KING. He has already been heard before the Ways and Means Committee, and I think we might proceed in that way more expeditiously.

Senator HARRISON. Suppose we hear Secretary Mills in executive session, and then we will be prepared to know how much further we want to go with the hearings.

The CHAIRMAN. All right. We will now hear from the Secretary of the Treasury as to the revenue features of the House bill.

#### **STATEMENT OF HON. OGDEN L. MILLS, SECRETARY OF THE TREASURY, WASHINGTON, D. C.**

Secretary MILLS. Mr. Chairman and gentlemen of the committee, I have not got anything to add to what I told the Ways and Means Committee. The Treasury estimates that at \$5 a barrel we ought to collect during the fiscal year 1934 from \$125,000,000 to \$150,000,000.

Senator HARRISON. Is that for the fiscal year?

Secretary MILLS. Yes. We also felt at that time that if malt sirup, which is taxed at a relatively low rate under the present law, is subjected to a compensatory tax, the ultimate yield of the tax on beer could be increased somewhat.

Now, gentlemen of the committee, in reaching these figures we had to make some rather complicated computations, and probably some fairly sweeping assumptions. We took the per capita consumption of beer over a number of years, including the fiscal year 1914, when I think the maximum was reached, and when 66,000,000 barrels were sold, and we found that both in this country and abroad, particularly in England, there was a relationship between changes in consumption

and in the tax rate, and, therefore, we adjusted the per capita consumption as nearly as we could to the \$5 per barrel tax basis.

Senator KING. That is to say, you thought the \$5 per barrel tax basis would produce the greatest amount of revenue?

Secretary MILLS. Not necessarily. The \$5 a barrel rate was in there, and we figured out what the probable consumption would be at that tax rate, based upon study which our economic section made.

Senator BINGHAM. Mr. Secretary, before you go on with that will you please tell us what rate will produce the largest revenue, or have you included that?

Secretary MILLS. No; I have not included that.

Senator BINGHAM. Well, that is one of the most important things for us to consider, I take it.

Secretary MILLS. It seems to me that is very largely a matter of opinion, and I do not know that my opinion on that subject would be any better than yours.

Senator COUZENS. Did I understand, Mr. Secretary, that you had 66,000,000 barrels as your basis?

Secretary MILLS. No. We just considered the per capita consumption of beer over a number of years.

Senator COUZENS. From 1914 up to the present time?

Secretary MILLS. No. We started our analysis with 1895 and went right on through.

Senator COUZENS. What was the average consumption of beer during that period, or did you use an average?

Secretary MILLS. I have not the average over that period right here before me. I will say that it varied from year to year with changes in the tax rate. But what I was giving you was the average for that period.

Senator COUZENS. I think we ought to have an estimate of the number of barrels.

Secretary MILLS. If you gentlemen want Mr. Stark to do so he can give you detailed estimates on which these figures are based. I was merely trying at this time to give you the general procedure that was followed.

The CHAIRMAN. Very well, if the committee desires those details, Mr. Stark can furnish it afterwards.

Secretary MILLS. As I was saying, when we had reached a figure which was related directly to the tax rate, we then wrote that figure down because of depressed business conditions, the assumption being that there would be a smaller consumption in times like these than in the year 1914, for instance. Having done that, we then applied that per capita figure to two lists of States, one including those which were likely to permit the immediate sale of beer and the other a group which included some States which we thought would probably permit it, but in respect of which there would seem to be more uncertainty. On the basis of those two lists of States we reached a possible consumption, in the one case of 33,000,000 barrels and in the other case of 42,000,000 barrels, to be consumed during the next fiscal year.

We then subjected those figures to a further revision downward, and for these reasons, as stated to the Ways and Means Committee: It should be remembered that the industry, at least so far as legitimate production and distribution are concerned, is not now estab-

lished, and that home brew and bootleg beer are apparently manufactured on a very considerable scale. The time which would be required for the commercial production and normal distribution is problematical. Moreover, there is very considerable uncertainty of the change which may have taken place in the public taste for a beverage of the alcoholic content provided in the bill, particularly when consideration is given to the number of younger men from 21 to 35, who have not been accustomed to the use of such a beverage.

After making these further adjustments we estimate the probable consumption of tax-paid beer in the fiscal year 1934 at 25,000,000 barrels and 30,000,000 barrels, respectively, for the two lists of States. These figures indicate collections in the amount of \$125,000,000 and \$150,000,000, respectively.

Senator SHORTRIDGE. At \$5 a barrel tax?

Secretary MILLS. Yes.

Senator COUZENS. Have you made any estimate if there were a lower rate whether there would be any greater consumption?

Secretary MILLS. No. I do not understand that we were to go into that feature of it. But that we were to give the committee the best estimate we could make as to the revenue which would be produced under this bill.

Senator BINGHAM. The present rate is \$6 a barrel. That is the tax to-day.

Secretary MILLS. Yes.

Senator BINGHAM. What would that amount to, for the ordinary bottled beer?

Secretary MILLS. It would be about 2 cent a pint, I believe.

Senator KING. Senator Bingham, did you mean for a quart bottle?

Senator BINGHAM. No, for only the customary bottled beer. It is not quite a pint. Mr. Secretary, what is the tax to-day in England, per barrel?

Secretary MILLS. The tax in England to-day I think is 103 shillings per barrel, which tax is subject to certain administrative adjustments including a rebate of one pound per bulk barrel. The English barrel is of course larger than ours. Converted to the basis of our barrel and of our currency (at par) I believe actual collections are at a rate of about \$13 per barrel.

Senator HARRISON. And that goes to the central government. There you have not a whole lot of municipalities and other agencies of government that assess a tax against them as we have here.

The CHAIRMAN. I think they have.

Senator BINGHAM. They have a local license tax.

Secretary MILLS. Yes.

Senator HARRISON. But how does that differ from our process over here? Here you have city taxes and State taxes, and you have other taxes.

Senator WALSH of Massachusetts. The city tax is to do business. The State tax is upon the beer, such as we levy, or the same character of tax.

Secretary MILLS. Of course, you have a very different situation here. You have a well-established illegal trade that has to be put out of business. And unless this beer, which after all has not got a very high alcoholic content, can be sold reasonably cheap it is very doubtful whether it could drive out the illegal trade. That is your

first problem. Now, it is all a matter of judgment. It seems to us that \$5 per barrel was probably a pretty good starting point, and—

Senator SHORTRIDGE (interposing). Certain witnesses I think suggested that with a tax of \$5 a barrel the legitimate trade could still furnish a 5-cent glass of beer.

Secretary MILLS. Well, as to that, of course it depends upon what the States and cities do. You will have a State tax on top of that and a city license tax.

Senator WALSH of Massachusetts. They will at least put a tax of \$1 a barrel on beer, and perhaps \$2.

Senator KING. And then the cities may impose a very heavy license upon the man who opens up a place for the sale of beer, if they do permit it at all.

The CHAIRMAN. But when these taxes are imposed every one who pays them will become a detective to see that the other fellow is not going to sell beer unless he pays the license.

Senator BINGHAM. Mr. Secretary, do you know what the reputed price per barrel of illicit beer is to-day?

Secretary MILLS. Well, now, I think Doctor Doran told me it varies from about \$25 a barrel to a considerably higher figure. That is my recollection. I have no information on the subject, other than that. You see, when considering, the price of illicit beer, you are dealing with a price which is by no means uniform or readily quoted.

Senator WALSH of Massachusetts. This bill before the Senate is more liberal than the House bill in that it permits the manufacture of beverages other than cereal beverages, any beverage that contains less than 3.05 per cent of alcohol can be manufactured. Mr. Secretary, do you think that this broadening of the scope of the bill will increase the revenue any?

Secretary MILLS. Do you mean the wine end of it?

Senator WALSH of Massachusetts. Yes.

Secretary MILLS. That is impossible to figure. I do not know what 3.05 per cent wine would be. I do not know whether there has ever been a wine of that alcoholic content.

Senator SHORTRIDGE. I will say that 3.05 per cent "wine" is not wine at all. It is perfectly ridiculous to speak of producing revenue from 3.05 per cent "wine."

Senator WALSH of Massachusetts. Of course, there will be concoctions of grape juices and other things.

Secretary MILLS. We have not attempted to make any estimate as to that.

Senator BINGHAM. Mr. Secretary, do you know of any country that has attempted to sell beer with such a percentage and that has derived any revenue?

Secretary MILLS. No; I do not, Senator Bingham. Canada, of course, tried a low-content beer, I remember that, in some of her Provinces.

Senator SHORTRIDGE. But it was a failure.

Secretary MILLS. I do not believe it was much of a revenue raiser.

Senator BINGHAM. Ontario had 4.04 beer but it was 2.02 by weight. It was not a revenue producer. I wondered if there had been any experience anywhere with beer of this quality. Of course, Pilsener is 3.02 by weight. That is natural beer. But when you start taking out anything from that in the way of alcohol you take out the extracts



which give it its filler, and that is why people do not like it. It is not because it has less alcohol in it. Mr. Secretary, have you any figures at all that would show whether 3.05 alcoholic content beer would sell in any appreciable quantities?

Secretary MILLS. I do not pretend to have any knowledge on the quality of beer.

Senator CONNALLY. Near beer has a certain trade under the present law.

Secretary MILLS. Yes.

Senator CONNALLY. What is the revenue on that?

Secretary MILLS. It is a very small figure. I do not know exactly offhand what it is.

Senator SHORTRIDGE. Mr. Chairman and gentlemen of the committee, I notice in the hearings before the House Ways and Means Committee that Mr. Cook gave definite information as to the tax or taxes that have been placed on beer during a series of years. If you will all pardon me I should like to develop this thought: Whether we would raise more revenue by having a tax of \$5 a barrel, or \$4 for example, or \$3 a barrel.

Senator BINGHAM. Or \$6 a barrel.

Senator SHORTRIDGE. Yes, or \$6 a barrel. I think it might be helpful if I were to read to you at this point what Mr. Levi Cooke said before the Way and Means Committee of the House:

As the Germans in 1848, after the political troubles in Prussia, came to this country, many of them engaged in brewing in a small way, and it grew into a large industry. The war necessities of 1862 required, in September of that year, a taxing of beer, and it was at \$1 per barrel, and that continued until 1863. From March 3, 1863, to March 31, 1864, it was at 60 cents a barrel. The taxes have always been addressed to beer on the basis of a barrel of 31 gallons. From April 1, 1864, to June 13, 1898, the tax was \$1 per barrel. Then the exigencies of the Spanish War caused an increase to \$2 per barrel, and that continued from June 14, 1898, to June 30, 1901. On July 1, 1901, it was reduced to \$1.60 per barrel. There was evidently no deficit following that war. From July 1, 1902, to October 22, 1914, it was at the rate of \$1 per barrel. From October 23, 1914, to October 3, 1917, the rate was at \$1.50 per barrel, and from October 4, 1917, to February 24, 1919, it was \$3 per barrel, and from February 25, 1919, it was \$6 per barrel, and that is the present rate of the 1918 act.

Now, what I should like to know is, what do the figures show in respect to revenue derived from a tax on beer when the taxes were different as here indicated? From that information we might draw some conclusion as to the rate to be imposed in order to raise the most revenue.

The CHAIRMAN. Senator Shortridge, if Mr. Stark has not those figures here to-day he can furnish them and we will put them in the record at this point. Have you the figures with you, Mr. Stark?

Mr. STARK. I have not the figures with me over that long period. I can give you the collections on malt liquors, however, from 1910 to 1919.

The CHAIRMAN. That is, for all liquors?

Mr. STARK. Malt liquors, or I can give you the others, too.

Senator BINGHAM. I will say that those figures have been printed, taken in connection with the hearings before the Manufactures Committee of the Senate.

Secretary MILLS. Yes.

Senator HARRISON. Those figures have been furnished by Mr. Parker, I believe.

Senator WALSH of Massachusetts. Mr. Chairman, can not we report out this bill without that information? We can report the bill out at the rate of \$5 a barrel, and I now move you, sir, that we report the bill out without further hearings.

Senator HARRISON. Let us get some questions in the hearing first.

Senator REED. What did you say about 1916?

Mr. STARK. That is \$87,000,000.

Senator REED. What about the fiscal year 1917?

Mr. STARK. That was \$91,000,000.

Senator REED. And what about 1918?

Mr. STARK. That was \$124,000,000.

Senator SHORTRIDGE. When the rate was what?

Senator KING. It was \$3 a barrel.

Senator SHORTRIDGE. And what was the revenue?

Mr. STARK. For 1918 it was \$124,000,000.

Senator HARRISON. I will state that Mr. R. A. Huber, vice president of Anheuser-Busch (Inc.), who seemed to be a well-informed man, stated that this business would stand \$5 a barrel.

The CHAIRMAN. What was your motion, Senator Walsh?

Senator REED. Let us ask a question or two before the motion is put. Mr. Secretary, what is your estimate of the revenue from malt liquors at the rate of \$5 per barrel?

Secretary MILLS. From \$125,000,000 to \$150,000,000.

Senator BINGHAM. Have you any suggestions about amendments to the bill from a revenue-producing standpoint?

Secretary MILLS. None.

Senator WATSON. I will state that I had a very interesting conversation the other day with a man who was one of the largest brewers in Chicago before the war and who had sold his product to 152 saloons in that city.

And he was counted a very high-class man, a German, whose name is withheld for obvious reasons. He stated that he would not reopen his breweries at all to sell 3.02 per cent beer. He said, in the first place, that \$5 a barrel, and then \$1,000 additional license tax, or taxes in one way and another, added to the expense of the man who would sell it, would make it utterly impossible for that man to make any money out of the sale of beer pure and simple; that necessarily every one of those men would be a bootlegger for hard liquor, that he would have to do it in order to exist and get on. He said: "Now, 3.02 per cent beer will make a very good beer, and will stand up, and yet it is not a beer that satisfies the beer drinker. He wants 4.50 or 5, or 5.5 per cent beer, and that beer will continue to come in, in large quantities from Canada, and as against 3.02 beer, because every one wants a higher alcoholic content."

The CHAIRMAN. This is 3.05.

Senator WATSON. Yes; but I was taking the old figure 3.02. He says they can not make any money out of it, and that they would bootleg hard liquor, and that in Chicago they would have a different condition, different from this town or that town, in that racketeers and gangsters will come to a man and say: Now, you can sell so much beer, and you can sell it in this or that territory, but nowhere else, because we are going to bring in this bootleg beer and sell it in

certain territories and in certain quantities, and there you have got to keep out, otherwise we will take you for a ride. He said that under those circumstances and conditions he would not attempt to open up his breweries again in Chicago.

Now, the only reason I mention that is to give a slant held by this fellow, who has been in the business, as to the revenue to be derived from this bill. His view was that you can get a larger revenue from a tax of \$4 a barrel on beer than a tax of \$5 a barrel. That was his view of the situation.

Senator BINGHAM. Well, beer is selling at \$25 to \$35 a barrel now, when it costs about \$2 a barrel to make. So there is a wide margin of profit.

Senator WATSON. Oh, it costs more than that.

Senator BINGHAM. Well, about \$1.75 a barrel, to be exact, to make beer. When you say 3.02 per centum beer by weight is not appreciated by beer drinkers, you can go for the contrary to Germany, which has had experience. When Anheuser-Busch made their fortune on Budweiser beer it was sold for \$25 a barrel and the content was 3.02 by weight.

Senator SHORTRIDGE. That is about 4 per cent beer in volume.

Senator REED. Mr. Secretary, do you know what rate of tax would yield the largest revenue?

Secretary MILLS. No, I do not. But I should not be inclined to go about \$5 a barrel.

Senator HARRISON. Mr. Huber, of Anheuser-Busch (Inc.), in his testimony before the Ways and Means Committee of the House, stated that when you raised the tax to \$6 a barrel they quit. But he states that they could make it and reopen under a tax of \$5 a barrel.

The CHAIRMAN. Independently of any conditions existing to-day and that have existed for the last 10 years or so?

Senator BINGHAM. Representative John Connor of the House says that Colonel Ruppert claims you can make a profit on it at \$7.50 a barrel, and make a good profit.

Senator CONNALLY. Have you considered the angle that the revenue will not be nearly as much as you expect on account of the fact that folks still make their own home-brew, where they can get a higher alcoholic content?

Senator WALSH of Massachusetts. The Secretary spoke of that.

Senator CONNALLY. All right. I beg pardon if he has already touched on that.

Secretary MILLS. We took that into consideration, Senator Connally.

Senator CONNALLY. In hard times they will make their own beer.

Senator WATSON. What is the alcoholic content of homebrew beer, Senator Bingham?

Senator BINGHAM. It is now 5 or 6 per cent. It has a lot of kick in it and a very bad flavor. The advantage of beer to the normal beer drinker, as we discovered by investigation, is not the kick in it, although that is the advantage to the homebrew fellow who wants a kick, but in Chicago they are making to-day beer at one-half of 1 per cent by a new formula, which has caffeine in it, and it needles very well, and they needle it up to 6 per cent or 7 per cent, and you get a tremendous kick out of it. The normal beer drinker drinks it because he likes a good glass of beer, like he likes a good cup of coffee.

It is pleasant and agreeable, and does not make him intoxicated, but makes him feel happy. Normal beer, which has not been doctored in any way, can be made at about 3.02 per cent. But I never heard of any beer of 2.75 per cent sold in any quantities that pleased anybody. The reason people do not like 2.75 per cent beer is that they take the extracts out of it, and those extracts are what make it good. It is like boiled beef, where the boiled beef has the extracts boiled out of it. Of course the Judiciary Committee has said that anything more than 3.05 per cent alcoholic content is intoxicating, so I suppose we can not touch that.

Senator SHORTRIDGE. Are we limited to that? If we are looking at this bill from a purely revenue standpoint—assuming now that we are looking at this bill from that standpoint—and we wish to secure revenue, gentlemen of the committee will pardon me for putting this in the record and for the time consumed. The bill here legalizes or permits the manufacture for sale of what we call “wine,” fermented dry wine, up to 3.05 per cent. Well, it is common knowledge that that is not wine; hence no revenue whatever would be raised from such an article, so-called wine. Whereas if we should advise and report in favor of permitting the legalizing of dry wine up to, say, 9 per cent by weight, to be used exclusively in the home, at meals, then the testimony is persuasive, I think, almost conclusive that we would raise from \$25,000,000 to \$30,000,000 or \$40,000,000 of revenue.

Now, there are those who argue that this type of pure wine, at 8 or 9 per cent by weight, to be used at meals, in homes, is not intoxicating, is in point of fact a food, and can be authorized within the scope of the eighteenth amendment. If so, we could raise from \$25,000,000 to \$50,000,000 of revenue and revive a great industry in California, in New York, Ohio, and many other States, which industry is now prostrate.

Secretary MILLS. I do not think you could raise any such revenue from it.

Senator SHORTRIDGE. Mr. Rossi of California, whom you all know, no doubt, whose father established early a great wine business, has given the House Ways and Means Committee testimony to that effect. And others corroborate him, Mr. Secretary. My thought is that we might well consider changing the percentage in respect to certain beverages for the purpose of raising revenue. Of course this can all be taken up on the Senate floor; but if this committee is merely going to take this bill and report it without discussion, I want to say—well, be it so.

The CHAIRMAN. I want to call attention to the amendment offered by Senator Borah to the bill. In Senator Borah's amendment he says to insert the following new section—

Senator BINGHAM (interposing). Is that before us here?

The CHAIRMAN. Yes.

Senator KING. Are we through with the Secretary?

The CHAIRMAN. I think we better consider this. Mr. Secretary, have you made any estimate on the Borah amendment?

Secretary MILLS. No.

Senator WATSON. What is the Borah amendment?

The CHAIRMAN. It won't take long to read it, and perhaps it would be just as well to do so. I do not know whether the Secretary has estimated any revenue on it:

Section 1. (a) In addition to the taxes under existing law and under this act there shall be levied, assessed, collected, and paid for the taxable year 1933, and for each subsequent taxable year, upon the brewing net income of every person engaged in the manufacture and sale of beer, a tax equal to the following percentages of such net income for such year:

Ten per cent of the amount of such net income in excess of the profit per barrel exemption and not in excess of one and one-half times such exemption;

Twenty per cent of the amount of such net income in excess of one and one-half times such exemption and not in excess of two times such exemption;

Thirty per cent of the amount of such net income in excess of two times such exemption.

That is the substance of it. I take it that it is not necessary to read any more here. Mr. Secretary, has the Treasury Department made an estimate as to the revenue under that?

Secretary MILLS. No, we have not. And I do not know how we could.

The CHAIRMAN. Well, I don't suppose you could.

Senator KING. It is a sort of attempt to impose excise profits taxes upon this business but not upon any other business.

Senator HARRISON. If that is attempted you will not get much revenue out of the beer proposition.

The CHAIRMAN. Do you want to vote upon it? Senator Borah will ask about what action the committee took.

Senator KING. I call for a vote on the Borah amendment.

The CHAIRMAN. All in favor of the Borah amendment will make it known by saying aye. Those opposed will say no. The noes have it.

Senator HARRISON. I am not going over these amendments because I do not think we ought to amend these features, but that it should be brought up on the floor of the Senate for attention. But Chairman Collier of the Ways and Means Committee has sent over an amendment, and as you will recall, under the Volstead law there was a prohibition against advertising in newspapers of beer and so on. If we are going to permit it to be sold within certain limits it seems to me they ought to be permitted to advertise the proposition. His amendment would carry out that theory. But I am not going to press it here before the committee. That is a proposition to come up on the floor.

Senator WALSH of Massachusetts. Yes.

Senator SHORTRIDGE. Is it your understanding that we are not to make any suggestion as to amending any feature of this bill?

Senator HARRISON. I think we ought to pass upon the revenue features of the bill and get it to the floor of the Senate, and there fight out any propositions that any Senator may have.

Senator SHORTRIDGE. Would it be proper to offer a motion for striking out the \$5 and inserting \$4?

Senator HARRISON. Oh, yes. That is a part of the revenue matter.

Senator SHORTRIDGE. That is why I wanted some information.

Senator WALSH of Massachusetts. Secretary Mills has indicated he thinks we should not make any increase beyond \$5 a barrel.

Senator HARRISON. On that subject I suggest that we take the testimony of Mr. Huber, who seemed to be very fair and very well

informed, to understand the question as well as anybody who appeared before the Ways and Means Committee:

I am not prepared to say that \$4 would produce a greater revenue. I think that \$5, for the time being, is about the fair high-water mark to produce the best results for the industry, and for the Government in the way of revenue.

Senator SHORTTRIDGE. Yes; he so stated, and he may be right.

Senator BINGHAM. I should like to ask the Secretary of the Treasury whether he thinks we would not get more tax from \$6 a barrel than from \$5. Will the difference between \$6 and \$5 not affect the sale of beer in any degree, and won't we get several million dollars more revenue out of a tax of \$6 a barrel?

Secretary MILLS. I doubt it.

Senator BINGHAM. Of course, Mr. Chairman, it is an open secret that the reason why they made it \$5 a barrel in the House, instead of the present tax of \$6, was so as to get it through the Ways and Means Committee. They could not get it out of the Judiciary Committee, and in order to send it to the Ways and Means Committee they had to put some tax in it. They did not need otherwise to put any tax in it. The tax is \$6 a barrel now, and no one objected to it, but in order to get it into the Ways and Means Committee they had to make a bill which changed the revenue, in order to get it away from the Judiciary Committee.

Senator SHORTTRIDGE. They did not object last year because there was no legalizing of the manufacture of beer.

The CHAIRMAN. Let us take the sentiment of the committee. All in favor of making the tax \$6 a barrel instead of \$5 a barrel will say aye. The contrary will say no. The noes have it.

Senator BARKLEY. Does this bill leave any \$6 tax at all on beer? Does it change the whole thing from \$6 to \$5 a barrel?

Senator HARRISON. It changes the whole thing from \$6 to \$5.

The CHAIRMAN. Does the committee desire to consider other amendments to the bill that have been submitted for consideration?

Senator BINGHAM. I should like to ask the Secretary of the Treasury about page 9—

The CHAIRMAN (interposing). Let us get the question before the committee. Here is an amendment suggested by Mr. McCabe, and I have two or three others. Does the committee want to consider any of these amendments?

Senator REED. What are they?

Senator SHORTTRIDGE. Do they relate to revenue?

Senator WALSH of Massachusetts. I take it that we all have amendments to offer to other features of the bill, and we will have an opportunity to offer them on the floor of the Senate.

The CHAIRMAN. He says:

Inserting the words "for sale" in the Collier-Blaine beer bill, thus taking out of tax the tremendous quantity of home brew annually manufactured, and practically legalizing home-brew, as recommended by the Judiciary Committee, will seriously impair the amount of revenue which might otherwise have been received from the tax on beer.

He goes on to explain why. But I do not see anything special in the amendment. How about that, Mr. Beaman?

Mr. BEAMAN. He says as recommended to the Judiciary Committee.

Senator LA FOLLETTE. I think that is taken care of in the Senate substitute.

The CHAIRMAN. No; this refers to the House bill.

Senator BINGHAM. I want to ask the Treasury Department about a charge of \$1,000 on brewers. Page 9, line 4:

Brewers shall pay \$1,000. Every person who manufactures fermented liquors of any name or description for sale, from malt, wholly or in part, or from any substitutes therefor, containing one-half of 1 per cent or more of alcohol by volume, shall be deemed a brewer.

In other words, in the case of home-brew if a man sells it to his neighbor he is a brewer, and you would collect \$1,000 from him.

Secretary MILLS. Well, if they sell; yes.

Senator SHORTRIDGE. He must have a permit.

Senator WATSON. In case this bill passes what becomes of the tax on home-brew?

Senator LA FOLLETTE. You will collect your tax on malt sirup?

Senator BINGHAM. You ought to increase the tax on malt sirup to be compensatory if you are going to put a tax on the brewer. If you get an amendment in regard to a tax on malt sirup, and you spoke of the necessity of that, I believe, Mr. Secretary—

Secretary MILLS (interposing). I did not speak of the necessity, and there is some question as to whether we should because of the state of the industry. We suggested to the Ways and Means Committee that that was a matter that might be worthy of study because it would entail reducing the competition. We were not prepared to recommend that it be done. It might interfere with the legitimate branch of the industry, and there is some very grave question as to whether it ought to be done.

Senator HARRISON. Mr. Chairman, might I now suggest that—

Senator BINGHAM (interposing). Mr. Secretary, what are you getting now from brewers?

Secretary MILLS. We are getting about \$1,000,000 a month to-day from malt sirup and brewers' wort.

Senator BINGHAM. Very much less than was anticipated?

Secretary MILLS. A great deal less. The tax was made higher than we recommended and it is obviously too high.

Senator KING. Do you think the law is evaded?

Secretary MILLS. Yes; unquestionably.

Senator HARRISON. Might I suggest at this point that this table be placed in our record, in the matter of Federal revenue statistics in regard to fermented liquors—beer, ale, and porter—so that we will not have to go back to the hearings of the Ways and Means Committee?

The CHAIRMAN. All right. That will be made a part of the record at this point.

## Federal revenue statistics in regard to fermented liquors (beer, ale, and porter)

[Source of production figures and revenue receipts: Annual report, Secretary of the Treasury]

| Fisca. year ending<br>June 30-- | Number of<br>breweries | Barrels of<br>beer consumed<br>and taxed | Per capita consumption<br>in gallons <sup>1</sup> |                                    | Rate of tax<br>per barrel | Revenue<br>collected from<br>barrel tax | Total revenue from<br>barrel tax and brewer's and<br>dealer's licenses |
|---------------------------------|------------------------|--|---|------------------------------------|---------------------------|---|--|
|                                 |                        |  | For wet<br>States<br>only                         | For United<br>States as<br>a whole |                           |   |  |
| 1901.....                       | 1,771                  | 40,517,078                               | 16.70   | 16.15                              | \$2.00                    | \$71,956,591                            | \$75,669,908   |
| 1902.....                       | 1,807                  | 44,478,837                               | 17.95   | 17.37                              | 1.60                      | 71,168,712                              | 71,988,902   |
| 1903.....                       | 1,733                  | 46,630,730                               | 18.46   | 17.85                              | 1.00                      | 46,634,823                              | 47,547,856   |
| 1904.....                       | 1,741                  | 48,208,133                               | 18.70   | 18.09                              | 1.00                      | 48,208,133                              | 49,083,459   |
| 1905.....                       | 1,847                  | 49,459,540                               | 18.82   | 18.22                              | 1.00                      | 49,459,540                              | 50,360,553   |
| 1906.....                       | 1,747                  | 54,651,637                               | 20.40   | 19.73                              | 1.00                      | 51,651,637                              | 55,641,859   |
| 1907.....                       | 1,644                  | 58,516,111                               | 21.45   | 20.75                              | 1.00                      | 58,546,111                              | 59,567,818   |
| 1908.....                       | 1,720                  | 58,747,680                               | 22.17   | 20.44                              | 1.00                      | 58,747,680                              | 59,807,617   |
| 1909.....                       | 1,622                  | 56,303,497                               | 21.92   | 19.24                              | 1.00                      | 56,303,497                              | 57,456,411   |
| 1910.....                       | 1,568                  | 59,485,117                               | 23.40   | 19.98                              | 1.00                      | 59,185,117                              | 60,572,280   |
| 1911.....                       | 1,524                  | 63,216,851                               | 21.48   | 20.91                              | 1.00                      | 63,216,851                              | 64,367,778   |
| 1912.....                       | 1,506                  | 62,108,633                               | 23.67   | 20.24                              | 1.00                      | 62,108,633                              | 63,268,771   |
| 1913.....                       | 1,462                  | 65,245,544                               | 24.48   | 20.95                              | 1.00                      | 65,245,544                              | 66,266,950   |
| 1914.....                       | 1,392                  | 66,105,455                               | 24.42   | 20.92                              | 1.00                      | 66,105,445                              | 67,081,512   |
| 1915.....                       | 1,372                  | 59,746,701                               | 22.79   | 18.65                              | <sup>2</sup> 1.50         | 78,460,381                              | 79,328,947   |
| 1916.....                       | 1,332                  | 58,564,508                               | 24.68   | 18.91                              | 1.50                      | 87,875,672                              | 88,771,104   |
| 1917.....                       | 1,217                  | 60,729,509                               | 25.46   | 18.42                              | 1.50                      | 91,094,678                              | 91,897,194   |
| 1918 <sup>3</sup> .....         | 1,092                  | 59,174,794                               | 24.20   | 15.01                              | <sup>4</sup> 3.00         | 124,264,754                             | 126,285,853  |
| 1919 <sup>5</sup> .....         | 669                    | 27,712,648                               | 16.22   | 8.18                               | <sup>6</sup> 6.00         | 116,184,344                             | 117,839,602  |
| 1920 <sup>6</sup> .....         | 583                    | 9,231,280                                | 5.31  | 2.68                               | 6.00                      | 41,743,891                              | 41,965,674   |

<sup>1</sup> In estimating per capita consumption annual population figures as estimated by the Bureau of the Census for continental United States have been used. "Wet" States include only those States having no state-wide prohibition laws in effect, regardless of the fact that many of those States had local-option laws.

<sup>2</sup> Increase in tax of 50 cents per barrel accounted for \$18,713,679.88 from date of imposition, Oct. 22, 1914, to end of fiscal year.

<sup>3</sup> By the President's proclamation of Dec. 8, 1917, under the food control act, the amount of food or feed material which might be used in the production of fermented liquor was limited to 70 per cent of the normal consumption for this purpose; by the President's proclamation of Sept. 16, 1918, the use of such materials in the production of fermented liquors was prohibited on and after Dec. 1, 1918.

<sup>4</sup> Collections at \$1.50 per barrel to Oct. 3, 1917, \$26,259,632.45. Collections at \$3 per barrel from Oct. 3, 1917, to end of fiscal year, \$98,005,121.20.

<sup>5</sup> Collections at \$3 per barrel to Feb. 24, 1919, \$64,374,610.47. Collections at \$6 per barrel from Feb. 25, 1919, to end of fiscal year, \$51,899,733.71.

<sup>6</sup> The act of Nov. 21, 1918, prohibited the manufacture of intoxicating fermented liquors on and after May 1, 1919. The Bureau of Internal Revenue construed this to mean liquors of an alcoholic content in excess of one-half of 1 per cent by weight or by volume. However, under the decision in United States v. Standard Brewery (Inc.) (251 U. S. 210) and other decisions, it appears that 2.75 per cent liquor by weight was manufactured up until the act of Oct. 28, 1919, defining "intoxicating liquor" as that containing more than one-half of 1 per cent alcohol. (National prohibition act effective Jan. 16, 1920.)

Senator KING. Mr. Secretary, I did not quite get your statement with respect to the revenue, if any, to be derived under this bill from the sale of wine.

Secretary MILLS. We made no estimate. We do not know how to make an estimate on that.

Senator KING. Do you think it would produce any revenue?

Secretary MILLS. I doubt it. We never got much revenue from wine, anyhow. I do not believe there is any revenue in 3 per cent wine just as a common-sense proposition. But you know as much about that as I do.

Senator SHORTRIDGE. It would not be made. It is not wine.

Secretary MILLS. I do not know of any wine that has as low an alcoholic content as 3 per cent.

The CHAIRMAN. I believe Congressman Hull is here and wants to be heard on this bill.

Senator HARRISON. I will go out and see Congressman Hull, if there is no objection.

Senator KING. I suppose if this bill goes through you have not determined whether that will be evaded or not.



Secretary MILLS. I have no way of determining it.

Senator HARRISON. Mr. Chairman, Congressman Hull just wants this put into the record.

The CHAIRMAN. It will be put in.

STATEMENT BY REPRESENTATIVE WILLIAM E. HULL, SUBMITTED TO THE FINANCE COMMITTEE OF THE SENATE

I have the privilege of submitting to your committee a statement in reference to the amount of money that could be collected from the sale of beer manufactured in accordance with H. R. 13742.

The capacity of the breweries of the Nation to a large extent have been closed for the past 13 years. Those that are operating have been running on a very small capacity on near beer; hence these breweries are well equipped and will be able to operate at full capacity almost immediately if a law is passed granting them that privilege.

Testimony given before the Ways and Means Committee from George P. McCabe, representing the Associated Producers of Cereal Beverages; that is, the breweries that have been making near-beer, shows that the capital invested amounts to \$58,000,000 and the capacity is 11,500,000 barrels.

I quote at this point R. A. Huber, manager of the Anheuser-Busch Brewing Co., and vice president of the United States Brewing Association, before the Ways and Means Committee:

"I am addressing myself in all of these figures to an estimated basis of 40,000,000 barrels per year and that figure is arrived at by taking 66,000,000 barrels that we sold in 1916 with a 24 per cent increase in population, according to our Census Bureau, which would make a present production of 80,000,000 barrels, and I am calculating that the industry should revive 50 per cent of that within the next two years."

Other estimates have been made on the basis of the capacity that could be immediately revived at about 30,000,000 barrels per year with an increase during the year of from ten to fifteen million barrels.

With a capacity of 30,000,000 barrels, at \$5 per barrel it would give the Government a direct taxing capacity of \$150,000,000. And I would presume that would be the correct amount for the first 12 months after the breweries got in full operation.

Other incomes that might be considered to the Government would be income tax.

It will require an expenditure of \$360,000,000 within the next year to rehabilitate the brewing plants in the United States. Assuming that the income tax to the manufacturers and to the stockholders of the different companies on this basis would make a total of \$7,200,000 and assuming that the profit to the brewers would amount to \$1 per barrel, it would make an income tax from them to the Government of \$6,000,000, making a total income tax that the Government would derive from the brewing business and its allied industries of \$13,200,000. Adding this to the \$150,000,000 would make a total of \$163,200,000.

While this is all estimated, I can reasonably state that the income from the first year of the brewing business after it was fairly started would amount to at least \$165,000,000 on a basis of \$5 per barrel.

In figuring whether the Government would receive more money by charging \$4 a barrel, \$5 a barrel, or \$6 a barrel, from the experience that I have had, I would assert that the \$5 point would bring more money to the Government than either the \$4 or the \$6 point for the following reasons:

Four dollars a barrel would sell no more beer than \$5 a barrel; \$6 a barrel would, in my judgment, be too near the turning point of retail price to guarantee as much income as the \$5 a barrel price. In my judgment, \$6 per barrel would prohibit the sale of a good-sized 5-cent glass of beer because the laboring men would want 10 ounces of straight beer in a glass and with a \$6 tax by the Government and the tax that may be expected to be put upon it by the States and cities would make the sale of a glass of this size impossible for 5 cents and unless you can sell a large glass of beer for 5 cents you will not get the volume of business. In other words, if you had to use 4 or 6 ounce glass, you would have to sell just twice as many glasses to collect as much revenue tax as you would if you sold a 10-ounce glass.

From the review of all the testimony that has been offered, there seems to be an entire agreement among those who have had practical experience with the

brewing business that a \$5 tax is the limit that can be placed upon beer in order to get a volume of business and based upon this evidence given by those who have had practical experience in the business, I do not believe it would be possible to finance the rehabilitation of the small breweries scattered throughout the United States with the prospect of having to pay an excessive tax. Under present financial conditions, many small breweries whose machinery is practically depleted would have to have large sums of money to rehabilitate them and it is very doubtful whether they could borrow the money for this purpose unless it could be shown that they were not to be taxed to a point where they could not sell their beer and make a reasonable profit. There will be something like a thousand breweries of this type and if they are not rehabilitated you will not get the volume of business that has been anticipated. Consequently, it is my opinion that this bill as written with one or two exceptions should be passed at as early a date as possible.

The advertising feature of this bill, it seems to me, ought to be given very close consideration because if you eliminate advertising as you have in this bill to a large degree, you necessarily decrease the sale of beer and that, of course, will decrease the income that the Government will receive.

With the committee's permission, I would like to file a digest of the hearings before the Ways and Means Committee, showing in brief the allied industries that will be affected, the amount of money that will be used and the amount of labor employed by the revival of this industry, all of which operate to the financial benefit of the Government.

*Estimated increase in industrial activity upon modification of the Volstead Act*

| Witness  | Estimate   | Page |
|--|--|------|
| R. A. Huber, vice president and treasurer Anheuser-Busch (Inc.), St. Louis; and vice president United Brewers Association. | \$360,000,000 for rehabilitation and materials within a year (outlay).   | 21   |
| Walter Raepcke, president Container Corporation of America, Chicago, Ill.  | \$12,000,000 for paper-board industry as a whole (new business).   | 74   |
| Harry S. Calvert, Pfau & Co. (steel equipment for brewing industry).   | \$200,000 to \$400,000 in plant and equipment (outlay).  | 77   |
| Owen T. Cull, general freight agent for Chicago, Milwaukee, St. Paul & Pacific R. R. Co., Chicago.                         | \$80,000,000 the first year (potentially \$100,000,000) and \$50,000,000 thereafter (new business).  | 112  |
| Wm. Wendnagle, Chicago.  | \$28,029,000 for large or stationary wood cooperage (new business).  | 117  |
| Joseph Wilworth, Pittsburgh; committee on industrial rehabilitation.   | \$40,000,000 to \$50,000,000 to be spent by brewers of St. Louis, Pittsburgh, Milwaukee, and New York. For United States, as a whole, "many times" this amount (outlay). | 195  |
| D. C. Fenner, New York City; Mack-International Motor Truck Corporation.   | \$25,000,000 for motor truck industry (new business).  | 201  |
| A. W. Beresford, National Electrical Manufacturers Association.  | \$50,000,000 (new business).   | 207  |
| J. P. Curran, Toledo, Ohio; Owens-Illinois Glass Co.   | \$6,000,000 a year additional pay roll in bottle manufacturing industry.   | 208  |
| Charles H. Pipsett, publisher, Daily Metal Reporter and other metal trade papers.  | Several hundred million dollars worth of orders to metal and steel working plants.   | 211  |
| Fred Nolde, New York City; the Refrigerating Machinery Association.  | \$20,000,000 new business for 1933, \$65,000,000 new business for next 3 to 5 years (total); \$6,000,000 annually for replacements, repairs, and new business.           | 214  |
| John I. Haas, Washington, D. C.  | \$13,000,000 to \$20,000,000 immediately; \$7,500,000 for annual preparation, harvest, etc.; \$12,500,000 value of new crops per year (?).                               | 215  |
| Paul Grady, Chicago, Ill.; Wooden Box Manufacturers Association.   | \$40,000,000 (new business annually).  | 219  |
| George J. Meyer, Milwaukee, Wis.; representing manufacturers of bottling machinery.  | \$9,000,000 annually for least 5 years (new business).   | 228  |
| Maurice Saunders, New York City; Lithographers National Association (Inc.).  | \$8,000,000 to \$10,000,000 added sales for lithographic paper, ink, and supply business; \$3,000,000 to \$4,000,000 would be paid out in wages (additional).            | 240  |
| Louis B. Montfort, Washington, D. C.; Crown Manufacturers Association.   | \$7,000,000 to \$10,000,000 (new business).  | 243  |

NOTE.—The above page numbers refer to pages in the printed hearing on Modification of the Volstead Act held by the Ways and Means Committee, House of Representatives, 72d Cong., 2d sess., Dec. 7 to 14, 1932.

*Estimated increase employment upon modification of Volstead Act*

| Witness   | Number of wage earners  | Page |
|---|---|------|
| R. A. Huber, vice president and treasurer; Anheuser-Busch (Inc.), St. Louis, and vice president United Brewers Association. | 300,000 reemployed in production and distribution, together with manufacture of materials.                                  | 32   |
| Walter Paepcke, president; Container Corporation of America, Chicago, Ill.  | 4,000 additional.   | 75   |
| Edward Verdi, Hoboken, N. J.; Associated Coopers Industries.  | 27,075 in the cooperage industry not including men who will be employed making bungs, plugs, steel dowel pins, rivets, etc. | 199  |
| D. C. Fenner, New York City; Mack-International Motor Truck Corporation.  | 30,000 additional in motor-truck industry   | 203  |
| J. P. Curran, Toledo, Ohio; Owens-Illinois Glass Co.  | 6,000 in bottle industry not counting additional men required for furnishing raw material.                                  | 209  |
| Paul L. Grady, Chicago, Ill.; National Association of Wooden Box Manufacturers, bottle box division.                        | 10,000 in wooden box and lumber industries  | 220  |
| George J. Meyer, Milwaukee, Wis., representing manufacturers of bottling machinery.   | 400 additional men for Meyer Co., as well as return of 200 men now at 30 3/4 per cent time to full time.                    | 228  |
| Maurice Saunders, New York City; Lithographers National Association (Inc.).   | 1,500 to 2,000 in the lithographic paper, ink, and supply business.   | 240  |
| Louis B. Montfort, Washington, D. C.; Crown Manufacturers Association.  | 2,000   | 245  |
| Matthew Woll, vice president; American Federation of Labor.   | 1,000,000 at least, before long, "not only in the brewing industry but in interrelated, allied, and kindred industries."    | 139  |

NOTE.—The page number given above refers to pages in the printed Hearing on Modification of the Volstead Act held by the Ways and Means Committee, House of Representatives, 72d Cong., 2d sess. Dec. 7 to 11, 1932.

The following is a quotation from the statement by Mr. Woll inserted in the record of the hearings and is found beginning on page 149:

"I want to present to you a statement from the representatives of the brewery workers' organizations and others. \* \* \* It is addressed to me under date of January 12, 1932. It reads as follows: \* \* \* 'In 1919 there were approximately 1,250,000 workers engaged in the brewing and allied industries, which supplied machinery, material, and supplies to the brewing industry, embracing workers in the following trades and callings: Coopers, hoop makers, box makers, lumberjacks, carton workers, glass-bottle blowers, plumbers, plumber's helpers, steam fitters, steam fitters' helpers, electrical workers, machinists, molders, patternmakers, boilermakers, boilermakers' helpers, elevator constructors, automobile mechanics, carpenters, painters, bricklayers, ironworkers, steelworkers, cement finishers, engineers, firemen, oilers, coal passers, laborers, brewers, bottlers, teamsters, printers, pressmen, photo-engravers, lithographers, bookkeepers, stenographers, clerks, salesmen, etc.'

"In addition to these, must be added the thousands of workers engaged in coal mining, in the transportation industry, and agricultural workers."

Senator HARRISON. Mr. Chairman, Bishop Cannon called me up the other day and said he had a brief to file by way of objection to the bill, and I believe there were some others. Is there any objection to it?

The CHAIRMAN. No.

Senator WALSH of Massachusetts. Does it relate to the revenue?

The CHAIRMAN. The superintendent of the International Reform Federation is here, and he wanted to appear before the committee. I told him he could not do it, but I suppose there is no objection to putting his statement in.

Senator KING. If it deals with the matter of revenue there is no objection.

The CHAIRMAN. All right. This will be made a part of the record.

<sup>1</sup> Mr. Huber's estimate does not include, the vast number of men that would be employed in the cooperage works, and the bottle manufacturing plants, or in the manufacture of boxes, the farmers, the coal mines, railroad operations, and whatever else would be affected, machinery and things like that.

TO THE FINANCE COMMITTEE OF THE SENATE OF THE UNITED STATES.

HONORED SIR: The International Reform Federation, representing thousands of citizens in all parts of the United States, having had headquarters in Washington for 36 years, respectfully renews its request for a hearing upon the Collier-Blaine bill, for the following reasons:

1. Because while there have been two hearings upon the Collier bill, (1) before the House Ways and Means Committee upon its revenue features, and (2) upon its constitutionality before the Senate Judiciary Committee, to test its constitutionality, the Collier-Blaine bill is an entirely new bill, and there has been no hearing upon it.

2. Because we can show that more money will accrue to the Federal Government by enforcing the prohibition act, as long as the eighteenth amendment is the law, than by nullifying Federal prohibition as proposed by the Blaine substitute bill.

3. Because we desire to call your attention to the thirteen billions of Federal tax-exempt bonds, which are drawing 3 and 3½ per cent, which if called in will provide income and surtaxes far in excess of the revenue from the Collier-Blaine bill and do much to remedy the depression. The existence of perhaps forty billions of tax-exempt bonds, issued by cities, States, and the Federal Government, should be ended, under the leadership of the Senate Finance Committee. Just incomes and just surtaxes levied upon tax-exempt property will do much to restore public confidence in Congress and start an important movement to end the great depression.

4. Because we desire to prove to the satisfaction of the Senate Finance Committee that no large income for the Government can be secured, except by high-powered salesmanship of the sale of beer among the children and young people of America.

Faithfully yours,

SUPERINTENDENT OF THE INTERNATIONAL REFORM FEDERATION.

JANUARY 30, 1933

Senator BINGHAM. I do not think we should put anything in the record that does not deal with revenue.

Senator WALSH of Massachusetts. Mr. Chairman, I move that the hearings be now closed and that we report the bill out on those features that deal with revenue. Personally I am going to vote on the floor to substitute the House bill, but I want to get this reported out from the committee.

Senator HASTINGS. I understand that the Secretary of the Treasury does not think a tax on wine will produce any revenue, but there is the matter of principle involved in connection with it. I was wondering whether some tax ought not be put on wine.

Senator BINGHAM. There is a tax on it, the same as anything else.

Senator SHORTRIDGE. It proposes to put a tax of \$5 a barrel on wine, but there would be no barrel, hence no revenue.

Senator HASTINGS. Does the law as now drawn include wine?

Senator SHORTRIDGE. It does. They call it wine, but it is not wine.

Senator HASTINGS. Then it is what might be called slop?

Senator SHORTRIDGE. Yes.

Senator WALSH of Massachusetts. Mr. Chairman, I call for the question.

Senator SHORTRIDGE. What is the motion?

Senator WALSH of Massachusetts. To let the bill be reported containing the revenue features as now contained in the bill.

Senator GEORGE. It has already been reported.

Senator WALSH of Massachusetts. Yes; but we have to get it out of this committee.

Senator SHORTRIDGE. And so you suggest that we report the bill as it is?

Senator WALSH of Massachusetts. Yes, and then let us pass on it when we get to the floor of the Senate.

Senator GORE. I want to make one statement before you vote on finally reporting the bill. I have prepared a substitute for the entire House bill, striking out all after the enacting clause, and I have had it prepared by the official draftsman of the Senate; so far as draftsmanship is concerned I think it is beyond criticism. It would shift the ground upon which the legislation is enacted. It is exactly the same amendment, and would have exactly the same effect, and would bear exactly the same rate, so far as the effective rate is concerned, and would produce exactly the same revenue. It differs in this respect, in that it levies in express terms a tax of \$5 a barrel on non-intoxicating beer. It prohibits the manufacture of intoxicating beer, as does the Volstead Act. It puts a prohibitive tax on all beers having more than 3.02 per cent of alcohol whether intoxicating or not intoxicating. The point is that when you vote for it you only vote to authorize the sale of nonintoxicating beer.

Now, it has this one point of difference only: Under the House bill if beer having less than 3.02 per cent of alcohol is intoxicating, the House bill violates the Constitution. But the offender under the House bill would not be subject to prosecution even though he had violated the Constitution. Under this substitute nobody could sell nonintoxicating beer under the tax imposed if it had more than 3.02 per cent of alcohol. But if the courts should find that beer having less than 3.02 per cent of alcohol is intoxicating then it would not be authorized by this act, and there isn't any reason why the President should not sign this, because it only authorizes the sale of nonintoxicating beer. The eighteenth amendment prohibits the sale of intoxicating liquors; that, and nothing more.

Senator WALSH of Massachusetts. It leaves it to the courts to determine the alcoholic content.

Senator GORE. It leaves it to the courts. The question is to be determined in the courts.

Senator WALSH of Massachusetts. And every court would make a different decision.

The CHAIRMAN. No percentage is named in your amendment at all.

Senator GORE. It is desired so as to accomplish the result desired.

Senator KING. Doesn't it declare that if it is above 3.02 per cent it is intoxicating, so that you would make a legislative declaration?

Senator GORE. No; it does not. It simply determines a \$10 a barrel tax on beers above 3.02 whether intoxicating or nonintoxicating. It enfranchises beer having less than 3.02 per cent of alcoholic content if nonintoxicating.

Senator WATSON. Doesn't that then sanction the manufacture of intoxicating beverages?

Senator GORE. No. It expressly prohibits that.

Senator HASTINGS. You say you get \$10 a barrel if intoxicating?

Senator GORE. Yes. But it would be violative of the Volstead law, if that is the case.

The CHAIRMAN. What is that for?

Senator GORE. That is an additional discouragement added to the flat prohibition of the Volstead Act. The Volstead Act prohibits the manufacture of all intoxicating liquors. It would continue to prohibit the manufacture of intoxicating beer. It is against all beer above 3.02,

whether intoxicating or not. When you vote for this you vote for beer only that is nonintoxicating.

The CHAIRMAN. Senator Gore, do you offer that as an amendment?

Senator GORE. I want you to consider it.

Senator BARKLEY. Isn't it true under your amendment that the Government, I mean the district attorneys and other officers, would have to have a chemical analysis made of every sale of beer?

Senator GORE. No, I do not think so. I think it would work out this way: Brewers would go ahead and make beer containing 3.02 per cent of alcohol. If anybody thought that was intoxicating they could raise that question. That is the only point in it. As to what extent it would deter brewers from making that kind of beer, it would violate the law as well as the Constitution. Under the House bill, making intoxicating beer less than 3.02 per cent, violates the Constitution but does not violate the law.

Senator WALSH of Massachusetts. Mr. Chairman, Senator Gore simply indicates that he wants to put that on the floor of the Senate.

Senator GORE. No; I do not say I will put it on the floor.

The committee thereupon resumed consideration of the bill in executive session and after voting to approve the revenue features and to report the bill, adjournment was taken at 11.05 a. m.