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THE PROPOSED FEDERAL ANTI-NARCOTIC LAW.

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After several years of consideration and discussion of the proposed legislation to curb the evil of habit-forming drugs in interstate commerce, we have now presented to us in H. R. Bill 25834 by Mr. Harrison of New York, what evidently purports to be the last word on the part of those who have been particularly active in the interest of such legislation.

Concluding, no doubt, that under the commerce clause of the Federal Constitution it would not be possible to secure and have sufficient control over the traffic in narcotics, it was found necessary to take refuge in the taxing power of the Federal Government, which is along the line of the original Foster Bill, and in disregard of the Mann Bill, as relating to this subject. It certainly must be agreed that the chances for sufficient and constitutional control are certain under the taxing power, whereas this sufficiency may be seriously doubted under the commerce clause. It necessarily follows, that those who are sincere in desiring a sufficient control of the narcotic evil, should not object to the imposition of a small tax, for the purpose of bringing this about, and the writer believes, that pharmacists and retail druggists very generally have evidenced their sincerity in desiring a sufficient control of the narcotic evil, in fact we may claim, that from the ranks of pharmacists have come the first demands for such proper regulation, and through their activity and advocacy the movement has grown, so as now to be about consummated into some proper and efficient legislation.

Since such legislation is likely to be of great concern to pharmacists, and may possibly be so framed as to place upon them a great unnecessary burden, and because they are best prepared to properly decide upon the real practical scope of such legislation, it can hardly be denied, that they should have the largest voice in framing it, and nothing should be enacted into law which does not have the full approval of those who are the pioneers in this movement.

Now an analysis of the Harrison Bill discloses an aim:

- 1st. To properly regulate under the taxing power, and this is intended to apply to all who in any way traffic in the named narcotics.
- 2d. To secure a sufficient regulation and supervision by a system of record keeping and making of returns as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe.
- 3d. To assure faithful compliance with these regulations by requiring each

and every trafficker to give bond, also, as prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

4th. To make it unlawful for any person to send or receive in interstate commerce any of the named narcotics unless registered, as provided by the bill.

5th. To place the burden of proving rightful and legal possession of narcotics upon the defendant in any action.

6th. Finally as evidenced by subsequent change in the original Harrison Bill its far reaching and sweeping effect is sought to be relieved by excluding from the operation of the intended law the *sale* or *distribution* only of preparations which do not contain more than two grains of opium, one-fourth grain of morphine, and one-fourth grain of heroin, or a grain of codeine to the fluid or avoirdupois ounce, as also Dover's powder, and all liniments or ointments, prepared for external use only.

While the bill contains other provisions, the foregoing ones are those which will effect directly the retail druggist, and therefore should find his careful thought and study. With reference to them it may be said:

1st. As already stated, if an exercise of the Federal taxing power is most likely to provide an efficient and constitutional control, then the retail druggist should not object to the exercise of such taxing power and to the requirement for paying a nominal tax.

2d. The requirements for record keeping and for the making of returns as applied to the retail druggists are far-reaching in effect. It is difficult to believe that one acquainted with the practical every day operation of an average drug store, would make such provision. Since the exception with reference to preparations containing small quantities refers only to *their sale and distribution*, and since the keeping of records which may be prescribed by the Commissioner of Internal Revenue, is without limit, we may assume, that such regulations will be made to include the keeping of a record, not only, of the purchase of opium, morphine, coca leaves, cocaine, their salts and derivatives or preparations, excepting the purchase only of such as contain in small quantities, but it will also include the keeping of a record of every grain of the substances, which goes into the manufacture or compounding of any and all preparations, prescriptions or other orders, as well as of the *sale* of all which contain more than the minimum quantities allowed. Now the present day pharmacist on the drug side of his business has no more frequent and legitimate demand than for the preparations containing narcotics in some form which in some way will require the making of a record. If he is not required to record a sale of paregoric, he is required to record the making of such paregoric. If he is not required to record the sale of a liniment, he is required to record the making of such liniment. If he is not required to record the sale of an ordinary present day cough syrup, he will be required to record its making. Even if the regulations should not require the separate recording of a physician's prescription containing these narcotics, the need for making returns would nevertheless include such separate recording. As applied to present day methods in the average well kept, legally and honorably conducted drug store this requirement seems impractical and almost impossible. When we

have in mind, that the largest part if not all the evils which result from interstate traffic in narcotics, are found where the respective states lack authority to restrict and supervise, then for the present at least we must conclude that such intended regulation as applied to the retail druggist is entirely unnecessary. It has yet to be shown, that state supervision and regulation of this traffic within the state, is either insufficient or impossible to be made sufficient, but it has been shown, that state supervision of interstate traffic is insufficient.

3d. The requirement for a bond from the retail druggist, while evidently intended to reach and effect irresponsible persons, is nevertheless likely to be hardship on the average responsible retail druggist, because in most instances it would mean the purchase of a bond from a surety company with an annual fee attached thereto, and since irresponsible persons can be sufficiently and effectively controlled by imprisonment for violation, the imposition of this additional burden, at least in so far as it concerns the retailer, is not well founded.

4th. The provision making it unlawful, for any but a registered person to ship or receive in interstate commerce any narcotics or any preparations, containing the named narcotics, beyond the minimum amount allowed, or other few exceptions stated, will apply with equal force to physicians' prescriptions. On the border line of the several states this may result in much unnecessary hardship and difficulty, and therefore this provision should have careful thought and study.

5th. The provision under which the burden of proof is placed upon the defense as against the general rule of placing it with the prosecution is for the purposes of the intended law to be approved. Since rightful possession is easily shown by registration, or by having received from a registered person for legitimate, and in such case, personal use, there can be no valid objection to the provision, when we have in mind the great difficulty which the authorities have found in the past, to prove possession for improper purposes.

6th. The exception made with reference to minimum quantities of opium, etc. and with reference to liniments and ointments for external use, are entirely inadequate to meet the objection which must come from the retail druggist as with reference to record keeping and making of returns. It may be satisfactory to the manufacturing and jobbing interests, because they do not otherwise deal in minute quantities to any great extent, though of course there is no desire to belittle the amount of extra work and trouble which nevertheless will come to both the manufacturer and jobber. At the same time this specific exception will undo one of the most beneficent and commendable results of the intended law as provided for in Section four (4) of the Bill by allowing the indiscriminate sale of all so-called patent and proprietary preparations, containing these narcotics within the prescribed limit to unqualified or unregistered people, that is, direct to the consumer. If the pharmacists of this country have any right whatever to assert themselves, they certainly do have the right to demand that the sale and distribution of narcotics and preparations containing narcotics no matter in what quantity, be reserved exclusively to qualified people, in so far as this is possible. While registration will not be limited exclusively to qualified persons, it at least will work greatly in that direction, and since the legitimate consumer is never

likely to be a registered person, this very result of Section 4 should certainly be maintained and not allowed to be undone by the exceptions provided in Section 10. There is no safeguard more necessary to the public health than to restrict the sale and distribution of narcotics to qualified persons, and when their sale to the consumer is practically made impossible in interstate commerce it will be a question of short time only until the respective states will see to it that within their respective jurisdictions the sale and distribution to the consumer is limited entirely to qualified people. As much as pharmacists should be opposed to the requirement for the keeping of records and making of returns on the part of the retailer, so or even more so, should they be opposed to this exception as shown in Section 10, and which evidently is intended as a concession, or at least made to appear so by some.

Having pointed out some of the objections to the Harrison Bill, in so far as it effects the retailer, it naturally occurs to reflect upon the possibility of suggesting suitable changes which will leave the intended law to serve properly the intended and really necessary interstate commerce supervision. In this connection we must not be unmindful of the right for consideration which both manufacturer and jobber demand and have, and any change which we propose should not be to their respective disadvantage, and should not add to the burden of conducting their respective legitimate business. We do maintain that the sale of narcotics or preparations containing narcotics, in any quantity, direct to the consumer should be restricted to qualified persons. In so far as manufacturer and jobbers differ in this from the retailer, the retailer has a right to be firm in his position. Beyond this however the retailer should have no desire to add to the troubles of the manufacturer and jobber in securing efficient regulation of interstate traffic in narcotics. It is anticipated that both manufacturer and jobber will aid to point out, that to relieve the retailer of the need to keep records and making of returns, is inconsistent and dictated by self-interest only, without due regard to the troubles and burdens of others. On examination however this will not be found true, because we must have in mind that the intended regulations concern interstate traffic only, and it is because of lack of regulation and supervision for this interstate commerce that the evil exists. Now the retailer is for all practical purposes limited to the doing of a business within the state, while the manufacturer particularly is doing business throughout all of the states, and the jobbers' business or at least a substantial part of it is also interstate. Therefore, state supervision as applied to the manufacturer is entirely insufficient, state supervision as applied to jobbers is in part insufficient, and since it is impractical to leave that part of the jobbing business which is within the state to state supervision alone, and the other part of the business which is without the state, to Federal supervision alone, it would seem entirely proper, that all of the jobbers' business should come within the supervision of the Federal Government. On the other hand since the retailer's business is usually within the state and by the operation of the intended law will necessarily be limited to within the state, it is equally proper that its supervision should remain with the respective state authorities. Believing that the objectionable features in Section 10 have been embodied in the Harrison Bill largely in the interest of the manufacturer and job-

ber it should therefore be the aim to preserve this advantage to them, and at the same time remove the objectionable features from the retailer's view point. By omitting entirely Section 10, and by changing and then adding a proviso to Section 3 of the Harrison Bill, this may be possible, and the following change in Section 3, is submitted for that purpose.

Add in Section 3, line 18, after the word "account" the following words: "with intent to sell otherwise than at retail, or with intent to in whole or in part distribute or sell in interstate commerce any of the foregoing drugs etc." After the word "prescribe" in line 22, add the following proviso: "Provided however that nothing contained in this section shall require the keeping of records or rendering of returns with reference only to the sale, distribution or disposition of preparations and remedies which do not contain more than two grains of opium, etc.," so that Section 3 as changed will read as follows:

"Section 3. That every person, importing, exporting, manufacturing, remanufacturing, compounding for his own account, with intent to sell otherwise than at retail, or with intent to in whole or in part distribute or sell in interstate commerce, or who distributes or offers for sale or sells in whole or in part in interstate commerce any of the aforesaid drugs, their salts, derivatives, or preparations, shall keep such books, render such returns, and give such bonds as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe. Provided, however, that nothing contained in this section shall require the keeping of records or rendering of returns with reference only to the sale, distribution or disposition of preparations and remedies which do not contain more than two grains of opium, or one-fourth of a grain of morphine, or one-fourth of a grain of heroin, or one grain of codeine, or their salts and derivatives in one fluidounce, or, if a solid or semisolid preparation, in one avoirdupois ounce; nor to powder of ipecac and opium, commonly known as Dover's powders; nor to liniments or ointments which are prepared for external use only: Provided further; that such remedies and preparations are sold, distributed, or disposed of as medicines, and not for the purpose of evading the provisions of this Act."

With the above changes it will be noted, that the retailer who confines his business to his home state would be relieved from keeping records, rendering returns and the giving of bond, unless this be required under the laws of his state. At the same time it will make it unnecessary for manufacturer and jobbers to keep a record and render returns with reference to the sale of preparations which contain the minimum quantities, just as is provided in Section 10. Finally it retains in the intended law to the fullest extent the provision under which it would be unlawful for any one in interstate commerce to sell to any one who is not registered under the law, and consequently it would prevent the sale of such articles direct to the consumer in interstate commerce, no matter in what quantity narcotics might be contained in such articles. Unless it is deemed well to make an exception with reference to physician's prescriptions, this simple change of the present Harrison Bill, should make it entirely satisfactory to the retail pharmacists of this country, and undoubtedly it would be a great step forward in preventing the evils which now exist because of a lack of supervision and regulation of interstate commerce with reference to the trafficking in narcotics.