

LEGISLATIVE BILL 751

Approved by the Governor May 22, 1971

Introduced by Terry Carpenter, 48th District

AN ACT relating to alcoholic liquor; to state policy; to require the filing and posting of schedules of prices charged to retail licensees and the effect and amendment thereof; to clarify provisions respecting advertising materials; to provide for enforcement; to provide severability; to amend section 53-169, Revised Statutes Supplement, 1969; to repeal the original section; and to declare an emergency.

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

Section 1. It is the declared policy of the State of Nebraska that it is necessary to regulate and control the manufacture, sale, and distribution of alcoholic liquors within the state for the purpose of fostering temperance in their consumption and respect for and obedience to the law. The advertising material furnished by suppliers of alcoholic liquor to retail licensees is an integral part of the distribution and the sale of alcoholic liquor together with the pricing by the suppliers of their products to retail licensees. In the supplying of advertising materials to retail accounts certain confusion has resulted from the enactment of conflicting legislation and failure to clarify the regulation of advertising materials which can legally be supplied may result in the placing in retail establishments of advertising materials which are not primarily for advertising purposes, but which would, in fact, give to the retail licensee matters of considerable value resulting in a tied-house between suppliers and retailers. There is a need to clarify existing legislation regulating advertising matters to be furnished retail licensees to promote an orderly marketing of alcoholic liquor which, in turn, will serve to promote temperance. To further accomplish these objectives and the declared legislative policy of the state in the manufacture, distribution and sale of alcoholic liquor, it is necessary that legislation be enacted to provide for the suppliers of alcoholic liquor to file with the Nebraska Liquor Control Commission schedules of prices at which the suppliers' brands of alcoholic liquor are available for purchase by retail licensees. This act is not for the purpose of fixing the wholesalers' prices to be charged to retailers but

is for the purpose of making known to retail licensees the price at which alcoholic liquor will be sold to any retailer in the state. The further requirement that such schedules be posted thereof, at the supplier's place of business will promote the orderly marketing of alcoholic liquor. In part, this legislation will also implement section 53-168. In this implementation it is recognized that there are marketing factors which differ between beer and other alcoholic liquors. Some of these factors are the more frequent turnover of a retailer's beer inventory, the fact that wholesalers of other liquors handle more brands of their products than beer wholesalers, most of whom distribute only one of two major brands of beer, the shelf life of beer, and other factors. Because of these differences it is the declared policy of this state to have this act apply to beer only as it pertains to the initial filing of price schedules and then have the marketing of beer governed by the provisions of section 53-168. Recognizing the marketing requirements of alcoholic liquor, except beer, it is the legislative intent to require the filing of price changes and in order to promote a more orderly marketing of alcoholic liquor, except beer, to allow only the posting down of the pricing of each brand thereof not more than two times each year. These provisions will enable the retail licensees to be advised of price changes and enable the Nebraska Liquor Control Commission to adequately enforce the provisions of section 53-168.

Sec. 2. Within fifteen days after the effective date of this act each wholesaler, distributor, or manufacturer selling alcoholic liquor to retail licensees in the state shall file with the commission, in such form as prescribed by the commission, a complete schedule of all prices to be charged to retail licensees by such manufacturer, distributor, or wholesaler from the point of shipment for each brand of alcoholic liquor sold to retail licensees in the state by such manufacturer, distributor, or wholesaler. Such schedule shall be duly verified by the manufacturer, wholesaler, or distributor or his duly authorized agent and shall set forth: (1) The unit price per case for all such alcoholic liquor of each brand; and (2) the unit price per bottle, or other container, for all alcoholic liquor of each brand sold in broken case lots, the size of the bottle or container to be specified.

Sec. 3. Any such manufacturer, distributor, or wholesaler of alcoholic liquor, except beer, at any time after the filing of its schedules of prices charged to retail licensees, may amend the same by filing with the

Nebraska Liquor Control Commission an amendment in writing on a form to be prescribed by the commission and specifically setting forth each item for which a change in price is made and stating the new price to be charged and the effective date of the price change, which shall in no case be less than thirty days after the date of filing the amendment with the commission and shall specify the period of time that the price change will be effective, which shall in no case be less than thirty days after the effective date thereof. For any brand or brands that have not previously been sold to retail licensees in this state by such manufacturer, distributor, or wholesaler, the price schedule may be amended for such brand or brands to become effective upon the filing of the amendment. If such manufacturer, distributor, or wholesaler has not previously sold such a brand in the state and has not previously filed a schedule of prices, then the prices of such brand or brands shall become effective immediately on filing of such a schedule and shall remain in effect for at least thirty days. If the price is increased thereafter, the price shall remain in effect for a period of one hundred fifty days before it can be reduced.

No manufacturer, distributor, or wholesaler shall make amendments of its price schedules to effect a discount in prices because of a retailer licensee's quantity purchases or to discriminate between retailers. To aid in the prevention of such discounts or discriminations, it shall be unlawful for any manufacturer, wholesaler, or distributor to reduce its price to retail licensees on a brand more than twice in any twelve-month period, and in the case of an increase in the price of a brand after a reduction, the increased price cannot be reduced again for one hundred fifty days thereafter.

Sec. 4. Any manufacturer, distributor, or wholesaler hereafter licensed shall, before commencement of business to sell alcoholic liquor at retail under such license, file its schedule with the Nebraska Liquor Control Commission, the same to be effective immediately upon filing, and shall thereafter proceed with regard to amendments as provided for in section 3 of this act.

Sec. 5. That section 53-169, Revised Statutes Supplement, 1969, be amended to read as follows:

53-169. (1) No manufacturer, distributor, or wholesaler shall directly or indirectly: (1) (a) Sell, supply, furnish, give, pay for, loan, or lease any furnishing, fixture, or equipment on the premises of a

place of business of another licensee authorized under this act to sell alcoholic liquor at retail, either for consumption on or off the premises; (2) (b) pay for any such license, or advance, furnish, lend, or give money for payment of such license; (3) (c) purchase or become the owner of any note, mortgage, or other evidence of indebtedness of such licensee or any form of security therefor; (4) (d) be interested in the ownership, conduct, or operation of the business of any licensee authorized to sell alcoholic liquor at retail; or (5) (e) be interested directly or indirectly, or as owner, part owner, lessee, or lessor thereof, in any premises upon which alcoholic liquor is sold at retail.

(2) No manufacturer, distributor, or wholesaler shall, directly or indirectly or through a subsidiary or affiliate, or by any officer, director, or firm of such manufacturer, distributor, or wholesaler, furnish, give, lend, or rent any interior decorations other than advertising signs, or furnish, give, lend, or rent any signs or displays, for inside or outside use, costing in the aggregate more than one hundred dollars in any one calendar year for use in or about or in connection with any one establishment on which products of the manufacturer, distributor, or wholesaler are sold; Provided, nothing in this act contained shall be construed as affecting existing signs that if such advertising signs are illuminated in any manner, they will be disconnected from their source of electrical energy during all times the retail premises are closed for business. Lawful advertising signs or displays shall include the following: (a) Pole displays, pole merchandisers, and stackers made of cardboard with or without metal feet, including cardboard bins designed to merchandise and advertise products and having no secondary value; (b) counter and floor racks, which are furnished by the manufacturer and are specifically identified with the manufacturer's brand; and (c) items and calendars advertising schedules of entertainment events or holidays and having no other secondary value. No person, engaged in the business of manufacturing, distributing, or wholesaling alcoholic liquors shall directly or indirectly pay for or advance, furnish any items for the individual use of the retail licensee's customers, or lend money for the payment of any licenses for another.

Sec. 6. The Nebraska Liquor Control Commission may revoke or suspend the license of any manufacturer, wholesaler, distributor, or retailer found violating the provisions of this act and all proceedings under this act shall be governed by the provisions of Chapter 53

governing the suspension or revocations of licenses and the appeals to the courts from any orders of the commission.

Sec. 7. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof.

Sec. 8. That original section 53-169, Revised Statutes Supplement, 1969, is repealed.

Sec. 9. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.