

LEGISLATURE OF NEBRASKA  
NINETY-SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1278**

Introduced by Brashear, 4; Dierks, 40

Read first time January 23, 2002

Committee: Judiciary

A BILL

1 FOR AN ACT relating to unlawful restraint of trade; to amend  
2 sections 59-806, 59-808 to 59-810, 59-812, 59-815,  
3 59-816, 59-819 to 59-822, 59-824, 59-826 to 59-831, and  
4 68-1035, Reissue Revised Statutes of Nebraska, section  
5 59-823, Revised Statutes Supplement, 2000, and section  
6 59-1803, Revised Statutes Supplement, 2001; to provide  
7 for illegal overcharge or undercharge actions as  
8 prescribed; to harmonize provisions; and to repeal the  
9 original sections.  
10 Be it enacted by the people of the State of Nebraska,

1                   Section 1.    Section 59-806, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   59-806.   No corporation, joint-stock company, limited  
4 liability company, or other association shall engage in business  
5 within this state, a majority of whose stock is owned by or  
6 controlled or held in trust for any manufacturing or other  
7 corporation, which, in the course of its manufacture or production,  
8 conducts its business, or any part thereof, in a manner which would  
9 be prohibited by sections 59-801 to ~~59-828~~ 59-831 and section 11 of  
10 this act if it were so conducted in the course of such business  
11 within this state.

12                  Sec. 2.    Section 59-808, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14                  59-808.   Any president, director, treasurer, officer,  
15 corporator, partner, member, associate, or agent of such  
16 corporation, joint-stock company, limited liability company, or  
17 other association who does in its behalf anything prohibited by  
18 sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act or who  
19 supports, votes for, aids and abets, or takes part in doing such  
20 action by the corporation, joint-stock company, limited liability  
21 company, or other association, or any instrumentality thereof,  
22 shall be liable to the penalties by law provided.

23                  Sec. 3.    Section 59-809, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25                  59-809.   No corporation, joint-stock company, limited  
26 liability company, or other association which manufactures or  
27 produces any article for sale or transportation within this state  
28 and which does any of the acts or things prohibited to be done by

1 sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act shall  
2 engage in business within this state.

3 Sec. 4. Section 59-810, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 59-810. Any corporation, joint-stock company, limited  
6 liability company, or other association which has been once  
7 adjudged to have violated the provisions of sections 59-801 to  
8 ~~59-828~~ 59-831 and section 11 of this act by the final judgment of  
9 any court having jurisdiction of the question in any civil suit or  
10 proceeding in which such corporation, joint-stock company, limited  
11 liability company, or other association was a party, which  
12 thereafter violates any of such sections or which fails to make the  
13 returns herein required at the times specified shall no longer be  
14 allowed to engage in business within this state. Such prohibition  
15 shall only be enforced after such corporation, joint-stock company,  
16 limited liability company, or other association has been enjoined  
17 against further engaging in such business on an information or suit  
18 brought in a court of competent jurisdiction by the Attorney  
19 General in behalf of this state.

20 Sec. 5. Section 59-812, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 59-812. Any corporation, joint-stock company, limited  
23 liability company, or other association which is charged with  
24 violating ~~any of the provisions of~~ sections 59-801 to ~~59-828~~ 59-831  
25 and section 11 of this act and any president, director, treasurer,  
26 officer, limited liability company member, or agent thereof may be  
27 joined as a party in any proceeding, civil or criminal, to enforce  
28 such sections.

1           Sec. 6.     Section 59-815, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           59-815.    Any corporation, joint-stock company, limited  
4 liability company, or other association, and any president,  
5 director, treasurer, officer, corporator, partner, member,  
6 associate, or agent thereof who in its behalf engages in such  
7 business in violation of sections 59-801 to ~~59-828~~ 59-831 and  
8 section 11 of this act shall for each offense, in addition to such  
9 penalty for contempt as the court in case of disobedience to its  
10 lawful order may impose, be guilty of a Class IV felony.

11           Sec. 7.    Section 59-816, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           59-816.    Every president, treasurer, general manager,  
14 agent, or other person usually exercising the powers of such  
15 officers of any corporation, joint-stock company, limited liability  
16 company, or other association who has himself or herself, in its  
17 behalf, violated, united to violate, or voted for or consented to  
18 the violation of any of the provisions of sections 59-801 to ~~59-828~~  
19 59-831 and section 11 of this act shall thereafter be personally  
20 liable for all the debts and obligations of any such corporation,  
21 joint-stock company, limited liability company, or other  
22 association created while such person holds such office or agency,  
23 whether under the same or subsequent elections or appointments.

24           Sec. 8.    Section 59-819, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26           59-819.    The several courts of record of this state  
27 having equity jurisdiction are hereby invested with jurisdiction to  
28 prevent and restrain all violations of sections 59-801 to ~~59-828~~

1 59-831 and section 11 of this act and especially the offering,  
2 granting, giving, soliciting, accepting, or receiving any such  
3 rebate, concession, or service by any person or persons and to  
4 prevent or restrain any such joint-stock company, corporation,  
5 limited liability company, or combination which has solicited,  
6 accepted, or received any such rebate, concession, or service or  
7 which has offered, granted, or given any special prices,  
8 inducements, or advantages in order to restrict or destroy  
9 competition in particular localities from engaging in commerce  
10 within this state. Such proceedings may be by way of complaint  
11 setting forth the cause of action and praying that the acts hereby  
12 made unlawful shall be enjoined or otherwise prohibited. When the  
13 parties complained of are duly notified of such complaint, the  
14 court shall proceed as soon as may be to the hearing and  
15 determination of the case, and upon such complaint and before final  
16 decree the court may at any time make such temporary restraining  
17 order or prohibition as shall be deemed just. The court may retain  
18 jurisdiction of the cause after the decree for the purpose of such  
19 subsequent modification of the same as may be made to appear  
20 equitable and just in the premises.

21           Sec. 9. Section 59-820, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           59-820. Whenever it shall appear to the court before  
24 which any civil proceeding under sections 59-801 to ~~59-828~~ 59-831  
25 and section 11 of this act shall be pending that the ends of  
26 justice require that other parties shall be brought before the  
27 court, the court may cause them to be summoned whether they reside  
28 in the county where the court is held or not, and subpoenas to that

1 end may be served in any county by the sheriff thereof.

2           Sec. 10.     Section 59-821, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           59-821. Any person who shall be injured in his or her  
5 business or property by any other person or persons, by reason of  
6 anything forbidden or declared to be unlawful by sections 59-801 to  
7 ~~59-828~~ 59-831 and section 11 of this act, may sue therefor in any  
8 court of record in this state, in the county in which the defendant  
9 or defendants reside or are found, without respect to the amount in  
10 controversy, and shall recover actual damages or liquidated damages  
11 in an amount which bears a reasonable relation to the actual  
12 damages which have been sustained and which damages are not  
13 susceptible of measurement by ordinary pecuniary standards and the  
14 costs of suit, including a reasonable attorney's fee. In cases  
15 alleging illegal overcharges or undercharges, such damages may be  
16 either direct or indirect.

17           Sec. 11.   (1) In an illegal overcharge or undercharge  
18 case when both direct and indirect damages are involved, a  
19 defendant may prove, as a partial or complete defense to a claim  
20 for damages under sections 59-801 to 59-831 and this section, that  
21 the illegal overcharge or undercharge has been passed on to others  
22 who are themselves entitled to recover so as to avoid duplication  
23 of recovery of such damages.

24           (2) In an illegal overcharge or undercharge case in which  
25 claims are asserted by both direct and indirect parties, the court  
26 may transfer and consolidate such claims, apportion damages, and  
27 delay disbursement of damages to avoid multiplicity of suits and  
28 duplication of recovery of damages and to obtain substantial

1 fairness.

2           Sec. 12.     Section 59-822, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           59-822.    The words person or persons, as used in sections  
5 59-801 to ~~59-828~~ 59-831 and section 11 of this act, shall be deemed  
6 to include all corporations, associations, limited liability  
7 companies, combinations, or concerns whatsoever.

8           Sec. 13.     Section 59-823, Revised Statutes Supplement,  
9 2000, is amended to read:

10           59-823.   When any suit in equity is brought in any court  
11 under sections 59-801 to ~~59-828~~ 59-831 and section 11 of this act  
12 in which the state is complainant, the Attorney General may file  
13 with the clerk of such court a certificate that, in his or her  
14 opinion, the case is of general public importance, a copy of which  
15 certificate shall be immediately furnished by such clerk to the  
16 judge of the court in which the case is pending.    Thereupon such  
17 case shall be given precedence over others and in every way  
18 expedited and be assigned for hearing at the earliest practicable  
19 day. An appeal from the final decree of the court shall lie to the  
20 Court of Appeals and shall be taken within thirty days after the  
21 entry of such decree or final order or within thirty days after  
22 entry of the order overruling a motion for a new trial in such  
23 cause.

24           Sec. 14.     Section 59-824, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26           59-824.    In all prosecutions, hearings, and proceedings  
27 under ~~the provisions of~~ sections 59-801 to ~~59-828~~ 59-831 and  
28 section 11 of this act, whether civil or criminal, no person shall

1 be excused from attending and testifying, or from producing books,  
2 papers, contracts, agreements, and documents before the courts of  
3 this state, or in obedience to the subpoena of the same, on the  
4 ground or for the reason that the testimony or evidence,  
5 documentary or otherwise, required of him or her, may tend to  
6 criminate ~~him~~ or subject him or her to a penalty or forfeiture.

7           Sec. 15.     Section 59-826, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           59-826.   Whoever knowingly swears to a return or report  
10 required by sections 59-801 to ~~59-828~~ 59-831 and section 11 of this  
11 act that is false in any material particular, or knowingly swears  
12 to an answer to any of the requirements of ~~said~~ such sections that  
13 is false in any material particular, shall be deemed guilty of  
14 perjury, and punished as provided by the laws of this state in  
15 reference to perjury.

16           Sec. 16.     Section 59-827, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           59-827.   Whoever shall knowingly prepare, or cause to be  
19 prepared, a report, return, or answer required by sections 59-801  
20 to ~~59-828~~ 59-831 and section 11 of this act that is false, as  
21 aforesaid, shall be guilty of subornation of perjury and punished  
22 by law.

23           Sec. 17.     Section 59-828, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25           59-828.   (1) It is hereby made the duty of the Attorney  
26 General and the county attorney of each county under the direction  
27 of the Attorney General to institute and prosecute such proceedings  
28 as may be necessary to carry into effect ~~all of the provisions of~~

1 sections 59-801 to ~~59-828~~, ~~PROVIDED~~, ~~no~~ 59-831 and section 11 of  
 2 this act. No person shall be prosecuted or be subjected to any  
 3 penalty or forfeiture for or on account of any transaction, matter,  
 4 or thing concerning which he or she may testify or produce  
 5 evidence, documentary or otherwise, in any proceeding, suit, or  
 6 prosecution under ~~said~~ such sections. ~~No~~ ~~AND PROVIDED FURTHER~~,  
 7 ~~no~~ person testifying shall be exempt from prosecution or punishment  
 8 for perjury committed in so testifying.

9 (2) It shall be lawful for any person to institute  
 10 proceedings pursuant to ~~the provisions of Chapter 59, article 8~~  
 11 sections 59-801 to 59-831 and section 11 of this act, at his or her  
 12 own expense and by his or her own attorney, but in the action so  
 13 brought by such person no recovery for costs and disbursements  
 14 shall be had against the state.

15 Sec. 18. Section 59-829, Reissue Revised Statutes of  
 16 Nebraska, is amended to read:

17 59-829. When any provision of sections 59-801 to 59-831  
 18 and section 11 of this act ~~59-821, 59-828, 59-829,~~ and 84-211 to  
 19 84-214 ~~or any provision of Chapter 59~~ is the same as or similar to  
 20 the language of a federal antitrust law, the courts of this state  
 21 in construing such sections ~~59-821, 59-828, 59-829, and 84-211 to~~  
 22 ~~84-214 or any provision of Chapter 59~~ shall follow the construction  
 23 given to the federal law by the federal courts.

24 Sec. 19. Section 59-830, Reissue Revised Statutes of  
 25 Nebraska, is amended to read:

26 59-830. No criminal action may be maintained under  
 27 ~~Chapter 59~~ sections 59-801 to 59-831 and section 11 of this act  
 28 against any person, corporation, organization, limited liability

1 company, or association for acting pursuant to and under the  
2 authority of any state or federal law. It is the purpose of this  
3 section to reaffirm that a person may rely on the validity of any  
4 state or federal law until declared invalid.

5 Sec. 20. Section 59-831, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 59-831. When the Attorney General, on behalf of a state  
8 agency or political subdivision, is authorized to investigate, file  
9 suit, or otherwise take action in connection with violations under  
10 sections 59-801 to ~~59-830~~ 59-831 and section 11 of this act, any  
11 recovery of damages or costs by judgment, court decree, settlement  
12 in or out of court, or other final result shall be subject to the  
13 following:

14 (1) Upon recovery of damages or any monetary payment  
15 except criminal penalties, the costs, expenses, or billings  
16 incurred by any state agency or political subdivision in any  
17 investigation or other action arising out of a violation under  
18 sections 59-801 to ~~59-830~~ 59-831 and section 11 of this act shall  
19 be sought out in any judgment, court decree, settlement in or out  
20 of court, or other final result. Any recovered costs shall be  
21 deposited by the Attorney General in the fund from which such costs  
22 were expended; and

23 (2) When the Attorney General makes recovery pursuant to  
24 sections 59-801 to ~~59-830~~ 59-831 and section 11 of this act on  
25 behalf of a state agency or political subdivision of any money,  
26 funds, securities, or other things of value in the nature of civil  
27 damages or other, except criminal penalties, whether such recovery  
28 shall be by way of verdict, judgment, compromise, or settlement in

1 or out of court, or other final disposition of any case or  
2 controversy, such money, funds, securities, or other things of  
3 value shall be deposited by the Attorney General in the fund from  
4 which the funds which are being recovered were expended.

5 Sec. 21. Section 59-1803, Revised Statutes Supplement,  
6 2001, is amended to read:

7 59-1803. Issuance of a charitable gift annuity does not  
8 constitute:

9 (1) Engaging in business as a trust company subject to  
10 the Nebraska Trust Company Act;

11 (2) Engaging in the business of insurance subject to  
12 Chapter 44;

13 (3) Engaging in an act in violation of sections 59-801 to  
14 59-831 and section 11 of this act;

15 (4) Engaging in an act in violation of the Viatical  
16 Settlements Act; or

17 (5) Engaging in an act in violation of the Uniform  
18 Deceptive Trade Practices Act. Conduct other than issuance of a  
19 charitable gift annuity, including the marketing of a charitable  
20 gift annuity, is not exempt from application of the Uniform  
21 Deceptive Trade Practices Act pursuant to this subdivision.

22 Sec. 22. Section 68-1035, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 68-1035. Actions taken pursuant to sections 68-1029 to  
25 68-1036 shall not be subject to the Consumer Protection Act and  
26 sections 59-801 to ~~59-829~~ 59-831 and section 11 of this act. It is  
27 the intention of the Legislature that vendors and contracts  
28 complying with sections 68-1029 to 68-1036 shall be exempted from

1 the application of federal antitrust laws. Nothing contained in  
2 sections 68-1029 to 68-1036 shall prohibit contracts between  
3 individual vendors and the Department of Health and Human Services  
4 Finance and Support.

5           Sec. 23. Original sections 59-806, 59-808 to 59-810,  
6 59-812, 59-815, 59-816, 59-819 to 59-822, 59-824, 59-826 to 59-831,  
7 and 68-1035, Reissue Revised Statutes of Nebraska, section 59-823,  
8 Revised Statutes Supplement, 2000, and section 59-1803, Revised  
9 Statutes Supplement, 2001, are repealed.