

1 IN THE HOUSE

BY MR. TAYLOR

2 HOUSE BILL NO. 140

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act prohibiting wholesalers and re-  
7 tailers of liquor from engaging in certain  
8 practices declared to be unlawful with  
9 intent to injure competitors or to destroy  
10 or substantially lessen competition; defin-  
11 ing unlawful practices; providing penalties  
12 for the violation thereof; and providing for  
13 an effective date."

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

15 Section 1. SHORT TITLE. This Act shall be known and cited  
16 as the Unfair Liquor Sales Act.

17 Sec. 2. DEFINITIONS. When used in this Act, the following  
18 words and phrases shall have the meaning ascribed to them in this  
19 section, except where the context clearly indicates a different  
20 meaning:

21 (1) "Person" means and includes any individual, firm,  
22 association, company, partnership, corporation, joint stock  
23 company, club, agency, syndicate, municipal corporation, or other  
24 political subdivision of this state, trust, receiver, trustee  
25 fiduciary and conservator.

26 (2) "Wholesaler" includes any person who:

27 (a) Purchases liquor directly from the manufac-  
28 turer, or

29 (b) Purchases liquor from any other person who

1 purchases from or through the manufacturer, for the purpose  
2 of bona fide resale to retail dealers or to other persons for  
3 the purpose of resale only, or

4 (c) Services retail outlets by the maintenance of  
5 an established place of business for the purchase of liquor,  
6 including, but not limited to, the maintenance of warehous-  
7 ing facilities for the storage and distribution of liquor.

8 Nothing contained herein shall prevent a person from quali-  
9 fying in different capacities as both a "wholesaler" and "retailer"  
10 under the applicable provisions of this Act.

11 (3) "Retailer" means and includes any person who oper-  
12 ates a store, stand, booth or concession for the purpose of making  
13 sales of liquor at retail.

14 (4) "Board" means the Alcoholic Beverage Control Board  
15 of the State of Alaska.

16 (5) "Liquor" or "liquors" mean whiskey, brandy, rum,  
17 gin, wine, ale, porter, beer, and all other spiritous, vinous,  
18 malt, and other fermented or distilled liquors intended for  
19 human consumption and containing more than 1% alcohol by volume.

20 (6) "Sale" means any transfer for a consideration,  
21 exchange, barter, gift, offer for sale and distribution, in any  
22 manner, or by any means whatsoever.

23 (7) "Sell at wholesale," "sale at wholesale" and  
24 "wholesale sales" mean and include any bona fide transfer of title  
25 to liquors for a valuable consideration, made in the ordinary  
26 course of trade or in the usual conduct of the wholesaler's busi-  
27 ness, to a retailer for the purpose of resale.

28 (8) "Sell at retail," "sale at retail" and "retail  
29 sales" mean and include any transfer of title to liquors for a

1 valuable consideration, made in the ordinary course of trade or  
2 usual conduct of the seller's business, to the purchaser for con-  
3 sumption or use.

4 (9) "Basic cost of liquor" means the invoice cost to,  
5 or replacement cost in the quantity last purchased, by the retailer  
6 or wholesaler, as the case may be, whichever is lower, less all  
7 trade discounts and customary discounts for cash. To this shall  
8 be added the full face value of any stamps which may be required  
9 by any liquor tax act of this state and by ordinance of any  
10 municipality thereof, now in effect or hereafter enacted, if not  
11 already included by the manufacturer in his list price.

12 (10) (a) The term "cost to the wholesaler" means the  
13 "basic cost of liquor" to the wholesaler plus the "cost of  
14 doing business by the wholesaler." Said cost of doing busi-  
15 ness amount shall be evidenced and determined by the standards  
16 and methods of accounting regularly employed by him in his  
17 allocation of overhead costs and expenses, paid or incurred,  
18 and must include, without limitation, labor costs (including  
19 reasonable salaries for partners, executives, and officers),  
20 rent, depreciation, selling cost, maintenance of equipment,  
21 delivery costs, all types of licenses, taxes, insurance and  
22 advertising. The "cost of doing business" shall be expressed  
23 percentage-wise in the ratio that said wholesaler's "cost of  
24 doing business" bears to said wholesaler's dollar volume per  
25 annum.

26 (b) In the absence of the filing with the Board  
27 of satisfactory proof of a lesser or higher cost of doing  
28 business by the wholesaler making the sale, the "cost of  
29 doing business by the wholesaler" shall be presumed to be

1 ten per cent of the "basic cost of liquor" to the wholesaler,  
2 plus cartage to the retail outlet, if performed or paid for  
3 by the wholesaler. Cartage cost, in the absence of the fil-  
4 ing with the Board of satisfactory proof of a lesser or high-  
5 er cost, shall be deemed to be one-half of one per cent of  
6 the "basic cost of liquor" to the wholesaler.

7 (11) (a) The term "cost to the retailer" means the  
8 "basic cost of liquor" to the retailer plus the "cost of do-  
9 ing business by the retailer." Said cost of doing business  
10 amount shall be expressed percentage-wise in the ratio that  
11 said retailers "cost of doing business" bears to said re-  
12 tailers' dollar volume per annum. Said "cost of doing  
13 business by the retailer" shall be evidenced and determined  
14 by the standards and methods of accounting regularly em-  
15 ployed by him in his allocation of overhead costs and ex-  
16 penses, paid or incurred, and must include, without limita-  
17 tion, labor (including reasonable salaries for partners,  
18 executives, and officers), rent, depreciation, selling costs,  
19 maintenance of equipment, delivery costs, all types of li-  
20 censes, taxes, insurance and advertising: Provided, that  
21 any retailer who, in connection with the retailer's purchase,  
22 receives not only the discounts ordinarily allowed upon pur-  
23 chases by a retailer but also, in whole or in part, discounts  
24 ordinarily allowed upon purchases by a wholesaler shall, in  
25 determining "cost to the retailer," add the "cost of doing  
26 business by the wholesaler," as defined in subdivision (10)  
27 of this section, to the "basic cost of liquor" to said re-  
28 tailer, as well as the "cost of doing business by the re-  
29 tailer."

1 (b) In the absence of the filing with the Board  
2 of satisfactory proof of a lesser or higher cost of doing  
3 business by the retailer making the sale, the "cost of doing  
4 business by the retailer" shall be presumed to be ten per  
5 cent of the "basic cost of liquor" to the retailer.

6 (c) In the absence of the filing with the Board  
7 of satisfactory proof of a lesser or higher cost of doing  
8 business, the "cost of doing business by the retailer" who  
9 receives not only the discounts ordinarily allowed upon pur-  
10 chases by a retailer but also, in whole or in part, the dis-  
11 counts ordinarily allowed upon purchases by a wholesaler,  
12 shall be presumed to be ten per cent of the sum of the "basic  
13 cost of liquor" and the "cost of doing business by the whole-  
14 saler."

15 (12) "Business day" means any day upon which liquor  
16 may be legally sold.

17 Sec. 3. UNLAWFUL PRACTICES: PENALTY. It shall be unlawful:

18 (1) For any retailer or wholesaler with intent to in-  
19 jure competition or destroy or substantially lessen competition:

20 (a) To advertise, offer to sell, or sell, at re-  
21 tail or wholesale, as the case may be, liquor at less than  
22 cost to such a retailer or wholesaler, as said cost is de-  
23 fined in this Act;

24 (b) To give or offer a rebate in price, to give or  
25 offer a concession of any kind or nature whatsoever in connec-  
26 tion with the sale of liquor.

27 (2) For any retailer with intent to injure competitors  
28 or destroy or substantially lessen competition:

29 (a) To induce or attempt to induce or to procure

1 or attempt to procure the purchase of liquor at a price less  
2 than "cost to wholesalers" as defined in this Act;

3 (b) To induce or attempt to induce or to procure  
4 or attempt to procure any rebate or concession of any kind  
5 or nature whatsoever in connection with the purchase of  
6 liquor.

7 (3) Any retailer or wholesaler who violates the pro-  
8 visions of this section shall be guilty of a misdemeanor and shall  
9 be prosecuted and punished by a fine of not more than five hundred  
10 dollars (\$500.00) for each such offense. Any individual who, as  
11 a director, officer, partner, member, or agent of any person  
12 violating the provisions of this Act assists or aids, directly or  
13 indirectly in such violation, shall equally with the person for  
14 whom he acts, be responsible therefor and subject to the punish-  
15 ment and penalties set forth herein.

16 (4) Evidence of advertisement, offering to sell, or  
17 sale of liquor by any retailer or wholesaler at less than cost to  
18 him, or evidence of any offer of a rebate in price, or the giving  
19 of a rebate in price or an offer of a concession, or the inducing,  
20 or attempt to induce, or the procuring, or the attempt to procure  
21 the purchase of liquor at a price less than cost to the wholesaler  
22 or the retailer, shall be prima facie evidence of intent to in-  
23 jure competitors and to destroy or substantially lessen competi-  
24 tion.

25 Sec. 4. SALES BETWEEN WHOLESALERS. When one wholesaler sells  
26 liquor to any other wholesaler, the former shall not be required  
27 to include in his selling price to the latter, "cost to the whole-  
28 saler" as provided by Sec. 2 (10), except that no such sale shall  
29 be made at a price less than the "basic cost of liquor" as defined

1 in Sec. 2 (9), but the latter wholesaler, upon resale to a re-  
2 taller, shall be deemed to be the wholesaler governed by the pro-  
3 visions of Sec. 2 (10).

4 Sec. 5. TRANSACTIONS INVOLVING COMBINATIONS OF ITEMS, GIFTS,  
5 TRADING STAMPS, DISCOUNTS, ETC. (1) In all advertisements, offers  
6 for sale or sales involving two or more items, at least one of  
7 which items is liquor, at a combined price, and in all advertise-  
8 ments, offers for sale, or sales, involving the giving of any  
9 gift or concession of any kind whatsoever (whether it be coupons  
10 or otherwise), the retailers' or wholesaler's combined selling  
11 price shall not be below the "cost to the retailer" or the "cost  
12 to the wholesaler", respectively, of the total costs of all  
13 articles, products, commodities, gifts and concessions included in  
14 such transactions.

15 (2) In all advertisements, offers for sale, or sales  
16 wherein there is accepted as part of the purchase price any  
17 coupon, discount slip, trading stamp, or similar device, the net  
18 purchase price after deducting the value of said coupon, discount  
19 slip, or trading stamp, shall be not less than the retailers, or  
20 the wholesalers, as the case may be, as defined by this Act, as  
21 being "cost of the retailer", or "cost of the wholesaler",  
22 respectively.

23 Sec. 6. TRANSACTIONS TO WHICH ACT DOES NOT APPLY. The pro-  
24 visions of this Act shall not apply to sales at retail or sales at  
25 wholesale made:

26 (1) As an isolated transaction and not in the usual  
27 course of business;

28 (2) Where liquor is advertised, offered for sale, or  
29 sold in bona fide clearance sales for the purpose of discontinuing

1 trade in such liquor and said advertising, offer to sell, or sale  
2 shall state the reason therefor and the quantity of such liquor  
3 advertised, offered for sale, or to be sold;

4 (3) Where liquor is advertised, offered for sale, or  
5 sold as imperfect or damaged, and said advertising, offer to sell,  
6 or sale shall state the reason therefor and the quantity of such  
7 liquor advertised, offered for sale, or to be sold;

8 (4) Where liquor is sold upon the final liquidation of  
9 a business; or

10 (5) Where liquor is advertised, offered for sale, or  
11 sold by any fiduciary or other officer acting under the order or  
12 direction of any court.

13 Sec. 7. PERMISSIBLE ADVERTISEMENTS, OFFERS, SALES: ACTION  
14 OTHER THAN INJUNCTIVE RELIEF, JUDGMENT. (1) Any retailer may  
15 advertise, offer to sell, or sell liquor at a price made in good  
16 faith to meet the legal price, as defined in this Act, of a com-  
17 petitor who is selling the same article at cost to him as a  
18 retailer as prescribed in this Act. Any wholesaler may advertise,  
19 offer to sell, or sell liquor at a price made in good faith to  
20 meet the legal price, as defined in this Act, of a competitor who  
21 is rendering the same type of service and is selling the same  
22 article at cost to him as a wholesaler as prescribed in this Act.  
23 The price of liquor advertised, offered for sale, or sold under  
24 the exceptions specified in Sec. 6 shall not be considered the  
25 price of a competitor and shall not be used as a basis for estab-  
26 lishing prices below cost, nor shall the price established at a  
27 bankrupt sale be considered the price of a competitor within the  
28 purview of this section.

29 (2) In the absence of proof of the "price of a com-

1 petitor", under this section, the "lowest cost to the retailer",  
2 or the "lowest cost to the wholesaler", as the case may be, deter-  
3 mined by any "cost survey" made pursuant to Sec. 11 may be deemed  
4 the "legal price of a competitor" within the meaning of this sec-  
5 tion. If the plaintiff elect not to seek injunctive relief, but  
6 does prove actual damages, plaintiff shall be entitled to the  
7 entry of a judgment in his costs of suit and a reasonable attor-  
8 ney's fee to be fixed by the court.

9       Sec. 8. CONTRACT IN VIOLATION OF ACT DECLARED VOID. Any  
10 contract, expressed or implied, made by any person in violation of  
11 any of the provisions of this Act is declared to be an illegal and  
12 void contract and no recovery thereon shall be had.

13       Sec. 9. DETERMINING "COST TO THE RETAILER" AND "COST TO THE  
14 WHOLESALER" WHEN PERSON COMPLAINED AGAINST. (1) In determining  
15 "cost to the retailer" and "cost to the wholesaler" the Board or a  
16 court shall receive and consider as bearing on the bona fides of  
17 the cost, evidence tending to show that any person complained  
18 against under any of the provisions of this Act purchased liquor,  
19 with respect to the sale of which complaint is made at a ficti-  
20 tious price, or upon terms, or in such a manner, or under such  
21 invoices, as to conceal the true cost, discounts or terms of pur-  
22 chase, and shall also receive and consider as bearing on the bona  
23 fides of such cost, evidence of the normal, customary and prevail-  
24 ing terms and discounts in connection with other sales of a  
25 similar nature in the trade area or state.

26       (2) Merchandise given gratis or payment made to a  
27 retailer or wholesaler by the manufacturer thereof for display, or  
28 advertising, or promotion purposes, or otherwise shall not be con-  
29 sidered in determining the cost of liquor to the retailer or

1 wholesaler.

2       Sec. 10. COST TO RETAILER OR WHOLESALER: PURCHASE OUTSIDE OF  
3 ORDINARY CHANNELS OF TRADE. In establishing the cost of liquor to  
4 the retailer or wholesaler, the invoice cost of said liquor pur-  
5 chased at a forced, bankrupt, or close-out sale, or other sale out-  
6 side of the ordinary channels of trade, may not be used as a basis  
7 for justifying a price lower than one based upon the replacement  
8 cost of the liquor to the retailer or wholesaler in the quantity  
9 last purchased through the ordinary channels of trade.

10       Sec. 11. COST SURVEY IS COMPETENT EVIDENCE. Where a cost  
11 survey, pursuant to recognized statistical and cost accounting  
12 practices, has been made for the trading area in which the offense  
13 is committed, to establish the lowest "cost to the retailer" and  
14 the lowest "cost to the wholesaler", said cost survey shall be  
15 deemed competent evidence to be used in proving the cost to the  
16 person complained against within the provisions of this Act.

17       Sec. 12. CIVIL ACTION FOR VIOLATIONS: COSTS, ATTORNEY FEES.  
18 In addition to penalties provided by Sec. 3, any person injured  
19 by any violation of this Act may maintain an action in any court  
20 of equitable jurisdiction to prevent, restrain or enjoin such  
21 violation. If in such action a violation of this Act shall be  
22 established, the court shall enjoin and restrain or otherwise pro-  
23 hibit such violation and in addition thereto shall assess in favor  
24 of the plaintiff and against the defendant the costs of the suit  
25 and reasonable attorney's fees. In such action it shall not be  
26 necessary that actual damages to the plaintiff be alleged or  
27 proved, but where alleged and proved the plaintiff in said action,  
28 in addition to such injunctive relief and fees and costs of suit,  
29 shall be entitled to recover from the defendant the amount of

1 actual damages sustained by the plaintiff.

2       Sec. 13. ADMINISTRATION OF ACT: RULES: REVOCATION, SUSPEN-  
3 SION, REINSTATEMENT OF LICENSE, PROCEDURE: APPEALS. In addition  
4 to the penalties and rights imposed and set forth in Secs. 3 and  
5 12, the Board may enforce the provisions of this Act. The Board  
6 shall have the power to adopt, amend and repeal rules and regula-  
7 tions necessary to enforce and administer the provisions of this  
8 Act.

9       Sec. 14. SEVERABILITY. The provisions of this Act shall be  
10 severable and if any of its sections, provisions, exceptions,  
11 sentences, clauses, phrases, or parts be held unconstitutional or  
12 void, the remainder of this Act shall continue in full force and  
13 effect.

14       Sec. 15. EFFECTIVE DATE. This Act shall take effect  
15 immediately upon its passage and approval or upon its becoming law  
16 without such approval.

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