(9)

COMMITTEE REPORT

HOUSE

FURTHER:

April 11, 1979 Date: ____________

Mr. Speaker:

The Committee on JUDICIARY has had HB 454

"An Act relating to the regulation of pricing of alcoholic beverages."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 454 [ ] same title [ ] new title

and recommends Do Pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ____________ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
[illegible signature]	
[illegible signature]	
[illegible signature]	
[illegible signature]	
[illegible signature]	

[illegible signature]

CHAIRMAN

H 60 (Rev. 12/78)

*[384 US 35]

*JOSEPH E. SEAGRAM & SONS, Inc., et al., Appellants,

v

DONALD S. HOSTETTER, etc., et al.

384 US 35, 16 L ed 2d 336, 86 S Ct 1254, reh den
384 US 967, 16 L ed 2d 679, 86 S Ct 1583

[No. 545]

Argued February 23, 1966. Decided April 19, 1966.

SUMMARY

The plaintiffs, distillers, wholesalers, and importers of distilled spirits, commenced the present action in a New York state court for an injunction and declaratory judgment upon the ground that the 1964 changes made in the New York Alcoholic Beverage Control Law were unconstitutional. The principal object of the attack was a provision requiring that the monthly price schedules for sales to wholesalers and retailers filed with the New York Liquor Authority by brandowners, their agents, and related persons, must be accompanied by an affirmation that the bottle and case price of liquor is no higher than the lowest price at which sales were made anywhere in the United States during the preceding month. In addition, the statutory definition of "related person" was attacked as unconstitutionally vague, and some minor provisions of the statute were also alleged to be unconstitutional. The trial court upheld the constitutionality of the law (45 Misc 2d 956, 258 NYS2d 442), and its judgment was affirmed by the Appellate Division (23 App Div 2d 933, 259 NYS2d 644) and by the New York Court of Appeals (16 NY2d 47, 262 NYS2d 75, 209 NE2d 701).

On appeal, the Supreme Court of the United States affirmed. In an opinion by STEWART, J., expressing the unanimous view of the Court, it was held that the 1964 amendments to the New York Alcoholic Beverage Control Law were constitutional on their face.

HEADNOTES

Classified to U. S. Supreme Court Digest, Annotated

Statutes § 12 — validity — upon face

1. Where a statute the constitutionality of which is attacked has not yet been put into effect, the Supreme

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ANNOTATION REFERENCES

State power to regulate price of intoxicating liquors. 14 ALR2d 699.

Judicial decisions since Twenty-first Amendment relating to state power over intoxicating liquor. 84 L ed 137, 88 L ed 614.

Federal constitutional and legislative provisions as to intoxicating liquor as affecting state legislation. 10 ALR 1587, 11 ALR 1320, 26 ALR 661, 70 ALR 132.

Vagueness or indefiniteness of statute as rendering it unconstitutional or inoperative. 70 L ed 322.

Court of the United States is concerned only with the question whether the statute is constitutional upon its face.

Intoxicating Liquors § 9.4 — state power

2. The Twenty-first Amendment bestows upon the states broad regulatory power over the liquor traffic within their territories.

Intoxicating Liquors § 9.4 — state power — commerce clause

3. By virtue of the Twenty-first Amendment, a state is totally unconfined by traditional commerce clause limitations when it restricts the importation of intoxicants destined for use, distribution, or consumption within its borders.

Intoxicating Liquors § 12 — price regulation

4. As part of its regulatory scheme for the sale of liquor, a state may constitutionally insist that liquor prices to domestic wholesalers and retailers be as low as prices offered elsewhere in the country.

States § 16 — extent of power

5. The mere fact that state action may have repercussions beyond state lines is of no judicial significance so long as the action is not within that domain which the Federal Constitution forbids.

Commerce § 209 — liquors — price regulation

6. A state statute providing that the monthly price schedules for sales of liquors to wholesalers and retailers filed by brandowners with the state liquor authority must be accompanied by an affirmation that the bottle and case price is no higher than the lowest price at which sales were made anywhere in the United States during the preceding month, places, upon its face, no unconstitutional burden on interstate commerce.

States § 21 — conflict with federal law

7. Conflicts between state and federal regulations are not to be sought out where none clearly exists.

Intoxicating Liquors § 12 — state price regulation — antitrust laws

8. No clear conflict exists between the federal antitrust laws—specifically the Sherman Act, as amended (15 USC §§ 1-7), and § 2 of the Clayton Act, as amended by the Robinson-Patman Act (15 USC § 13)—and a state statute providing that the monthly price schedule for sales of liquor to wholesalers and retailers filed by brandowners with the state liquor authority must be accompanied by an affirmation that the bottle and case price of liquor is no higher than the lowest price at which sales were made anywhere in the United States during the preceding month.

Restraints of Trade and Monopolies § 33 — price information

9. The bare assembly, without more, of price information on liquor sales to wholesalers and retailers to support affirmations filed with a state liquor authority pursuant to the maximum price provisions of a state statute does not, of itself, violate the Sherman Anti-Trust Act (15 USC §§ 1-7).

Restraints of Trade and Monopolies § 36 — liquor price

10. Nothing in the Twenty-first Amendment prevents enforcement of the Sherman Anti-Trust Act (15 USC §§ 1-7) against a conspiracy to raise the prices at which liquor is sold.

Intoxicating Liquors § 12 — state price regulation — antitrust laws

11. Merely potential conflicts between the provisions of the Robinson-Patman Act (15 USC § 13) prohibiting price discrimination and a state maximum-price law for sale of liquors to wholesalers and retailers are too speculative to support a conclusion that a state is foreclosed from enacting such a law.

Evidence § 248 — presumption — administrative acts

12. The United States Supreme Court cannot presume that the statu

tory discretion of a state liquor authority to modify schedule requirements will not be exercised to alleviate any friction that might result should the state maximum-price law for the sale of liquors to wholesalers and retailers chafe against the Robinson-Patman Act (15 USC § 13) or any other federal statute.

Courts § 141 — regulation of business

13. It is not the province of courts to draw on their own views as to the morality, legitimacy, and usefulness of a particular business in order to decide whether a statute bears too heavily upon that business and by so doing violates due process.

Courts § 103 — inquiry into wisdom of legislation

14. Under the system of government created by the Federal Constitution it is up to legislatures, not courts, to decide on the wisdom and utility of legislation.

Constitutional Law 513 — due process — functions of courts

15. Due process does not authorize courts to hold laws unconstitutional when they believe the legislature has acted unwisely.

Courts § 103 — appropriateness of legislation

16. Courts do not substitute their social and economic beliefs for the judgment of legislative bodies.

Intoxicating Liquors §§ 6, 9.4 — regulation of liquor business

17. Nothing in the Twenty-first Amendment or any other part of the Federal Constitution requires that state laws regulating the liquor business be motivated exclusively by a desire to promote temperance.

Constitutional Law § 744 — due process — liquor — maximum prices

18. The due process clause of the Fourteenth Amendment is not violated by a state statute providing that the monthly price schedules for sales to wholesalers and retailers filed by brandowners with a state liquor authority must be accompanied by an affirmation that the bottle and case price of liquor is no higher than the lowest price at which sales were made anywhere in the United States during the preceding month.

Statutes § 17 — liquor price regulation — vagueness

19. A state statute requiring that a price affirmation must be filed with the state liquor authority by a brandowner, his agent, or any "related person" is not rendered unconstitutionally vague by the statutory definition of "related person" as including any person whose exclusive, principal, or substantial business is the sale of brands of liquor purchased from such brandowner or wholesaler designated as agent, where, insofar as the determination of "related person" is unclear, an affected party has access to the authority for a ruling to clarify the issue.

Administrative Law § 15 — validity of grant of power

20. If substantiality of an activity is the statutory guide to administrative action in regard to that activity, the limits of such action are sufficiently definite or ascertainable so as to survive challenge on the grounds of unconstitutionality.

Constitutional Law § 744 — due process — liquor — maximum prices

21. A state statute requiring that the monthly price schedules for sales to wholesalers and retailers filed with the state liquor authority must be accompanied by an affirmation, verified by the brandowner, his agent, or any related person, that the bottle and case price of liquor is no higher than the lowest price at which sales were made anywhere in the United States during the preceding month, does not impose an unconstitutional burden, in violation of the due process clause of the Fourteenth Amendment, on distillers or wholesalers in ascertaining the wholesalers who satisfy the "related person" criterion or in obtaining

information on prices charged by such wholesalers.

Constitutional Law § 432 — equal protection — regulation of price of liquor

22. The equal protection clause of the Fourteenth Amendment is not violated by a state statute which, while requiring brandowners, their agents, or related persons, to file monthly maximum-price affirmations with the state liquor authority, excepts consumer sales and private label brands of liquor from the maximum-price requirement, and reduces the scope of price affirmation required with respect to sales made to wholesalers and retailers by those who are not "related persons."

Statutes § 12 — validity

23. A statute is not invalid under the Federal Constitution because it might have gone farther than it did, or because it may not succeed in bringing about the result that it tends to produce; the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.

Appeal and Error § 711 — state court's construction of statute

24. The Supreme Court of the United States will accept the construction by the highest state court of a state statute fixing maximum prices of liquor as being concerned only with practices within the state, and as authorizing the state liquor authority, if sales in other states have no relevancy to enforcement, to waive the general prohibition against sales to wholesalers in the absence of the required price schedules.

Intoxicating Liquors § 6 — price regulation — validity

25. In the exercise of its constitutional power to regulate the sale of liquor within its borders, a state may validly enact provisions in a maximum-price statute which require the price schedules to be filed by brandowners with the state liquor authority (1) to cover sales to wholesalers irrespective of the place of sale or delivery, and (2) as to sales to both wholesalers and retailers, to include the net bottle and case price paid by the seller, where the statute, as construed by the highest state court, is concerned only with practices within the state and authorizes the state liquor authority, if sales in other states have no relevancy to enforcement, to waive the general prohibition against sales to wholesalers in the absence of the required price schedules.

APPEARANCES OF COUNSEL

Thomas F. Daly and Jack Goodman argued the cause for appellants.

Ruth Kessler Toch argued the cause for appellees.

Briefs of Counsel, p 1194, infra.

OPINION OF THE COURT

*[384 US 37]

*Mr. Justice Stewart delivered the opinion of the Court.

This appeal draws in question certain provisions of Chapter 531, 1964 Session Laws of New York, which worked substantial changes in the State's Alcoholic Beverage Control Law. The appellants are distillers, wholesalers, or importers of distilled spirits, who commenced this action in a New York court for an injunction and declaratory judgment against the appropriate state officials, upon the ground that § 9 of Chapter 531 violates the Federal Constitution in several respects.[1] The trial court upheld the constitu-

1. The appellants also challenged two minor provisions of § 7 of Chapter 531, 1964 Session Laws of New York. See pp. 347, 348, infra. The relevant provisions of §§ 7, 8 and 9 of Chapter 531 are set out in the Appendix to this opinion.

*[384 US 38]

tionality of the law,[2] and its *judgment was affirmed by the Appellate Division[3] and by the New York Court of Appeals.[4] The appellants brought the case here,[5] and we now affirm the judgment of the Court of Appeals.

Chapter 531 was enacted as the result of a sweeping redirection of New York's policy regulating the sale of liquor in the State. For more than 20 years the Alcoholic Beverage Control Law (hereinafter ABC Law) had required brand owners of Alcoholic beverages or their agents to file with the State Liquor Authority monthly schedules listing the bottle and case price to be charged to wholesalers and retailers within the State. These schedules were publicly displayed, and sales were prohibited except at the listed prices.[6] In 1950 the ABC Law was amended by the addition of a section which required brand owners or their agents to file price schedules listing the minimum retail price at which each brand could be sold to consumers and which prohibited retail sales at prices less than those fixed in the schedules.[7] The enforcement of these mandatory minimum retail prices was entrusted to the State Liquor Authority rather than to private action, but the Authority was given no power to determine the reasonableness of the prices that were fixed.

and.

In 1963, against a background of irregularities within the State Liquor Authority and extensive dissatisfaction with the operation of the ABC Law, the Governor of New York appointed a Commission to study the sale and distribution of alcoholic beverages within the State.

*[384 US 39]

The *Commission sponsored various study papers and issued a series of reports and recommendations.[8] It found unequivocally that compulsory resale price maintenance had had "no significant effect upon the consumption of alcoholic beverages, upon temperance or upon the incidence of social problems related to alcohol." It also found that New York liquor consumers had been the victims of serious discrimination because of the higher prices and reduced competition fostered by the mandatory minimum price maintenance provision of the law.[9] The Commission therefore recommended the repeal of that provision,[10] and → and the ultimate response of the legislature was the enactment of Chapter 531.

The legislature did not stop, how-

2. 45 Misc 2d 956, 258 NYS2d 442.

3. 23 App Div 2d 933, 259 NYS2d 644.

4. 16 NY2d 47, 209 NE2d 701.

5. 382 US 924, 15 L ed 2d 338, 86 S Ct 316.

6. Laws 1942, c. 899, § 1, Alcoholic Beverage Control Law, §§ 101-b-3(a)-(d) (1946 ed.).

7. Laws 1950, c. 689, § 1, Alcoholic Beverage Control Law, § 101-c (1964 Supp.).

8. See New York State Legislative Annual 401-408, 484-489, 498-500 (1964); Breuer, Moreland Act Investigations in New York: 1907-65, pp. 131-169 (1965). The Commission's Study Paper Number 5 ("Resale Price Maintenance in the Liquor Industry") and Report and Recommendations No. 3 ("Mandatory Resale Price Maintenance") are part of the record in this case.

9. Based upon the comparative price data it assembled, including examples of wholesale liquor prices in New York higher than retail prices elsewhere, the Commission concluded that because of the mandatory resale price maintenance provision, New Yorkers were subsidizing the liquor industry by $150,000,000 a year.

10. The Commission made various other recommendations, including relaxation of certain restrictions on package store licenses and elimination of some of the conditions imposed on establishments serving liquor by the drink.

ever, with repeal of the mandatory resale price maintenance provision of the law.[11] In § 9 of Chapter 531 it imposed the additional requirement that the monthly price schedules for sales to wholesalers and retailers filed with the State Liquor Authority must be accompanied by an affirmation that "the bottle and case price of liquor . . . is no higher than the lowest price" at which sales were made anywhere in
*[384 US 40]
*the United States during the preceding month. It is this provision that is the principal object of the appellants' constitutional attack in this litigation.

issue at bar

Section 9 effects the "no higher than the lowest price" requirement by the addition of paragraphs (d)–(k) to § 101-b-3 of the ABC Law. The affirmation required by paragraph (d), which must be filed and verified by brand owners or their agents who sell to wholesalers in New York, must cover all sales to wholesalers anywhere in the United States by the brand owner, his agent, or any "related person." The less extensive affirmation required by paragraph (e), which applies to persons other than brand owners or their agents who file schedules for sales to wholesalers, need only cover sales elsewhere by the person filing the schedule. The affirmation required by paragraph (f), which must be filed by brand owners, their agents, or "related persons" who sell to retailers in New York, must be verified by the brand owner or his agent and must cover all sales to retailers anywhere in the United States by the brand owner, his agent, or any "related person." The less extensive affirmation required by paragraph (g), which applies to wholesalers who are not "related persons," need only cover sales elsewhere by the person filing the schedule.[12]

The term "related person" is defined in paragraphs (d) and (f) to include any person, the "exclusive, principal or substantial business of which is the sale of a brand or brands of liquor purchased from" the brand owner or his agent. In consequence, before a "related per-
*[384 US 41]
son" *wholesaler may sell a particular brand of liquor to a New York retailer, he must secure an affirmation from the brand owner or his agent that the price charged by the wholesaler is no higher than the lowest price at which the brand was sold to any retailer in any other part of the country by any wholesaler doing "substantial" business with the band owner. Thus, a brand owner doing business in New York must keep himself informed of the prices charged by all "related persons" throughout the United States.

The scheme of § 9 of Chapter 531 is rounded out by the addition to § 101-b-3 of the ABC Law of paragraph (h), which prohibits sales to wholesalers and retailers of brands for which no affirmation has been filed; paragraph (i), which requires the "lowest price" to reflect all discounts and other allowances to wholesalers and retailers, with the exception of state taxes and delivery costs; and paragraphs (j) and (k),

11. The mandatory resale price maintenance provision, § 101-c, was repealed by § 11 of Chapter 531.

12. Sellers seeking to take advantage of the milder affirmations required by paragraphs (e) and (g) must file a representation that they are not "related persons." See Alcoholic Beverage Control Law, Appendix, Rule 16 of the State Liquor Authority, § 65.7(e) (1965 Supp), 9 NYCRR 65.7(e). The schedule requirements of § 101-b do not apply to sales of private label brands of liquor. Alcoholic Beverage Control Law, § 101-b-3(c).

which impose criminal penalties for the filing of a false affirmation.

[1] As a result of a series of stays granted throughout this litigation, the provisions of § 9 have not yet been put into effect. Our concern here, therefore, is only with the constitutionality of those provisions on their face. The appellants attack § 9 on many constitutional fronts. They contend that its provisions place an illegal burden upon interstate commerce, conflict with federal antitrust legislation and thus fall under the Supremacy Clause, and violate both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. We find all these contentions without merit.

[2, 3] Consideration of any state law regulating intoxicating beverages must begin with the Twenty-first Amendment, the second section of which provides that: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in

*[384 US 42]

violation of the laws thereof, *is hereby prohibited." As this Court has consistently held, "That Amendment bestowed upon the states broad regulatory power over the liquor traffic within their territories." United States v Frankfort Distilleries, 324 US 293, 299, 89 L ed 951, 956, 65 S Ct 661. Cf. Nippert v Richmond, 327 US 416, 425, note 15, 90 L ed 760, 765, 66 S Ct 586, 162 ALR 844. Just two Terms ago we took occasion to reiterate that "a State is totally unconfined by traditional Commerce Clause limitations when it restricts the importation of intoxicants destined for use, distribution, or consumption within its borders." Hostetter v Idlewild Liquor Corp. 377 US 324, 330, 12 L ed 2d 350, 355, 84 S Ct 1293. See State Board of Equalization v Young's Market Co. 299 US 59, 81 L ed 38, 51 S Ct 77; Mahoney v Joseph Triner Corp. 304 US 401, 82 L ed 1424, 58 S Ct 952; Ziffrin, Inc. v Reeves, 308 US 132, 84 L ed 128, 60 S Ct 163; California v Washington, 358 US 64, 3 L ed 2d 106, 79 S Ct 116. Cf. Indianapolis Brewing Co. v Liquor Comm'n, 305 US 391, 83 L ed 243, 59 S Ct 254; Joseph S. Finch & Co. v McKittrick, 305 US 395, 83 L ed 246, 59 S Ct 256. As the Idlewild case made clear, however, the second section of the Twenty-first Amendment has not operated totally to repeal the Commerce Clause in the area of the regulation of traffic in liquor. In Idlewild the ultimate delivery and use of the liquor was in a foreign country, and the Court held that under those circumstances New York could not forbid sales made under the explicit supervision of the United States Customs Bureau, pursuant to laws enacted by Congress under the Commerce Clause for the regulation of commerce with foreign nations. Cf. Dept. of Alcoholic Beverage Control v Ammex Warehouse Co. 378 US 124, 12 L ed 2d 743, 84 S Ct 1657; Collins v Yosemite Park Co. 304 US 518, 82 L ed 1502, 58 S Ct 1009.

[4, 5] Unlike Idlewild, the present case concerns liquor destined for use, distribution, or consumption in the State of New York. In that situation, the Twenty-first Amendment demands wide latitude for regulation by the State. We need not now decide whether the mode of liquor regulation chosen by a State in such circumstances could ever constitute so grave an interference

*[384 US 43]

with a *company's operations elsewhere as to make the regulation invalid under the Commerce Clause.[13]

13. Cf. United States v Frankfort Distilleries, 324 US 293, 299, 89 L ed 951, 956,

See Baldwin v G. A. F. Seelig, 294 US 511, 79 L ed 1032, 55 S Ct 497, 101 ALR 55. No such situation is presented in this case. The mere fact that § 9 is geared to appellants' pricing policies in other States is not sufficient to invalidate the statute. As part of its regulatory scheme for the sale of liquor, New York may constitutionally insist that liquor prices to domestic wholesalers and retailers be as low as prices offered elsewhere in the country. The serious discriminatory effects of § 9 alleged by appellants on their business outside New York are largely matters of conjecture. It is by no means clear, for instance, that § 9 must inevitably produce higher prices in other States, as claimed by appellants, rather than the lower prices sought for New York. It will be time enough to assess the alleged extraterritorial effects of § 9 when a case arises that clearly presents them. "The mere fact that state action may have repercussions beyond state lines is of no judicial significance so long as the action is not within that domain which the Constitution forbids." Osborn v Ozlin, 310 US 53, 62, 84 L ed 1074, 1078, 60 S Ct 758. Cf. Hoopeston Canning Co. v Cullen, 318 US 313, 87 L ed 777, 63 S Ct 602, 145 ALR 1113; South Carolina Highway Dept. v Barnwell Bros. 303 US 177, 189, 82 L ed 734, 741, 58 S Ct 510; Baldwin v G. A. F. Seelig, 294 US 511, 528, 79 L ed 1032, 1041, 55 S Ct 497, 101 ALR 55.

Moreover, as the Court of Appeals observed, the regulatory procedure followed by New York is comparable to that practiced by those States, 17 in number, in which liquor is sold by the State itself and not by private enterprise. Each of these monopoly States, we are told, requires distillers to warrant that the price
*[384 US 44]
charged the *State is no higher than the price charged in other States. In at least one of these States, the distillers are required to adjust the sales price to include all rebates and other allowances made to purchasers elsewhere, and the State has taken positive precautions to insure that the contractual commitments
*[384 US 45]
are fulfilled.[14] In some respect, *the burden of gathering information for

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65 S Ct 661, where we stated that the Twenty-first Amendment "has not given the states plenary and exclusive power to regulate the conduct of persons doing an interstate liquor business outside their boundaries." See also Note, The Twenty-first Amendment Versus the Interstate Commerce Clause, 55 Yale LJ 815 (1946).

14. The executive vice-president of one of the appellants testified that "We and other distillers have freely entered into contracts with these monopoly states in which we warrant that the f. o. b. prices at which our brands are offered to those states are no higher than the lowest price at which we sell in other states."

The Deputy Commissioner of the State Liquor Authority testified that "[I]n a number of other States e. g., in the State of Pennsylvania, some of these same plaintiffs have been warranting for some time past that the price quoted to the Pennsylvania Liquor Control Board is 'the lowest current price quoted to any other customer,' or 'to any purchaser, dealer, agent or agency of any nature or kind anywhere in the United States of America.'" The same witness later added that '[A]s part and parcel of the offerings of their products in, for example, the State of Pennsylvania, they warrant that 'if and when special cash or commodity allowances, post-offs or discounts are offered to purchasers in any other State or the District of Columbia, the same' shall also be offered the Pennsylvania Liquor Control Board."

The Chairman of the Commission testified at a public hearing before a joint legislative committee that "We have, for example, the State of Pennsylvania which is the largest purchaser of liquor in the world. I think they purchase almost $400,000,000 worth of liquor a year—one customer. They swing a very big bit of leverage, and you cannot be convinced that that Pennsylvania customer does not insist the warranties made to the monopoly States may be more onerous than that required for the affirmations under § 9, since the warranties generally cover prices in other States at the very time of sale to the monopoly State, whereas the affirmations filed under § 9 cover prices charged elsewhere during the preceding month.

[6] We therefore conclude that the provisions of § 9 on their face place no unconstitutional burden on interstate commerce.

The appellants' contention that § 9 violates the command of the Supremacy Clause needs no extended discussion. The argument is based upon a claimed inconsistency between § 9 and the federal antitrust laws, specifically the Sherman Act, 26 Stat 209, as amended, 15 USC §§ 1–7 (1964 ed.) and § 2 of the Clayton Act, 38 Stat 730, as amended by the Robinson-Patman Act, 49 Stat 1526, 15 USC § 13 (1964 ed.).

[7-10] In this as in other areas of coincident federal and state regulation, the "teaching of this Court's decisions . . . enjoin[s] seeking out conflicts between state and federal regulation where none clearly exists." Huron Cement Co. v Detroit, 362 US 440, 446, 4 L ed 2d 852, 858, 80 S Ct 813, 78 ALR2d 1294. We find no such clear conflict in the present case. The bare compilation, without more, of price information on sales to wholesalers and retailers to support the affirmations filed with the State Liquor Authority would not of itself violate the Sherman Act. Maple Flooring Assn. v United States, 268 US 563, 582–586, 69 L ed 1093, 1102–1104, 45 S Ct 578; cf. American Column Co. v United States, 257 US 377, 66 L ed 284, 42 S Ct 114, 21 ALR 1093. Section 9 imposes no irresistible economic pressure on the appellants to violate the Sherman Act in order to comply with the requirements of § 9. On the contrary, § 9 appears firmly anchored to the assumption that the Sherman Act will deter any attempts by the appellants to preserve their New York price level by conspiring to raise the prices at
*[384 US 46]
which liquor is sold elsewhere *in the country. Nothing in the Twenty-first Amendment, of course, would prevent enforcement of the Sherman Act against such a conspiracy. United States v Frankfort Distilleries, 324 US 293, 299, 89 L ed 951, 956, 65 S Ct 661.

[11, 12] Although it is possible to envision circumstances under which price discriminations proscribed by the Robinson-Patman Act might be compelled by § 9, the existence of such potential conflicts is entirely too speculative in the present posture of this case to support the conclusion that New York is foreclosed from regulating liquor prices in the manner it has chosen.[15] Moreover, § 7 of Chapter 531 has amended the ABC Law by granting to the State

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on the lowest price that the distiller offers anywhere in the country. . . . [T]he State of Pennsylvania has a contract which permits them to send accountants into any supplier's office—and they do. They send corps of accountants into suppliers' offices to determine whether or not they're getting the best price. And in fact, if they were not, they would have a violation of contract . . . ."

In the monopoly States, of course, no sales to retailers by private wholesalers take place. Thus, brand owners dealing with those States are not placed in the position of vouching for sales to retailers by wholesalers occupying a "related person" status.

15. Cf. Wisconsin v Texaco, 14 Wis 2d 625, 630–631, 111 NW2d 918, 921; Safeway Stores v Oklahoma Retail Grocers Assn. 360 US 334, 342, note 7, 3 L ed 2d 1280, 1286, 79 S Ct 1196.

Liquor Authority ample discretion to modify the schedule requirements.[16] We cannot presume that the Authority will not exercise that discretion to alleviate any friction that might result should the ABC Law chafe against the Robinson-Patman Act or any other federal statute.

There remain for consideration the appellants' Fourteenth Amendment claims. Section 9, they say, violates the Due Process Clause in two respects, first because it imposes an "unreasonable, arbitrary, and capricious" burden upon them, and second because the statutory definition of "related person" is so vague as to be constitutionally intolerable. And § 9 violates the Equal Protection Clause, they say, because it arbitrarily discriminates among various segments of the liquor industry.

[13-16] The first contention amounts to a claim of a deprivation of due process of law, based on the *[384 US 47] argument that *§ 9 is not designed to promote temperance and that it is an unwise, impractical, and oppressive law. But it is not "the province of courts to draw on their own views as to the morality, legitimacy, and usefulness of a particular business in order to decide whether a statute bears too heavily upon that business and by so doing violates due process. Under the system of government created by our Constitution, it is up to legislatures, not courts, to decide on the wisdom and utility of legislation. There was a time when the Due Process Clause was used by this Court to strike down laws which were thought unreasonable, that is, unwise or incompatible with some particular economic or social philosophy. . . . The doctrine . . . that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely . . . has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws. . . ." Ferguson v Skrupa, 372 US 726, 728–730, 10 L ed 2d 93, 96, 97, 83 S Ct 1028, 95 ALR2d 1347.

[17, 18] Moreover, nothing in the Twenty-first Amendment or any other part of the Constitution requires that state laws regulating the liquor business be motivated exclusively by a desire to promote temperance.[17] The announced purpose of the legislature was to eliminate "discrimination against and disadvantage of consumers" in the State.[18] Frustrated by years of un-

16. Sections 101-b-3(a) and (b) of the ABC Law, as amended by § 7 of Chapter 531, provide: ". . . Such brand of liquor . . . shall not be sold to wholesalers ["retailers" in § 101-b-3(b)] except at the price and discounts then in effect unless prior written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter. . . ."

17. See State Board of Equalization v Young's Market Co. 299 US 59, 81 L ed 38, 57 S Ct 77; Mahoney v Joseph Triner Corp. 304 US 401, 82 L ed 1424, 58 S Ct 952; Indianapolis Brewing Co. v Liquor Comm'n. 305 US 391, 83 L ed 243, 59 S Ct 254; Joseph S. Finch & Co. v McKittrick, 305 US 395, 83 L ed 246, 59 S Ct 256; Ziffrin, Inc. v Reeves, 308 US 132, 84 L ed 128, 60 S Ct 163; California v Washington, 358 US 64, 3 L ed 2d 106, 79 S Ct 116.

18. The intent of the legislature in enacting § 9 is expressed in § 8 of Chapter 531:

". . . In order to forestall possible monopolistic and anti-competitive practices designed to frustrate the elimination of . . . discrimination and disadvantage [to consumers], it is hereby further declared that the sale of liquor should be subjected to certain further restrictions, prohibitions and regulations, and the necessity for the enactment of the provisions of section nine of this act is, therefore,

Intent pec re NY law

*[384 US 48]

happy experience *with a state-enforced mandatory resale price maintenance system that placed exclusive price-fixing power in the hands of the distillers, the legislature adopted § 9 as the core of the liquor price reform contemplated by Chapter 531. We cannot say that the legislature acted unconstitutionally when it determined that only by imposing the relatively drastic "no higher than the lowest price" requirement of § 9 could the grip of the liquor distillers on New York liquor prices be loosened.[19] In a variety of cases in areas no more sensitive than that of liquor control, this Court has upheld state maximum price legislation. See Nebbia v New York, 291 US 502, 78 L ed 940, 54 S Ct 505, 89 ALR 1469; Townsend v Yeomans, 301 US 441, 81 L ed 1210, 57 S Ct 842; O'Gorman & Young v Hartford Fire Ins. Co., 282 US 251, 75 L ed 324, 51 S Ct 130, 72 ALR 1163; Gold v DiCarlo, 380 US 520, 14 L ed 2d 266, 85 S Ct 1332.

[19, 20] The statutory definition of "related person," which the appellants attack as unconstitutionally vague, includes any person "the exclusive, principal or substantial business of which is the sale of a brand or brands of liquor purchased from such brand owner or wholesaler designated as agent . . . ." The claim

*[384 US 49]

of vagueness is centered *upon the term "principal or substantial." We cannot agree that that language is so vague as to be constitutionally invalid. The Deputy Commissioner of the State Liquor Authority testified in these proceedings that where the determination of "related persons" is unclear, the appellants will have access to the Authority for a ruling to clarify the issue.[20] As the Court said in Board of Governors v Agnew, 329 US 441, 449, 91 L ed 408, 414, 67 S Ct 411, ". . . we think it plain under our decisions that if substantiality is the statutory guide, the limits of administrative action are sufficiently definite or ascertainable so as to survive challenge on the grounds of unconstitutionality." Cf. Opp Cotton Mills v Administrator, 312 US 126, 142–146, 85 L ed 624, 634–636, 61 S Ct 524; Bowles v Willingham, 321 US 503, 512–516, 88 L ed 892, 901–904, 64 S Ct 641.

[21] Further, as the record indicates, the structure of the liquor industry is such that even the largest national distillers deal through a relatively limited number of wholesalers.[21] Frequently, a wholesaler

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declared as a matter of legislative determination."

The preceding portion of § 8 states the intent of the legislature in enacting § 11 of Chapter 531, which repealed § 101-c, the mandatory resale price maintenance provision. See Appendix, infra, p. 349.

19. We also find without merit the appellants' objection that the price computation provision, § 101-b-3(i), sweeps too broadly. That provision was intended to circumvent the established industry practice of interpreting "price" as "invoice price" rather than the amount actually realized by the seller on the transaction. There is no indication in the record that § 101-b-3(i) as applied will require the reflection in New York of every idiosyncratic price fluctuation elsewhere in the United States that happens to produce a "lowest price."

20. Section 101-b-4 of the ABC Law authorizes the State Liquor Authority to promulgate rules to carry out the purpose of § 101-b.

21. The vice-president of Joseph E. Seagram & Sons, Inc., one of the largest national distillers, testified that "Of the 330 wholesalers selling Seagram throughout the country, sixteen do 75 per cent or more of their business in the sale of our brands. Sixty-one do approximately 60 to 75 per cent in the sale of these brands; seventy-three do 40 to 60 per cent; seventy-nine, 20 to 40 per cent; sixty-four, 5 to 20 per cent; thirty-seven, 1 to 5 per cent."

agrees with a distiller not to sell brands of competing distillers in the same price range, and the prices charged by these wholesalers are potentially subject to the influence of the distillers.[22] We cannot say, therefore, that § 9 on its face imposes an unconstitutional burden on distillers or wholesalers in ascertaining the wholesalers who satisfy the

*[384 US 50]

*"related person" criterion or in obtaining information on prices charged by such wholesalers.

We come, then, to the appellants' argument that § 9 violates the Equal Protection Clause. That argument is based upon the claim that it was arbitrary for the legislature to except consumer sales and private label brands of liquor from the "no higher than the lowest price" requirement of § 9, and to reduce the scope of the price affirmation required with respect to sales made to wholesalers and retailers by those who are not "related persons."

[22, 23] We do not find that these differentiations constitute invidious discrimination. The legislature could reasonably have believed that, once the prices on sales by distillers and "related persons" were reduced, the prices of private label brands and brands sold by non-"related persons" would follow suit. Nor was it necessary for the legislature to impose the "no higher than the lowest price" requirement on sales by retailers to consumers. The legislature might reasonably have concluded that consumer prices would adequately reflect the reductions in prices to wholesalers and retailers accomplished by § 9, even though the state fair trade statute, which permits private resale price maintenance agreements on sales to consumers, appears to have emerged unscathed by the enactment of Chapter 531.[23] "A statute is not invalid under the Constitution because it might have gone farther than it did, or because it may not succeed in bringing about the result that it

*[384 US 51]

tends to produce." Roschen v *Ward 279 US 337, 339, 73 L ed 722, 729, 49 S Ct 336. "[T]he reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." Williamson v Lee Optical Co., 348 US 483, 489, 99 L ed 563, 573, 75 S Ct 461.

[24, 25] Although the appellants' primary attack is upon the constitutionality of § 9, they also challenge two minor provisions added by § 7 of Chapter 531 to the schedule requirements of the ABC Law. The first provision, which requires the price schedules to cover sales to wholesalers "irrespective of the place of sale or delivery," is designed to bring wholesalers within the price-publicity requirement of the law, even though they take delivery of the liquor outside New York for distribution within the State. The second provision, which requires the price schedules on sales to both wholesalers and retailers to include "the net bottle and case price paid by the seller," tends to promote pub-

22. See Borregard & Glusker, The Distilled Spirits Industry: A Marketing Survey 65–104, 133–163 (Yale Law School 1950); Oxenfeldt, "Whisky Prices," Industrial Pricing and Market Practices 445, 477, 483–486 (1951).

23. The New York fair trade statute is the Feld-Crawford Act, Laws 1940, c. 195, § 3, as amended, General Business Law, §§ 369-a–e. See National Distillers Corp. v Seyopp Corp. 17 NY2d 12, 214 NE2d 361, 267 NYS2d 193; National Distillers Corp. v R. H. Macy & Co. 23 App Div 2d 51, 258 NYS2d 298; Fleischmann Distilling Corp. v R. H. Macy & Co. 24 App Div 2d 977, 265 NYS2d 384; Victor Fischel & Co. v R. H. Macy & Co. NY Sup Ct, 154 NYLJ No. 95, p. 17 (Nov. 17, 1965).

licity of the seller's profit margins.[24] There is no indication in the present record that the State Liquor Authority will require the appellants to file schedules of prices on sales unrelated to the distribution of liquor in New York. As the Court of Appeals observed with regard to these provisions, "The statute is concerned with New York practices and, if the sales in other States have no relevancy to New York enforcement, the statute permits the Liquor Authority for good cause to waive the general prohibition against sales to wholesalers in the absence of such schedules. It would be reasonable to expect that the statute would be administered consistently with its sole purpose to regulate the intrastate sale of liquor." 16 NY 2d 47, 59, 209 NE2d 701, 706. We accept this construction of the statute by New York's highest court.
*[384 US 52]
N.A.A.C.P. v Button, 371 *US 415, 432, 9 L ed 2d 405, 417, 83 S Ct 328. As so construed, these provisions serve a clear and legitimate interest of New York in the exercise of its constitutional power to regulate the sale of liquor within its borders.

For the reasons that we have stated, we find no constitutional infirmity in any of the 1964 amendments to the New York ABC Law challenged on this appeal. Although it is possible that specific future applications of Chapter 531 may engender concrete problems of constitutional dimension, it will be time enough to consider any such problems when they arise. We deal here only with the statute on its face. And we hold that, so considered, the legislation is constitutionally valid. Accordingly, the judgment of the New York Court of Appeals is

Affirmed.

APPENDIX TO OPINION OF THE COURT

Chapter 531, 1964 Session Laws of New York.

. . . .

§ 7. Section one hundred one-b of such law, as added by chapter eight hundred ninety-nine of the laws of nineteen hundred forty-two, subdivision four thereof having been amended by chapter five hundred fifty-one of the laws of nineteen hundred forty-eight, is hereby amended to read as follows:

§ 101-b. *Unlawful discriminations prohibited; filing of schedules; schedule listing fund*

. . . .

3. (a) No brand of liquor or wine shall be sold to or purchased by a wholesaler, irrespective of the place of sale or delivery, unless a schedule, as provided by this section, is filed with the liquor authority, and is then in effect. Such schedule shall be in writing duly verified, and filed in the number of copies and form as required by the authority, and shall contain, with respect to each
*[384 US 53]
item, *the exact brand or trade name, capacity of package, nature of contents, age and proof where stated on the label, the number of bottles contained in each case, the bottle and case price to wholesalers, the net bottle and case price paid by the seller, which prices, in each instance, shall be individual for each item and not in "combination" with any other item, the discounts for

24. Where the manufacturer is also the seller, this provision is inapplicable. See Alcoholic Beverage Control Law, Appendix, Rule 16 of the State Liquor Authority, § 65.6(b)(3) (1965 Supp.), 9 NYCRR 65.6(b)(3).

quantity, if any, and the discounts for time of payment, if any. Such brand of liquor or wine shall not be sold to wholesalers except at the price and discounts then in effect unless prior written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter. Such schedule shall be filed by (1) the owner of such brand, or (2) a wholesaler selling such brand and who is designated as agent for the purpose of filing such schedule if the owner of the brand is not licensed by the authority, or (3) with the approval of the authority, by a wholesaler, in the event that the owner of the brand is unable to file a schedule or designate an agent for such purpose.

(b) No brand of liquor or wine shall be sold to or purchased by a retailer unless a schedule, as provided by this section, is filed with the liquor authority, and is then in effect. Such schedule shall be in writing duly verified, and filed in the number of copies and form as required by the authority, and shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents, age and proof where stated on the label, the number of bottles contained in each case, the bottle and case price to retailers, the net bottle and case price paid by the seller, which prices, in each instance, shall be individual for each item and not in "combination" with any other item, the discounts for quantity, if any, and the discounts for time of payment, if any. Such brand of liquor or wine shall not be sold to retailers except at the price and discounts then in effect unless prior

*[384 US 54]

*written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter. Such schedule shall be filed by each manufacturer selling such brand to retailers and by each wholesaler selling such brand to retailers.

(c) Provided however, nothing contained in this section shall require any manufacturer or wholesaler to list in any schedule to be filed pursuant to this section any item offered for sale to a retailer under a brand which is owned exclusively by one retailer and sold at retail within the state exclusively by such retailer.

. . . .

§ 8. In enacting section eleven of this act, it is the firm intention of the legislature (a) that fundamental principles of price competition should prevail in the manufacture, sale and distribution of liquor in this state, (b) that consumers of alcoholic beverages in this state should not be discriminated against or disadvantaged by paying unjustifiably higher prices for brands of liquor than are paid by consumers in other states, and that price discrimination and favoritism are contrary to the best interests and welfare of the people of this state, and (c) that enactment of section eleven of this act will provide a basis for eliminating such discrimination against and disadvantage of consumers in this state. In order to forestall possible monopolistic and anti-competitive practices designed to frustrate the elimination of such discrimination and disadvantage, it is hereby further declared that the sale of liquor should be subjected to certain further restrictions, prohibitions and regulations, and the necessity for the enactment of the provisions of section nine of this act is, therefore, declared as a matter of legislative determination.

§ 9. Subdivision three of section one hundred one-b of such law, as amended by section seven of this

*[384 US 55]

act, is *hereby amended to add eight new paragraphs, to be paragraphs (d), (e), (f), (g), (h), (i), (j) and (k), to read as follows:

(d) There shall be filed in connection with and when filed shall be deemed part of the schedule filed for a brand of liquor pursuant to paragraph (a) of this subdivision an affirmation duly verified by the owner of such brand of liquor, or by the wholesaler designated as agent for the purpose of filing such schedule if the owner of the brand of liquor is not licensed by the authority, that the bottle and case price of liquor to wholesalers set forth in such schedule is no higher than the lowest price at which such item of liquor was sold by such brand owner or such wholesaler designated as agent, or any related person, to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state (or state agency) which owns and operates retail liquor stores, at any time during the calendar month immediately preceding the month in which such schedule is filed. As used in this paragraph (d), the term "related person" shall mean any person (1) in the business of which such brand owner or wholesaler designated as agent has an interest, direct or indirect, by stock or other security ownership, as lender or lienor, or by interlocking directors or officers, or (2) the exclusive, principal or substantial business of which is the sale of a brand or brands of liquor purchased from such brand owner or wholesaler designated as agent, or (3) which has an exclusive franchise or contract to sell such brand or brands.

(e) There shall be filed in connection with and when filed shall be deemed part of any other schedule filed for a brand of liquor pursuant to paragraph (a) of this subdivision an affirmation duly verified by the person filing such schedule that the bottle and case price of liquor to wholesalers set forth in such sched-

*[384 US 56]

ule is no higher than *the lowest price at which such item of liquor was sold by such person to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state (or state agency) which owns and operates retail liquor stores, at any time during the calendar month immediately preceding the month in which such schedule is filed.

(f) There shall be filed in connection with and when filed shall be deemed part of any schedule filed for a brand of liquor pursuant to paragraph (b) of this subdivision by the owner of such brand of liquor, or by the whoesaler designated as agent for the purpose of filing such schedule if the owner of the brand of liquor is not licensed by the authority, or by a related person, an affirmation duly verified by such brand owner or such wholesaler designated as agent that the bottle and case price of liquor to retailers set forth in such schedule is no higher than the lowest price at which such item of liquor was sold by such brand owner of [sic] such wholesaler designated as agent, or any related person, to any retailer anywhere in any other state of the United States or in the District of Columbia, other than to any state (or state agency) which owns and operates retail liquor stores, at any time during the calendar month immediately preceding the month in which such schedule is filed. As used in this paragraph (f), the term "related person" shall mean any person (1) in the business of which such brand owner or wholesaler designated as agent has an interest, direct or indirect, by stock or other security ownership, as lender or lienor, or by interlocking directors or officers, or (2) the exclusive, principal or substantial business of which is the sale of a brand or brands of liquor purchased from such brand owner or wholesaler designated as agent, or (3) who has an exclusive franchise or contract to sell such brand or brands.

*[384 US 57]

*(g) There shall be filed in connection with and when filed shall be deemed part of any other schedule filed for a brand of liquor pursuant to paragraph (b) of this subdivision an affirmation duly verified by the person filing such schedule that the bottle and case price of liquor to retailers set forth in such schedule is no higher than the lowest price at which such item of liquor was sold by such person to any retailer anywhere in any other state of the United States or in the District of Columbia, other than to any state (or state agency) which owns and operates retail liquor stores, at any time during the calendar month preceding the month in which such schedule is filed.

(h) In the event an affirmation with respect to any item of liquor is not filed within the time provided by this section, any schedule for which such affirmation is required shall be deemed invalid with respect to such item of liquor, and no such item may be sold to or purchased by any wholesaler or retailer during the period covered by any such schedule.

(i) In determining the lowest price for which any item of liquor was sold in any other state or in the District of Columbia, or to any state (or state agency) which owns and operates retail liquor stores, appropriate reductions shall be made to reflect all discounts in excess of those to be in effect under such schedule, and all rebates, free goods, allowances and other inducements of any kind whatsoever offered or given to any such wholesaler, state (or state agency) or retailer, as the case may be, purchasing such item in such other state or in the District of Columbia; provided that nothing contained in paragraphs (d), (e), (f) and (g) of this subdivision shall prevent differentials in price which make only due allowance for differences in state taxes and fees, and in the actual cost of delivery. As used in this paragraph, the term "state taxes or fees" shall mean the excise

*[384 US 58]

taxes *imposed or the fees required by any state or the District of Columbia upon or based upon the gallon of liquor, and the term "gallon" shall mean one hundred twenty-eight fluid ounces.

(j) Notwithstanding and in lieu of any other penalty provided in any other provisions of this chapter, any person who makes a false statement in any affirmation made and filed pursuant to paragraph (d), (e), (f) or (g) of this subdivision shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than ten thousand dollars or by imprisonment in a county jail or penitentiary for a term of not more than six months or by both such fine and imprisonment. Every affirmation made and filed pursuant to paragraph (d), (e), (f) or (g) of this subdivision shall be deemed to have been made in every county in this state in which the brand of liquor is offered for sale under the terms of said schedule. The attorney general or any district attorney may prosecute any person charged with the commission of a violation of this paragraph. In any such prosecution by the attorney general, he may appear in person or by his deputy or assistant before any court or any grand jury and exercise all the powers and perform all the duties in respect of any such proceeding which the district attorney would otherwise be authorized or required to exercise or perform, and in such prosecution the district attorney shall only exercise such powers and perform such duties as are required of him by the attorney general or his deputy or assistant so attending.

(k) Upon final judgment of conviction of any person after appeal, or in the event no appeal is taken, upon the expiration of the time during which an appeal could have been taken, the liquor authority may refuse to accept for any period of months not exceeding three calendar months any affirmation required to be filed by such person.

LETTER OF INTENT

It is the intent of the House Judiciary Committee in passing out HB 572 that no additional personnel be authorized. Therefore, the Committee does not concur in the personal services section of the attached fiscal note.

took to L.A. 9:20
Tues. April 15 – 8:32 am

CS

Introduced: 4/11/79
Referred: Judiciary

IN THE HOUSE

BY HAYES, BETTISWORTH, FREEMAN, MONTGOMERY AND MUNSON

HOUSE BILL NO. 454

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of pricing of alcoholic beverages."

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

* Section 1. AS 04.15 is amended by adding new sections to read:

Sec. 04.15.120. FILING OF SCHEDULES OF PRICES REQUIRED. (a) A distiller or related person may not sell spiritous liquor to a holder of a general wholesale license unless the distiller or related person has filed with the Department of Revenue a schedule listing the information required under (b) of this section and an affidavit supporting that schedule as required by AS 04.15.130(b).

(b) The schedule required to be filed under (a) of this section shall include the following information:

(1) the brand name of each spiritous liquor sold;

(2) the capacity of each package of spiritous liquor sold;

(3) the nature of the contents of each package of spiritous liquor sold;

(4) the age and alcoholic content by volume of the contents of each package of spiritous liquor sold;

(5) the number of bottles of spiritous liquor contained in each case;

(6) the bottle and case price of spiritous liquor to wholesalers; and

(7) the net bottle and case price paid ~~by~~ to a distiller or related person for the spiritous liquor.

(c) The information on prices in the schedule required to be filed under (a) of this section shall be separately stated for each item of information required and may not be combined with another item of information, or stated in terms of a discount for quantity or for time of payment.

(d) The schedule required under (a) of this section shall be in writing, verified, and filed in the form and according to the deadlines required by the commissioner of revenue.

Sec. 04.15.130. PARITY WITH PRICES IMPOSED ELSEWHERE REQUIRED. (a) A price may not be filed under AS 04.15.120 for a bottle or a case of a brand of spiritous liquor which is higher than the lowest price at which the bottle or case of spiritous liquor was sold by the distiller or related person to a wholesaler in another state, the District of Columbia, or to a state which owns and operates retail liquor stores, at any time during the calendar month immediately preceding the month in which the schedule is filed.

(b) A distiller or related person must make an affidavit affirming that the schedule of prices filed by him under AS 04.15.120 complies with (a) of this section.

(c) In determining the lowest price for which a bottle or case of spiritous liquor was sold to a wholesaler in another state, in the District of Columbia, or to a state which owns and operates retail liquor stores, the commissioner of revenue shall make appropriate reductions (1) to reflect discounts in excess of those to be in effect under the schedule filed under AS 04.15.120, and (2) for rebates, free goods, allowances and other inducements offered or given to a wholesaler, state, or retailer purchasing the bottles or cases in the other state or the District of Columbia. However, nothing in this section prevents differences in price which result from differences in state taxes and fees, or from the actual cost of delivery.

(d) If the affidavit required under AS 04.15.130(b) is not filed with respect to an item of spiritous liquor within the time prescribed by the commissioner of revenue, the schedule for which the affidavit is support is invalid with respect to that item of spiritous liquor, and the item may not be sold to or purchased by a wholesaler during the period covered by the schedule.

(e) As used in this section

(1) "state taxes and fees" means the excise taxes imposed or the fees required by a state or by the District of Columbia upon, or based upon, a gallon of spiritous liquor; and

(2) "gallon" means 231 cubic ounces.

Sec. 04.15.140. PRICING IN ACCORDANCE WITH SCHEDULES REQUIRED. A distiller or related person may not sell spiritous liquor to a wholesaler at a price or discount other than that stated in a schedule filed under AS 04.15.120, unless the commissioner of revenue consents in writing upon a showing of good cause.

Sec. 04.15.150. PENALTY FOR VIOLATION. A distiller or related person who knowingly makes a false statement in an affidavit filed in accordance with AS 04.15.130(b) may be prohibited by the Commissioner from selling ~~or permitting the purchase~~ of any item of spiritous liquor by a wholesaler within the state. A wholesaler is prohibited

F

C-D→W
C→W
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Sec. 04.15.160. DEFINITIONS. As used in AS 04.15.120 - 04.15.160:

(1) "related person" means a person

(A) engaged in a business of which a distiller has an interest, direct or indirect, by stock or other security ownership, as lendor or lienor, or by interlocking directors or officers; or

(B) engaged in the exclusive, principal or substantial business of selling spiritous liquor purchased from a distiller; or

(C) who has an exclusive franchise or contract to sell a brand or brands of spiritous liquor;

(2) "spiritous liquor" means intoxicating liquor, except for wine, ale, porter, beer or malt liquor or malt beverages and all other vinous, malt, and other fermented liquors intended for human consumption and containing more than one per cent alcohol by volume.

* Sec. 2. AS 04.15.100(a) is amended to read:

Sec. 04.15.100. PENALTIES FOR VIOLATION OF TITLE OR MUNICIPAL ORDINANCE. (a) A person who violates any provision of this title other than AS 04.15.080 and AS 04.15.120 - 04.15.160 is guilty of a misdemeanor, and upon conviction is punishable by imprisonment of not more than one year, or by a fine of not more than $500. Each violation is a separate offense.

* Sec. 3. AS 04.20.010 is amended to read:

Sec. 04.20.010. INTOXICATING LIQUOR DEFINED. As used in this title,

(1) "intoxicating liquor" includes whiskey, brandy, rum, gin, wine, ale, porter, beer and all other spirituous, vinous, malt and other fermented or distilled liquors intended for human consumption and containing more than one per cent alcohol by volume;

(2) "board" means the Alcoholic Beverage Control Board.

(3) "Commissioner" means the Commissioner of Revenue

TABULATION OF LICENSE STATES BY CLASS OF THREE TIER SYSTEMS BY THEIR SUPPORTIVE LAWS, 1979

State	Class	At Rest	Primary Source	Price Affirmation	Franchise Protection	
Alaska	III	No	No	No	No	
Arizona	III	Yes	Yes	Yes	Yes	See Comment
Arkansas	I	Yes	Yes	No	Yes	
California	I	Yes	Yes	Yes	No	See Comments
Colorado	I	No	Yes	No	No	
Connecticut	I	Yes	Yes	Yes	Yes	See Comments
Delaware	I	Yes*	No	Yes	Yes	
District of Columbia	III	Yes*	Yes	No	No	
Florida	I	Yes*	Yes	Yes	Yes	See Comments
Georgia	I	Yes	No	Yes	Yes	
Hawaii	III	No	No	No	No	
Illinois	I	Yes	No	No	No	
Indiana	I	Yes*	No	No	No	
Kansas	I	Yes	Yes	Yes	Yes	See Comments
Kentucky	I	Yes*	No	Yes	No	See Comments
Louisiana	III	Yes	Yes	Yes*	No	See Comments
Maryland	III	No	Yes	Yes*	Yes*	See Comments
Massachusetts	I	Yes	No	Yes	Yes	
Minnesota	III	Yes*	No	Yes	No	See Comments
Missouri	II	No	Yes	No	Yes	See Comments
Nebraska	I	Yes	Yes	Yes	No	See Comments
Nevada	I	Yes	No	No	Yes	See Comments
New Jersey	III	Yes	Yes	Yes	Yes	See Comments
New Mexico	I	Yes	No	Yes	Yes	See Comments
New York	III	No	No	Yes	No	
North Dakota	I	Yes	No	No	No	
Ohio	III	Yes*	Yes*	No	Yes	See Comments
Oklahoma	I	No	No	Yes	No	
Rhode Island	I	Yes	Yes	Yes	No	See Comments
South Carolina	I	Yes	No	Yes	No	
South Dakota	I	Yes	No	No	No	
Tennessee	II	Yes	No	Yes	Yes	See Comments
Texas	I	Yes	Yes	No	No	
Wisconsin	I	Yes*	Yes	No	Yes	
Class I & II (1979)	24	27	17	20	[illegible]	
Status in 1975	23	26	11	14	13	
Increase	1	1	6	6	3	

Underlining indicates a change from status as reported in the Three Tier Book published in 1975.

The numbers indicate the number of states having the various types of supportive laws.

* Asterisk indicates a qualified provision.

STATE OF ALASKA

Interdepartmental Route Slip

TO: Mail Station	Department
3100	LEGISLATURE HOUSE JUDICIARY
Attention REP. CHARLES PARR	

☐ Approval
☐ Signature
☐ Comment
☐ Contact Me
☐ Prepare Reply
☐ For Your File
☐ Note & Return
☐ Initial & Return
☐ Return as Requested
☐ Return for Approval
☐ Necessary Action
☐ For Your Information

Remarks:

FROM: Mail Station	Department
0600	DHSS
By	Date 5/22

02-002(Rev. 2/80)

CS FOR HB 454

"An Act relating to the regulation of pricing of alcoholic beverages"

Passage of HB 454 would require distillers to file a schedule of their prices and other pertinent information regarding their product with the Department of Revenue. Additionally HB 454 ensures that the net price distillers charge wholesalers doing business in Alaska is no greater than the price distillers charge wholesalers doing business in other states.

Since passage of HB 454 apparently will not alter the retail price of spiritous liquor sold in Alaska nor substantialy increase its consumption the Office of Alcoholism and Drug Abuse neither opposes or favors HB 454.

Recommended by: Robert L. Cole 04/09/80
Robert L. Cole, Coordinator Date

Approved by: Helen D. Beirne by JMcG
Helen D. Beirne, Commissioner Date
Dept. of Health & Social Services

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS for House Bill No. 454
Title "An Act Relating to the Regulation of Pricing of Alcoholic Beverages"
Requested by Judiciary Committee Date 5/2/80

II. FISCAL DETAIL
Agency Affected Department of Health and Social Sevices
Program Category Affected ALCOHOLISM & DRUG ABUSE
BRU, Program, or Subprogram(s) Affected Administration
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		-0-				
200 TRAVEL		-0-				
300 CONTRACTUAL		-0-				
400 COMMODITIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS, ETC.		-0-				
TOTAL		-0-				

FUNDING (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
GENERAL FUND		-0-				
FEDERAL FUNDS		-0-				
OTHER (Specify Fund Source)		-0-				

POSITIONS

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
FULL TIME		-0-				
PART TIME		-0-				
TEMPORARY		-0-				

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Robert L. Cole

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Prepared by: Robert L. Cole Date: 5/14/80
Division/Office: Alcoholism/Drug Abuse PH: 586-6201
Department of Health & Social Services

Approval DHSS Mgt. & Bdgt.: [illegible] Date: 5/[illegible]/80

33-091 (Rev. 12/79)
Modify by DHSS (11-28-79)

Page ____ of ____

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 293 am

Title An Act Relating to Presumptive Death

Requested by ______ Date ______

II. FISCAL DETAIL

Agency Affected Department of Health and Social Sevices

Program Category Affected Vital Statistics

BRU, Program, or Subprogram(s) Affected ______

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

No fiscal impact

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Prepared by: Joan P. Graham Date: 2/13/80
Division/Office: Vital Statistics PH: 465-3393
Department of Health & Social Services

33-001 (Rev. 12/79)
Modify by DHSS (11-28-79)

Approval DHSS Mgt. & Bdgt: [illegible] Date: 2/27/80

HB 454

"An Act relating to the regulation of pricing of alcoholic beverages"

Passage of HB 454 would require distiller to file a schedule of their prices and other pertinent information regarding their product with the Department of Revenue. Additionally HB 454 ensures that the net price distillers charge wholesalers doing business in Alaska is no greater than the price distillers charge wholesalers doing business in other states.

Since passage of HB 454 apparently will not alter the retail price of spiritous liquor sold in Alaska nor substantialy increase its consumption the Office of Alcoholism and Drug Abuse neither opposes or favors HB 454.

Recommended by: Robert L. Cole 04/09/80

Robert L. Cole, Coordinator Date

Approved by: Helen D. Beirne by

Helen D. Beirne, Commissioner Date
Dept. of Health & Social Services

I. REQUEST
Bill/Resolution No. House Bill 454
Title "An Act relating to the regulation of pricing of alcoholic beverages"
Requested by Hayes, Bettisworth, Freeman, Montgomery, Munson Date 4/11/79

II. FISCAL DETAIL
Agency Affected Department of Health and Social Sevices
Program Category Affected ALCOHOLISM & DRUG ABUSE
BRU, Program, or Subprogram(s) Affected Administration
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		-0-				
200 TRAVEL		-0-				
300 CONTRACTUAL		-0-				
400 COMMODITIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS, ETC.		-0-				
TOTAL		-0-				

FUNDING (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
GENERAL FUND		-0-				
FEDERAL FUNDS		-0-				
OTHER (Specify Fund Source)		-0-				

POSITIONS

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
FULL TIME		-0-				
PART TIME		-0-				
TEMPORARY		-0-				

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Robert L. Cole
Prepared by: Robert L. Cole Date: 4/9/80
Division/Office: Alcoholism/Drug Abuse Ph: 586-6201
Department of Health & Social Services

33-001 (Rev. 12/79)
Modify by DHSS (11-28-79)

Approval DHSS Mgt. & Bdgt: ________ Date: ________

Page ____ of ____

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

April 7, 1980

The Honorable Charles Parr
Chairman
House Judiciary Committee
Room 124 - Capitol Building
Juneau, Alaska 99811

Dear Mr. Parr:

Re: House Bill No. 454

House Bill No. 454, an Act relating to the regulation of pricing of alcoholic beverages, was introduced in the House on April 11, 1979 and was referred to the House Judiciary Committee.

For the consideration of the House Judiciary Committee, I am enclosing a copy of a Fiscal Note prepared by Patrick Sharrock, Director, Alcoholic Beverage Control Board, Department of Revenue, Anchorage.

Sincerely,

R. D. Stevenson

R. D. Stevenson
Special Assistant

cc: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Patrick Sharrock, Director
Alcoholic Beverage Control Board
Department of Revenue

04-D2LH

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 454
Title Pricing of Alcoholic Beverages
Requested by Hayes, Bettisworth, Freeman, Montgomery Date April 11, 1979

II. FISCAL DETAIL
Agency Affected Department of Revenue
Program Category Affected Consumer Protection
BRU, Program, or Subprogram(s) Affected ABC Board
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		71.2				
200 TRAVEL		4.0				
300 CONTRACTUAL		15.2				
400 COMMODITIES		1.2				
500 EQUIPMENT		3.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	94.6	98.0	104.9	112.2	120.1

FUNDING (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
GENERAL FUND	-0-	94.6	98.0	104.9	112.2	120.1
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1) monthly reports are required from reporting parties
2) information reported is public
3) several hundred reports will potentially be filed monthly
4) some means of audit verification will be necessary
5) Alaskan licensed wholesalers are not required to file reports
6) new staff positions will be required. Form 13's are attached.
7) 7% inflation rate for fiscal years following FY 81 less equipment costs.

IV. DATE April 11, 1980 PREPARED BY Pat Sharrock
AGENCY ABC Board
PHONE 277-8638

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

Attachments - Comments
Fiscal Note
HB 454 - Pricing of Alcoholic Beverages

It is assumed that the only intent of the legislation is to provide for formal posting of prices charged by distillers to licensed Alaskan wholesalers. Price reporting of alcoholic beverages by wholesalers selling to licensed retailers who sell to consumers is apparently not intended to be included. However, the definition of "related person" at 04.15.160(b) appears to include wholesale licensees as purchasers from distillers who are required to file affidavits along with "related persons" who may sell to general wholesale licensees at 04.15.120.

The bill at 10.15.150 implies that a new class of liquor license is intended. This section provides for suspension by the Alcoholic Beverage Control Board when a "licensee" makes a false statement in an affidavit filed with the Board. At the present time distillers or related persons (unless related persons include licensed Alaska wholesalers) are not licensed by the State of Alaska. However, there is provision in Title 4 for a distillery license where a licensee operates a distillery in the State.

Other comments are:

1. Section 04.15.120(b) (7) mentions a "price paid by a distiller or related person for the spirituous liquor." Changing the word "paid" to "charged" may more appropriately express the intent of the legislation.

2. Other than for affirmation of prices, are reports to be utilized for other purposes? Confidentiality of information should be clarified.

3. Some Alaskan wholesalers publish prices monthly in the "Beverage Analyst" magazine. A sample of the pricing section is attached.

	POSITION TITLE				RANGE/STEP	BARG. UNIT.	LOCATION		APPROV.	DISAPP.
1	Revenue Auditor I				14A	G	Anchorage	GOV.		
2	TYPE OF POSITION: PFP	STAFF MONTHS: 12	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE	LEG.		

	TYPE OF EXPENDITURE			AMOUNT
3	1		2	3
4	PERSONAL SERVICES: SALARY	$1850/mo	21,780	
5	BENEFITS		6,752	
6	FICA	31%		
7	HEALTH INS.			
8	TOTAL PERSONAL SERVICES		28,532	
9	TRAVEL			3,000
10	CONTRACTUAL			5,050
11	COMMODITIES			400
12	EQUIPMENT			1,000
13	OTHER			
14	TOTAL COST			37,982

	CODE	FUNDING SOURCE	
15		FED RCPTS.	
16		GF MATCH.	
17		GEN. FUND	37,982
18		I-A RCPTS.	
19		PGM RCPTS	
20		OTHER	
21	CONTINUATION		
22	ADDITION		

FOR B&M USE ONLY

4A KEY NUMBER ____________ COLUMN NO. ______

JUSTIFICATION:

Attachment to:

Fiscal Note HB 454 -- Pricing of alcoholic beverages.

AGENCY Department of Revenue

PROGRAM AREA Consumer Protection

BRU ABC Board

COMPONENT ______

FY 81

13 REQUEST FOR NEW POSITION.

Page 1 of 3

REVISED DATE ______

1	POSITION TITLE Documents Processing Clerk II			RANGE/STEP 8A	BARG. UNIT. G	LOCATION Anchorage	GOV.	APPROV. / DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG.	

	TYPE OF EXPENDITURE		AMOUNT
3	1	2	3
4	PERSONAL SERVICES: SALARY $1277/mo	15,324	
5	BENEFITS		
6	FICA 31%	4,750	
7	HEALTH INS.		
8	TOTAL PERSONAL SERVICES	20,074	
9	TRAVEL		500
10	CONTRACTUAL		5,050
11	COMMODITIES		400
12	EQUIPMENT (one time expenditure)		1,000
13	OTHER		
14	TOTAL COST		27,024

	CODE	FUNDING SOURCE	
15		FED RCPTS.	
16		GF MATCH.	
17		GEN. FUND	27,024
18		I-A RCPTS	
19		PGM RCPTS	
20		OTHER	
21	CONTINUATION		
22	ADDITION		

FOR B&M USE ONLY

4A KEY NUMBER ______ COLUMN NO. ______

JUSTIFICATION:

Attachment to:

Fiscal Note HB 434-- Pricing of alcoholic beverages.

AGENCY Department of Revenue

PROGRAM AREA Consumer Protection

BRU ABC Board

COMPONENT ______

FY 81

13 REQUEST FOR NEW POSITION.

REVISED DATE ______

1	POSITION TITLE: Documents Processing Clerk II	RANGE/STEP: 10A	BARG. UNIT: C	LOCATION: Anchorage	GOV.	APPROV.	DISAPP.
2	TYPE OF POSITION / STAFF MONTHS / RP No. / PCN No.	PRIORITY		FORM 12 / PAGE/LINE	LEG.		

	TYPE OF EXPENDITURE		AMOUNT
3	1	2	3
4	PERSONAL SERVICES: SALARY $1440/mo	$17,280	
5	BENEFITS		
6	FICA 31%	5,357	
7	HEALTH INS.		
8	TOTAL PERSONAL SERVICES	22,637	
9	TRAVEL		500
10	CONTRACTUAL		5,050
11	COMMODITIES		400
12	EQUIPMENT (one time expenditure)		1,000
13	OTHER		
14	TOTAL COST		29,578

	CODE	FUNDING SOURCE	
15		FED RCPTS.	
16		GF MATCH.	
17		GEN. FUND	29,578
18		I-A RCPTS.	
19		PGM RCPTS	
20		OTHER	
21	CONTINUATION		
22	ADDITION		

FOR B&M USE ONLY

4A KEY NUMBER ______ COLUMN NO. ______

JUSTIFICATION:

Attachment to:

Fiscal Note HB 454-- Pricing of alcoholic beverages.

AGENCY Department of Revenue PROGRAM AREA Consumer Protection

BRU ABC Board

FY 81

COMPONENT ______

13 REQUEST FOR NEW POSITION.

Page 3 of 3

REVISED DATE ______

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

May 9, 1980

The Honorable Sam Cotten
Chairman
House Rules Committee
Room 208 - Capitol Building
Juneau, Alaska 99811

Dear Mr. Cotten:

Re: CS for House Bill No. 454

CS for House Bill No. 454, an Act relating to the regulation of pricing of alcoholic beverages, was referred in the House on May 2, 1980 by the House Judiciary Committee to the House Rules Committee.

For the consideration of the House Rules Committee, I am enclosing a copy of a Fiscal Note prepared by Patrick Sharrock, Director, Alcoholic Beverage Control Board, Department of Revenue, Anchorage concerning the proposed legislation.

Sincerely,

R. D. Stevenson
Special Assistant

cc: The Honorable Charles Parr
Chairman
House Judiciary Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Patrick Sharrock, Director
Alcoholic Beverage Control Board
Department of Revenue

04-02LH

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS HB#454
Title Pricing of alcoholic beverages
Requested by Representative Hayes, et al Date May 2, 1980

II. FISCAL DETAIL
Agency Affected Department of Revenue
Program Category Affected Consumer Protection
BRU, Program, or Subprogram(s) Affected Alcoholic Beverage Control Board
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		20.0				
200 TRAVEL		.5				
300 CONTRACTUAL		5.1				
400 COMMODITIES		.4				
500 EQUIPMENT		1.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	27.0	27.8	29.7	31.8	34.0

FUNDING (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
GENERAL FUND	-0-	27.0	27.8	29.7	31.8	34.0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

ASSUMPTIONS:

1. Monthly reports are required from reporting parties.
2. Information reported is public information.
3. 7% inflation rate for fiscal years following FY 81 less equipment costs.
4. Additional clerical position may be required to administer the reporting program. (Form 13 is attached)

IV. DATE May 9, 1980 PREPARED BY Patrick L. Sharrock
AGENCY Alcoholic Beverage Control Board
PHONE 277-8638

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

1	POSITION TITLE Documents Processing Clerk II			RANGE/STEP 8A	BARG. UNIT. G	LOCATION Anchorage		GOV	APPROV.	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12	PAGE/LINE	LEG.		

3	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
4	PERSONAL SERVICES: SALARY $1277/mo	$15,324	
5	BENEFITS		
6	FICA 31%	4,750	
7	HEALTH INS.		
8	TOTAL PERSONAL SERVICES		$20,074
9	TRAVEL		500
10	CONTRACTUAL		5,050
11	COMMODITIES		400
12	EQUIPMENT		1,000
13	OTHER		
14	TOTAL COST		$27,024

	CODE	FUNDING SOURCE	
15		FED RCPTS.	
16		GF MATCH.	
17		GEN. FUND	$27,024
18		I–A RCPTS.	
19		PGM RCPTS	
20		OTHER	
21	CONTINUATION		
22	ADDITION		

FOR B&M USE ONLY

4A KEY NUMBER ____________ COLUMN NO. ______

JUSTIFICATION: Attachment to: CS
Fiscal Note HB#454, relating to pricing of alcoholic beverages.

AGENCY Department of Revenue

PROGRAM AREA Consumer Protection

BRU ABC Board

COMPONENT

FY 81

13 REQUEST FOR NEW POSITION.

Page 1 of 1

REVISED DATE

Introduced: 4/11/79
Referred: Judiciary

BY HAYES, BETTISWORTH, FREEMAN, MONTGOMERY AND MUNSON

IN THE HOUSE

HOUSE BILL NO. 454

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of pricing of alcoholic beverages."

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

* Section 1. AS 04.15 is amended by adding new sections to read:

Sec. 04.15.120. FILING OF SCHEDULES OF PRICES REQUIRED. (a) A distiller or related person may not sell spiritous liquor to a holder of a general wholesale license unless the distiller or related person has filed with the Department of Revenue a schedule listing the information required under (b) of this section and an affidavit supporting that schedule as required by AS 04.15.130(b).

(b) The schedule required to be filed under (a) of this section shall include the following information:

(1) the brand name of each spiritous liquor sold;

(2) the capacity of each package of spiritous liquor sold;

(3) the nature of the contents of each package of spiritous liquor sold;

(4) the age and alcoholic content by volume of the contents of each package of spiritous liquor sold;

(5) the number of bottles of spiritous liquor contained in each case;

(6) the bottle and case price of spiritous liquor to wholesalers; and

(7) the net bottle and case price paid ~~by~~ to a distiller or related person for the spiritous liquor.

(c) The information on prices in the schedule required to be filed under (a) of this section shall be separately stated for each item of information required and may not be combined with another item of information, or stated in terms of a discount for quantity or for time of payment.

(d) The schedule required under (a) of this section shall be in writing, verified, and filed in the form and according to the deadlines required by the commissioner of revenue.

Sec. 04.15.130. PARITY WITH PRICES IMPOSED ELSEWHERE REQUIRED. (a) A price may not be filed under AS 04.15.120 for a bottle or a case of a brand of spiritous liquor which is higher than the lowest price at which the bottle or case of spiritous liquor was sold by the distiller or related person to a wholesaler in another state, the District of Columbia, or to a state which owns and operates retail liquor stores, at any time during the calendar month immediately preceding the month in which the schedule is filed.

(b) A distiller or related person must make an affidavit affirming that the schedule of prices filed by him under AS 04.15.120 complies with (a) of this section.

(c) In determining the lowest price for which a bottle or case of spiritous liquor was sold to a wholesaler in another state, in the District of Columbia, or to a state which owns and operates retail liquor stores, the commissioner of revenue shall make appropriate reductions (1) to reflect discounts in excess of those to be in effect under the schedule filed under AS 04.15.120, and (2) for rebates, free goods, allowances and other inducements offered or given to a wholesaler, state, or retailer purchasing the bottles or cases in the other state or the District of Columbia. However, nothing in this section prevents differences in price which result from differences in state taxes and fees, or from the actual cost of delivery.

(d) If the affidavit required under AS 04.15.130(b) is not filed with respect to an item of spiritous liquor within the time prescribed by the commissioner of revenue, the schedule for which the affidavit is support is invalid with respect to that item of spiritous liquor, and the item may not be sold to or purchased by a wholesaler during the period covered by the schedule.

(e) As used in this section

(1) "state taxes and fees" means the excise taxes imposed or the fees required by a state or by the District of Columbia upon, or based upon, a gallon of spiritous liquor; and

(2) "gallon" means 231 cubic ounces.

Sec. 04.15.140. PRICING IN ACCORDANCE WITH SCHEDULES REQUIRED. A distiller or related person may not sell spiritous liquor to a wholesaler at a price or discount other than that stated in a schedule filed under AS 04.15.120, unless the commissioner of revenue consents in writing upon a showing of good cause.

No license issued

~~dept~~ commissioner

Sec. 04.15.150. PENALTY FOR VIOLATION. The ~~board~~ may suspend the license of A ~~a licensee~~ who knowingly makes a false statement in an affidavit filed in accordance with AS 04.15.130. The suspension may be for a period not to exceed five days for the first offense and not to exceed thirty days for each subsequent offense.

may be prohibited by the commissioner from selling or permitted ~~[illegible]~~ any item of spiritous liquor within the State

Sec. 04.15.160. DEFINITIONS. As used in AS 04.15.120 - 04.15.160:

(1) "related person" means a person

(A) engaged in a business of which a distiller has an interest, direct or indirect, by stock or other security ownership, as lendor or lienor, or by interlocking directors or officers; or

(B) engaged in the exclusive, principal or substantial business of selling spiritous liquor purchased from a distiller; or

(C) who has an exclusive franchise or contract to sell a brand or brands of spiritous liquor;

(2) "spiritous liquor" means intoxicating liquor, except for wine, ale, porter, beer or malt liquor or malt beverages and all other vinous, malt, and other fermented liquors intended for human consumption and containing more than one per cent alcohol by volume.

* Sec. 2. AS 04.15.100(a) is amended to read:

Sec. 04.15.100. PENALTIES FOR VIOLATION OF TITLE OR MUNICIPAL ORDINANCE. (a) A person who violates any provision of this title other than AS 04.15.080 and AS 04.15.120 - 04.15.160 is guilty of a misdemeanor, and upon conviction is punishable by imprisonment of not more than one year, or by a fine of not more than $500. Each violation is a separate offense.

* Sec. 3. AS 04.20.010 is amended to read:

Sec. 04.20.010. INTOXICATING LIQUOR DEFINED. As used in this title,

(1) "intoxicating liquor" includes whiskey, brandy, rum, gin, wine, ale, porter, beer and all other spirituous, vinous, malt and other fermented or distilled liquors intended for human consumption and containing more than one per cent alcohol by volume;

~~(2) "board" means the Alcoholic Beverage Control Board.~~

(2) commissioner means the Commissioner of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS for House Bill No. 454
Title Relating to the regulation of pricing of alcoholic beverages
Requested by House Judiciary Committee Date May 12, 1980

II. FISCAL DETAIL
Agency Affected Department of Revenue
Program Category Affected Consumer Protection
BRU, Program, or Subprogram(s) Affected Alcoholic Beverage Control Board
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Charles H. Parr

IV. DATE May 12, 1980 PREPARED BY Rep. Charles H. Parr, Chairman
AGENCY House Judiciary Committee
PHONE 465-3718

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Legislative Affairs Agency
FROM: Margaret W. Berck, Staff
DATE: April 25, 1980

Please provide the Committee with a CS in final version form for HB 454 that incorporates the following changes:

1. Page 3, lines 18-22. Change to read:

Sec. 04.15.150 PENALTY FOR VIOLATION. If the affidavit filed in accordance with AS 04.15.130(b) contains a false statement knowingly made by a distiller or related person, the Commissioner shall prohibit the sale to or purchase by a wholesaler of any item of spiritous liquor from such distiller or related person.

2. Page 4, line 16-18. Delete all of section #3..

Gill

ARIZONA LIQUOR LAWS

§4-233 Affirmation; filing; violation; penalty.

A. There shall be filed in connection with, and when filed shall be deemed part of, the schedule filed for a brand of spirituous liquor, an affirmation duly verified by the supplier that the bottle and case price of spirituous liquor to wholesalers set forth in the schedule is no higher than the lowest price at which such item of liquor was sold by the supplier or any related person to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state or state agency which owns and operates retail liquor stores. As used in this section "related person" means any person:

1. In the business of which the supplier has an intereste direct or indirect, by stock or other security ownership, as lendor or lienor, or by interlocking directors or officers;
2. In the exclusive, principal or substantial business of selling a brand or brands of spirituous liquor purchased from the supplier; or
3. Who has an exclusive franchise or contract to sell the brand or brands.

B. In the event an affirmation with respect to any item of spirituous liquor is not filed within the prescribed time, any schedule for which the affirmation is required shall be deemed invalid with respect to that item of spirituous liquor, and no such item may be sold to or purchased by any wholesaler during the period covered by any such schedule.

C. In determining the lowest price for which any item of spirituous liquor was sold in any other state or in the District of Columbia, or to any state or state agency which owns or operates retail liquor stores, appropriate reductions shall be made to reflect all discounts in excess of those to be in effect under such schedule, and all rebates, free goods, allowances and other inducements of any kind whatsoever offered or given to any such wholesaler, state or state agency or retailer, as the case may be, purchasing such item in the other state or in the District of Columbia; provided nothing contined in this article shall prevent differentials in price which make only due allowance for differences in state taxes and fees, and in the actual cost of delivery. As used in this section, "state taxes and fees" means the excise taxes imposed or the rees required by any state or the District of Columbia upon, or based upon, the gallon of liquor, and the term "gallon" means two hundred thirty-one cubic inches.

D. Notwithstanding any other penalty provided in this title, any person who knowingly makes a false statement in any affirmation made and filed pursuant to this article shall be liable for suspension of any license issued by the board for a period not to exceed five days for the first offense and thirty days for each offense thereafter.

E. Upon final judgement that any person has violated any provision of this article, the superintendent may refuse to accept for any period of months not exceeding three calendar months any affirmation required to be filed by such person.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

(907) 465-3600

May 14, 1980

The Honorable Charles H. Parr
Chairman, House Judiciary
Committee
Eleventh Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 548
Our file J-66-628-80

Dear Chairman Parr:

Attached is a proposed House Judiciary Committee Substitute for Senate Bill No. 548, "an Act relating to the processing of permits by state agencies; and providing for an effective date." It is the result of several days of negotiation between representatives of industries most affected by state permitting procedures and the administration. The proposed committee substitute is a compromise which everyone finds acceptable although not ideal.

Section 1 of the proposed committee substitute contains certain legislative findings demonstrating the need for such a bill. Basically, the findings indicate that the procedural process which must be followed is too complicated and lengthy, and that orderly development of resources in the state is being delayed unnecessarily as a result.

The remainder of the bill is directed toward solving the procedural problems. In that sense, the bill is not intended to be a substitute for or to impliedly repeal the substantive provisions of law which currently govern permits; its thrust is to reduce the procedural delay in the permitting process as it currently exists, and to create a vehicle for reviewing and suggesting changes to the state's overall approach to permitting.

Section 2 would add a new article, Permit Processing, to AS 44.62, the Administrative Procedure Act. The new provisions require each state agency with permitting authority to classify its permits into one of three classes depending on the length of time it takes the agency to make a final pre-adjudicatory decision on an application for those permits. These time frames could be waived by agreement between the agency and the applicant, and the head of the permitting agency, upon making a specific finding (subject to judicial review) regarding the complexity of a particular project, could establish a different time period for rendering a final pre-adjudicatory decision. If a final pre-adjudicatory decision is not rendered within the time frame specified, the application would be deemed automatically approved. Such automatic approval, of course, would still be subject to judicial review for substantive compliance with applicable laws governing the permit even though it was granted as a result of agency inaction. Agencies also would be required to adopt uniform deadlines for public notice, public hearing and inter-agency consultation, and would be required to include certain items in any final decision on an application for one of the more substantive permits (Classes II and III).

After substantial discussion and consideration of a variety of judicial review provisions, all parties agreed that it was more appropriate not to create a new, separate judicial review provision. Accordingly, judicial review would be governed by the existing provisions of the Administrative Procedure Act, particularly AS 44.62.560-570, the current Rules of Court, particularly Alaska Rule of Appellate Procedure 45(a)(2), and the various judicial doctrines which have developed under those provisions. See, e.g., Jager v. State, 537 P.2d 1100, 1107 (Alaska 1975). Again, this is an area where this bill would not change existing substantive law.

Section 4 of the proposed committee substitute would create the Permit Reform Commission. Composed of representatives of industry, the Native community, environmental groups, the executive branch, and chaired by the lieutenant governor, it would have two distinct missions. First, it would oversee the classification of permits by agencies under the provisions added to the Administrative Procedure Act. Where the commission disagreed with a classification made by an agency, the agency would be required to submit to the resource committees of both houses of the Twelfth Alaska State Legislature, First Session, a detailed explanation of its reasons for deviating from the commission's recommendation. The commission's second task would be to recommend changes in the Administrative Procedure Act to facilitate the permitting process. While addressing the time frame issue in the proposed committee substitute, all parties recognized that there are other problem areas with the permitting process which cannot be solved by merely mandating action within a specified time frame. A comprehensive review of the whole process is needed to recommend substantive changes to streamline the system while retaining the necessary substance; the commission would accomplish this.

We have spoken with Senator Bennett, and he believes the approach set out in the proposed committee substitute is worth trying for a year. We believe it has the potential to benefit all interested parties in that it addresses certain concrete problems -- the timing of agency action -- immediately while also establishing a framework for a comprehensive review of the permitting process to recommend fundamental changes where appropriate.

We hope you will give favorable consideration to calendaring the proposed committee substitute before the House Judiciary Committee at an early date. If we can provide any further information, we will be happy to do so at your convenience.

Yours very truly,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Wilson L. Condon
Wilson L. Condon
Deputy Attorney General

WLC/lm
Attachment

April 25, 1980

M E M O R A N D U M

TO: Rep. Charlie Parr, Chairman

FROM: Margaret W. Berck, Staff Counsel

SUBJECT: CS for HB 454

I have reviewed the United States Supreme Court decision in California Retail Liquor Dealers Association v. Midcal Aluminum, Inc., 48 LW 4328 (March 3, 1980), and do not find that case applicable to HB 454 as Midcal deals with the maintenance of resale prices.

The controlling case regarding HB 454 is Seagram v. Hostetter, 384 US 35 (1966). In that case a New York statute substantially similar to HB 454 was challenged on various constitutional, as well as anti-trust, grounds. In Seagram the United States Supreme Court upheld the New York statute.

The opinions in both Midcal and Seagram are attached hereto for your information.

MWB:vc
Att.

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM June 5, 1980

TO: Rep. Charlie Parr, Chairman, House Judiciary
Rep. Nels Anderson, Vice-Chairman

FROM: Margaret W. Berck, Counsel

SUBJECT: Whether HB 454, which has now been inserted in the FCCS for SB 239, establishes a monopoly.

I. HB 454 requires distillers to file a schedule of their prices with the Department of Revenue. Furthermore, the bill ensures that the net price a distiller charges a wholesaler doing business in Alaska is no greater than the price the distiller charges a wholesaler doing business in any other state. Nothing in the bill prevents the distiller from selling to the Alaskan wholesaler at a price lower than the lowest price the distiller charges a wholesaler in another state.

II. This type of legislation clearly does not establish a monopoly. This question was resolved in Seagram v. Hostetter, 384 US 35 (1966). There the United States Supreme Court held that a New York statute, almost identical to HB 454, did not violate federal antitrust laws -- specifically the Sherman Act and the Clayton Act. The Court concluded that the New York statute imposed no irrestible economic pressure on the distillers to violate the Sherman Act in order to comply with the requirements of the statute. On the contrary, the Court pointed out that the statute appeared firmly anchored to the assumption that the Sherman Act would deter any attempts by the distillers to preserve their New York price levels by conspiring to raise the prices at which liquor is sold elsewhere in the country. Nothing in the Twenty-first Amendment, of course, would prevent enforcement of the Sherman Act against such a conspiracy.

MWB:vc

cc: Rep. Dick Eliason

HOUSE BILL 454 ENCOMPASSES A LAW WHICH EXISTS IN 23 STATES, WITH 17 OTHER MONOPOLY STATES COVERED BY THE "DES MOINES WARRANTY" PROTECTING CONSUMERS IN THOSE STATES.

HB 454 REQUIRES THAT ANY LIQUOR DISTILLER WISHING TO DO BUSINESS IN THE STATE FILE A SCHEDULE OF PRICES WITH THE DEPARTMENT OF REVENUE, AND CERTIFY THAT THOSE PRICES ARE NOT HIGHER (EXCEPT AS AFFECTED BY TAXES AND TRANSPORTATION) THAN THOSE CHARGED TO WHOLESALERS IN ANY OTHER STATE, OR THE DISTRICT OF COLUMBIA.

THE IDEA THAT SUCH A LAW WOULD CREATE A MONOPOLY IS ENTIRELY CONTRARY TO THE FACTS. IT WOULD PERMIT THE DISTILLER WILLING TO OFFER THE LOWEST PRICES TO COMPETE FOR BUSINESS ALONG WITH THOSE WHICH ALREADY HOLD MONOPOLIES. THE ONLY REMAINING TYPE OF MONOPOLY, WHICH THE LAW WOULD NOT AFFECT IN ANY FASHION, WOULD BE WITH RESPECT TO BRAND NAMES, WHICH ARE THE LEGITIMATE PROPERTY OF DISTILLERS.

6/5/80

Charlie –

This memo is from Joe Koyes' office regarding HB454 which we put in SB239.

Nels

Alaska State Legislature
House

JUNEAU ALASKA

TO: Will Condon
FROM: Peggy Berck, Counsel to House Judiciary
DATE: June 5, 1980

I understand from Dick Eliason that you were taking a look at HB 454 that was inserted in the FCC for SB 239.

Attached is a memo which I distributed this morning that may be of assistance to you. You may wish to also note that I took a look at California Retail Liquor Dealors Assn. v. Midcal Aluminum, 48 US Law Week 4238 (March 3, 1980), but did not find that case applicable to HB 454.

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M — June 5, 1980

TO: Rep. Charlie Parr, Chairman, House Judiciary
Rep. Nels Anderson, Vice-Chairman

FROM: Margaret W. Berck, Counsel

SUBJECT: Whether HB 454, which has now been inserted in the FCCS for SB 239, establishes a monopoly.

I. HB 454 requires distillers to file a schedule of their prices with the Department of Revenue. Furthermore, the bill ensures that the net price a distiller charges a wholesaler doing business in Alaska is no greater than the price the distiller charges a wholesaler doing business in any other state. Nothing in the bill prevents the distiller from selling to the Alaskan wholesaler at a price lower than the lowest price the distiller charges a wholesaler in another state.

II. This type of legislation clearly does not establish a monopoly. This question was resolved in Seagram v. Hostetter, 384 US 35 (1966). There the United States Supreme Court held that a New York statute, almost identical to HB 454, did not violate federal antitrust laws -- specifically the Sherman Act and the Clayton Act. The Court concluded that the New York statute imposed no irrestible economic pressure on the distillers to violate the Sherman Act in order to comply with the requirements of the statute. On the contrary, the Court pointed out that the statute appeared firmly anchored to the assumption that the Sherman Act would deter any attempts by the distillers to preserve their New York price levels by conspiring to raise the prices at which liquor is sold elsewhere in the country. Nothing in the Twenty-first Amendment, of course, would prevent enforcement of the Sherman Act against such a conspiracy.

MWB:vc

cc: Rep. Dick Eliason

The United States
LAW WEEK

Supreme Court
Opinions

March 4, 1980 • THE BUREAU OF NA[illegible]NAL AFFAIRS, INC., WASHINGTON, D.C. • Volume 48, No. 34

OPINIONS ANNOUNCED MARCH 3, 1980

The Supreme Court decided:

CRIMINAL LAW AND PROCEDURE—False Statements

Neither federal immunity statute, 18 U.S.C. §6002, nor Fifth Amendment's privilege against compelled self-incrimination prevents prosecution, at trial for giving false testimony before grand jury while under immunity grant, from introducing into evidence defendant's truthful immunized statements as well as those statements that constitute "corpus delicti" or "core" of false statement offense. (U.S. v. Apfelbaum, No. 78-972) .... page 4217

FREEDOM OF INFORMATION—Agency Records

Freedom of Information Act does not require State Department to retrieve transcripts and notes that were made of former secretary of state's telephone conversations but that had been removed from State Department custody prior to filing of FOIA request for disclosure, since agency possession or control of material is prerequisite to FOIA disclosure, and since agency's failure to seek return of material, even if wrongfully removed from Government custody, is not "withholding" of records under FOIA; notes of former secretary of state's telephone conversations, made while he was national security advisor to President, are not "agency records" subject to FOIA; neither Federal Records Act, which establishes records management program for federal agencies, nor Federal Records Disposal Act, which provides exclusive means for records disposal, confers right of action on private parties. (Kissinger v. Reporters Committee for Freedom of the Press, Nos. 78-1088 & 78-1217) page 4223

Data that was generated by privately controlled organization receiving federal grant funds, but that was never obtained by funding agency, are not "agency records" subject to mandatory disclosure under Freedom of Information Act. (Forsham v. Harris, No. 78-1118) .... page 4232

INTOXICATING LIQUORS—State Regulation

California wine pricing statute, which requires either wine producers or wholesalers to file schedule of resale prices and prohibits sale of wine below such prices, merely authorizes enforcement of prices established by private parties and, therefore, is not immune from Sherman Act liability under "state action" doctrine of Parker v. Brown, 317 U.S. 341 (1943); Twenty-First Amendment's reservation to states of power to regulate "transportation or importation" of liquor does not bar application of Sherman Act to California's wine resale price maintenance system. (California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., No. 79-97) .... page 4238

SHIPS AND SHIPPING—Longshoremen

Stevedore's lien on injured longshoreman's recovery from negligent shipowner, for amount of compensation payment paid to longshoreman under Longshoremen's and Harbor Workers' Compensation Act, need not be reduced by proportionate share of longshoreman's expenses in obtaining recovery from shipowner. (Bloomer v. Liberty Mutual Insurance Co., No. 78-1418) .... page 4211

Full Text of Opinions

No. 78-1418

William E. Bloomer, Jr., Petitioner, v. Liberty Mutual Insurance Company, etc.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[March 3, 1980]

Syllabus

Held: A stevedore's lien for the amount of its compensation payment to an injured longshoreman under the Longshoremen's and Harbor Workers' Compensation Act against the longshoreman's recovery in a negligence action against the shipowner may not be reduced by an amount representing the stevedore's proportionate share of the longshoreman's legal expenses in obtaining recovery from the shipowner. The language, structure, and history of the Act support this conclusion, rather than the application of the equitable "common fund" doctrine that when a third person benefits from litigation instituted by another, that person may be required to bear a portion of the expenses of suit.

586 F. 2d 908, affirmed.

MARSHALL, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, WHITE, POWELL, REHNQUIST, and STEVENS, JJ., joined. BLACKMUN, J., filed a dissenting opinion.

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Under the Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. § 901 *et seq.* (1976), a longshoreman is entitled to receive compensation payments from his stevedore for disability or death resulting from an injury occurring on the navigable waters of the United States. If the longshoreman believes that his injuries warrant a recovery in excess of the compensation provided under the Act, he may also bring a negligence action against the owner of the vessel on which the injury occurred. The longshoreman's recovery from the shipowner is subject to the stevedore's lien in the amount of the compensation payment. The question for decision is

NOTICE: These opinions are subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released * * * at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

0148-8[illegible]9/80/$00.50

3/10/80

Forsham v. *Califano, supra.* Finally, as the Court also acknowledges, there is no question that the Government has full access to the data under the terms of the grant and under federal regulations. Indeed, if it so chose, the Government could obtain permanent custody of the data merely by requesting it from UGDP. Thus, the data remain with the grantee only at the pleasure of the Government. In my view the record abundantly establishes that these data were developed with public funds and with Government assistance and, in large part, for governmental purposes. Therefore, I would hold that they are agency records, and I respectfully dissent.

III

I emphasize that the standards I suggest do not mean opening to the public the files of all grantees or of all who submit information to the Government. In many cases grantees' records should not be treated as agency records. But the Court's approach must inevitably undermine FOIA's great purpose of exposing Government to the people. It is unavoidable that as the work of federal agencies mushrooms both in quantity and complexity the agencies must look to outside organizations to assist in governmental tasks. Just as the explosion of federal agencies, which are not directly responsible to the electorate, worked to hide the workings of the Federal Government from voters before enactment of FOIA. S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965), the understandable tendency of agencies to rely on nongovernmental grantees to perform myriad projects distances the electorate from important information by one more step. If the records of such organizations, when drawn directly into the regulatory process, are immune from public inspection, then government by secrecy must surely return.

MICHAEL R. SONNENREICH, Washington, D.C. (NEIL L. CHAYET, HARVEY W. FREISHTAT, MICHAEL X. MORRELL, DANIEL F. SHAW, and CHAYET and SONNENREICH, with him on the brief) for petitioner; KENNETH S. GELLER, Office of Solicitor General (WADE H. McCREE, JR., Solicitor General, ALICE DANIEL, Acting Assistant Attorney General, WILLIAM ALSUP, Assistant to the Solicitor General, RICHARD M. COOPER, MICHAEL P. PESKOE, and JESSE H. STRIBLING, JR., with him on the brief) for respondent.

No. 79-97

California Retail Liquor Dealers Association, Petitioner, v. Midcal Aluminum, Inc., et al.	On Writ of Certiorari to the Court of Appeal of California for the Third Appellate District.

[March 3, 1980]

Syllabus

A California statute requires all wine producers and wholesalers to file with the State fair trade contracts or price schedules. If a producer has not set prices through a fair trade contract, wholesalers must post a resale price schedule and are prohibited from selling wine to a retailer at other than the price set in a price schedule or fair trade contract. A wholesaler selling below the established prices faces fines or license suspension or revocation. After being charged with selling wine for less than the prices set by price schedules and also for selling wines for which no fair trade contract or schedule had been filed, respondent wholesaler filed suit in the California Court of Appeal asking for an injunction against the State's wine-pricing scheme. The Court of Appeal ruled that the scheme restrains trade in violation of the Sherman Act, and granted injunctive relief, rejecting claims that the scheme was immune from liability under that Act under the "state action" doctrine of *Parker* v. *Brown*, 317 U. S. 341, and was also protected by § 2 of the Twenty-first Amendment, which prohibits the transportation or importation of intoxicating liquors into any State for delivery or use therein in violation of the State's laws.

Held:

1. California's wine-pricing system constitutes resale price maintenance in violation of the Sherman Act, since the wine producer holds the power to prevent price competition by dictating the prices charged by wholesalers. And the State's involvement in the system is insufficient to establish antitrust immunity under *Parker* v. *Brown*, *supra*. While the system satisfies the first requirement for such immunity that the challenged restraint be "one clearly articulated and affirmatively expressed as state policy," it does not meet the other requirement that the policy be "actively supervised" by the State itself. Under the system the State simply authorizes price-setting and enforces the prices established by private parties, and it does not establish prices, review the reasonableness of price schedules, regulate the terms of fair trade contracts, monitor market conditions, or engage in any "pointed reexamination" of the program. The national policy in favor of competition cannot be thwarted by casting such a gauzy cloak of state involvement over what is essentially a private price-fixing arrangement.

2. The Twenty-first Amendment does not bar application of the Sherman Act to California's wine-pricing system.

(a) Although under that Amendment States retain substantial discretion to establish liquor regulations over and above those governing the importation or sale of liquor and the structure of the liquor distribution system, those controls may be subject to the federal commerce power in appropriate situations.

(b) There is no basis for disagreeing with the view of the California courts that the asserted state interests behind the resale price maintenance system of promoting temperance and protecting small retailers are less substantial than the national policy in favor of competition. Such view is reasonable and is supported by the evidence, there being nothing to indicate that the wine-pricing system helps sustain small retailers or inhibits the consumption of alcohol by Californians.

90 Cal. App. 3d 979, 153 Cal. Rptr. 757, affirmed.

POWELL, J., delivered the opinion of the Court, in which all other Members joined, except BRENNAN, J., who took no part in the consideration or decision of the case.

MR. JUSTICE POWELL delivered the opinion of the Court.

In a state-court action, respondent Midcal Aluminum, Inc., a wine distributor, presented a successful antitrust challenge to California's resale price maintenance and price posting statutes for the wholesale wine trade. The issue in this case is whether those state laws are shielded from the Sherman Act by either the "state action" doctrine of *Parker* v. *Brown*, 317 U. S. 341 (1943), or § 2 of the Twenty-first Amendment.

I

Under § 24866 (b) of the California Business and Professions Code, all wine producers, wholesalers, and rectifiers must file with the State fair trade contracts or price schedules.[1] If a wine producer has not set prices through a fair trade contract, wholesalers must post a resale price schedule for that producer's brands. *Id.*, § 24866 (a). No state-licensed wine merchant may sell wine to a retailer at other than the price set "either in an effective price schedule or in an effective fair trade contract. . . ." *Id.*, § 24862 (West Supp. 1979).

The State is divided into three trading areas for administration of the wine pricing program. A single fair trade contract or schedule for each brand sets the terms for all wholesale transactions in that brand within a given trading area. *Id.*, §§ 24862, 24864–24865 (West Supp. 1979). Similiarly, state regulations provide that the wine prices posted by a single wholesaler within a trading area bind all wholesalers in that area. *Midcal Aluminum, Inc.* v. *Rice*, 90 Cal. App. 3d 979, 983–984, 153 Cal. Rptr. 757, 762 (1979). A licensee

[1] The statute provides:

"Each wine grower, wholesaler licensed to sell wine, wine rectifier, and rectifier shall:

"(a) Post a schedule of selling prices of wine to retailers or consumers for which his resale price is not governed by a fair trade contract made by the person who owns or controls the brand.

"(b) Make and file a fair trade contract and file a schedule of resale prices, if he owns or controls a brand of wine resold to retailers or consumers." Cal. Bus. & Prof Code § 24866 (West 1964).

seling below the established prices faces fines, license suspension, or outright license revocation. Cal. Bus. & Prof. Code § 24880.[2] The State has no direct control over wine prices, and it does not review the reasonableness of the prices set by wine dealers.

Midcal Aluminum, Inc. is a wholesale distributor of wine in Southern California. In July 1978, the Department of Alcoholic Beverage Control charged Midcal with selling 27 cases of wine for less than the prices set by the effective price schedule of the E & J Gallo Winery. The Department also alleged that Midcal sold wines for which no fair trade contract or schedule had been filed. Midcal stipulated that the allegations were true and that the State could fine it or suspend its license for those transgressions. App. 19–20. Midcal then filed a writ of mandate in the California Court of Appeal for the Third Appellate District asking for an injunction against the State's wine pricing system.

The Court of Appeal ruled that the wine pricing scheme restrains trade in violation of the Sherman Act, 15 U. S. C. § 1 *et seq.* The court relied entirely on the reasoning in *Rice* v. *Alcoholic Beverage Control Appeals Bd.*, 21 Cal. 3d 431, 579 P. 2d 476 (1978), where the California Supreme Court struck down parallel restrictions on the sale of distilled liquors. In that case, the court held that because the State played only a passive part in liquor pricing, there was no *Parker* v. *Brown* immunity for the program.

> "In the price maintenance program before us, the state plays no role whatever in setting the retail prices. The prices are established by the producers according to their own economic interests, without regard to any actual or potential anticompetitive effect; the state's role is restricted to enforcing the prices specified by the producers. There is no control, or 'pointed re-examination,' by the state to insure that the policies of the Sherman Act are not 'unnecessarily subordinated' to state policy." 21 Cal. 3d, at 445, 579 P. 2d, at 486.

Rice also rejected the claim that California's liquor pricing policies were protected by § 2 of the Twenty-first Amendment, which insulates state regulation of intoxicating liquors from many federal restrictions. The court determined that the national policy in favor of competition should prevail over the state interests in liquor price maintenance—the promotion of temperance and the preservation of small retail establishments. The court emphasized that the California system not only permitted vertical control of prices by producers, but also frequently resulted in horizontal price fixing. Under the program, many comparable brands of liquor were marketed at identical prices.[3] Referring to congressional and state legislative studies, the court observed that resale price maintenance has little positive impact on either temperance or small retail stores. See pp. 14–15, *infra.*

In the instant case, the State Court of Appeal found the analysis in *Rice* squarely controlling. 90 Cal. App., at 984, 153 Cal. Rptr., at 760. The court ordered the Department of Alcoholic Beverage Control not to enforce the resale price maintenance and price posting statutes for the wine trade. The Department, which in *Rice* had not sought certiorari from this Court, did not appeal the ruling in this case.[4] An appeal was brought by the California Retail Liquor Dealers Association, an intervenor.[5] The California Supreme Court declined to hear the case, and the Dealers Association sought certiorari from this Court. We granted the writ, — U. S. — (1979), and now affirm the decision of the state court.

II

The threshold question is whether California's plan for wine pricing violates the Sherman Act. This Court has ruled consistently that resale price maintenance illegally restrains trade. In *Dr. Miles Medical Co.* v. *Park & Sons Co.*, 220 U. S. 373, 407 (1911), the Court observed that such arrangements are "designed to maintain prices . . . , and to prevent competition among those who trade in [competing goods]." See *Albrecht* v. *The Herald Co.*, 390 U. S. 145 (1968); *United States* v. *Parke, Davis & Co.*, 362 U. S. 29 (1960); *United States* v. *Schrader's Son, Inc.*, 252 U. S. 85 (1920). For many years, however, the Miller-Tydings Act of 1937 permitted the States to authorize resale price maintenance. 50 Stat. 693. The goal of that statute was to allow the States to protect small retail establishments that Congress thought might otherwise be driven from the marketplace by large-volume discounters. But in 1975 that congressional permission was rescinded. The Consumer Goods Pricing Act of 1975, 89 Stat. 801, repealed the Miller-Tydings Act and related legislation.[6] Consequently, the Sherman Act's ban on resale price maintenance now applies to fair trade contracts unless an industry or program enjoys a special antitrust immunity.

California's system for wine pricing plainly constitutes resale price maintenance in violation of the Sherman Act. *Schwegmann Bros.* v. *Calvert Corp.*, 341 U. S. 384 (1951); see *Albrecht* v. *The Herald Co., supra; Kiefer-Stewart Co.* v. *Seagram & Sons*, 340 U. S. 211 (1951); *Dr. Miles Medical Co.* v. *Park & Sons Co., supra.* The wine producer holds the power to prevent price competition by dictating the prices charged by wholesalers. As Mr. Justice Hughes pointed out in *Dr. Miles*, such vertical control destroys horizontal competition as effectively as if wholesalers "formed a combination and endeavored to establish the same restrictions . . . by agreement with each other." 220 U. S., at 408.[7] Moreover, there can be no claim that the California program is simply intrastate regulation beyond the reach of the Sherman Act. See *Schwegmann Bros.* v. *Calvert Corp., supra; Burke* v. *Ford*, 389 U. S. 320 (1967) (*per curiam*).

Thus, we must consider whether the State's involvement in the price-setting program is sufficient to establish antitrust immunity under *Parker* v. *Brown*, 317 U. S. 341 (1943). That

[2] Licensees that sell wine below the prices specified in fair trade contracts or schedules also may be subject to private damage suits for unfair competition. *Id.*, § 24752.

[3] The court cited record evidence that in July 1976, five leading brands of gin each sold in California for $4.89 for a fifth of a gallon, and that five leading brands of scotch whiskey sold for either $8.39 or $8.40 a fifth. *Rice* v. *Alcoholic Beverage Control Appeals Bd.*, 21 Cal. 3d 431, 454, and nn. 14, 16, 579 P. 2d [illegible], and nn. 14, 16 (1978).

[4] The State also did not appeal the decision in *Capiscean Corp.* v. *Alcoholic Beverage Control Appeals Bd.*, 87 Cal. App. 3d 996, 151 Cal. Rptr. 492 (1979), which used the analysis in *Rice* to invalidate California's resale price maintenance scheme for retail wine sales to consumers.

[5] The California Retail Liquor Dealers Association, a trade association of independent retail liquor dealers in California, claims over 3,000 members.

[6] The congressional reports accompanying the Consumer Goods Pricing Act of 1975, 89 Stat. 801, noted that repeal of fair trade authority would not alter whatever power the States hold under the Twenty-first Amendment to control liquor prices. S. Rep. No. 94–466, 94th Cong., 1st Sess., 2 (1975); H. R. Rep. No. 94–341, 94th Cong., 1st Sess., 3, n. 2 (1975). We consider the effect of the Twenty-first Amendment on this case in Part III, *infra.*

[7] In *Rice*, the California Supreme Court found direct evidence that resale price maintenance resulted in horizontal price fixing. See p. 3, *supra*, and n. 3. Although the Court of Appeal made no such specific finding in this case, the court noted that the wine pricing system "cannot be upheld for the same reasons the retail price maintenance provisions were declared invalid in *Rice*." *Midcal Aluminum, Inc.* v. *Rice*, 90 Cal. App. 3d 979, 983, 153 Cal. Rptr. 757, 760 (1979).

immunity for state regulatory programs is grounded in our federal structure. "In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress." *Id.*, at 351. In *Parker* v. *Brown*, this Court found in the Sherman Act no purpose to nullify state powers. Because the Act is directed against "individual and not state action," the Court concluded that state regulatory programs could not violate it. *Id.*, at 352.

Under the program challenged in *Parker*, the state Agricultural Prorate Advisory Commission authorized the organization of local cooperatives to develop marketing policies for the raisin crop. The Court emphasized that the Advisory Commission, which was appointed by the governor, had to approve cooperative policies following public hearings: "It is the state which has created the machinery for establishing the prorate program. . . . [I]t is the state, acting through the Commission, which adopts the program and enforces it. . . ." *Id.*, at 352. In view of this extensive official oversight, the Court wrote, the Sherman Act did not apply. Without such oversight, the result could have been different. The Court expressly noted, "a state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful. . . ." *Id.*, at 351.

Several recent decisions have applied *Parker*'s analysis. In *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773 (1975), the Court concluded that fee schedules enforced by a state bar association were not mandated by ethical standards established by the State Supreme Court. The fee schedules therefore were not immune from antitrust attack. "It is not enough that . . . anticompetitive conduct is 'prompted' by state action; rather, anticompetitive conduct must be compelled by direction of the State acting as sovereign." *Id.*, at 791. Similarly, in *Cantor* v. *Detroit Edison Co.*, 428 U. S. 579 (1976), a majority of the Court found that no antitrust immunity was conferred when a state agency passively accepted a public utility's tariff. In contrast, Arizona rules against lawyer advertising were held immune from Sherman Act challenge because they "reflect[ed] a clear articulation of the State's policy with regard to professional behavior" and were "subject to pointed re-examination by the policymaker—the Arizona Supreme Court—in enforcement proceedings." *Bates* v. *State Bar of Arizona*, 433 U. S. 350, 362 (1977).

Only last Term, this Court found antitrust immunity for a California program requiring state approval of the location of new automobile dealerships. *New Motor Vehicle Bd. of Calif.* v. *Orrin W. Fox Co.*, 439 U. S. 96 (1978). That program provided that the State would hold a hearing if an automobile franchisee protested the establishment or relocation of a competing dealership. *Id.*, at 103. In view of the State's active role, the Court held, the program was not subject to the Sherman Act. The "clearly articulated and affirmatively expressed" goal of the state policy was to "displace unfettered business freedom in the matter of the establishment and relocation of automobile dealerships." *Id.*, at 109.

These decisions establish two standards for antitrust immunity under *Parker* v. *Brown*. First, the challenged restraint must be "one clearly articulated and affirmatively expressed as state policy"; second, the policy must be "actively supervised" by the State itself. *City of Lafayette* v. *Louisiana Power & Light Co.*, 435 U. S. 389, 410 (1978) (opinion of BRENNAN, J.).[8] The California system for wine pricing satisfies the first standard. The legislative policy is forthrightly stated and clear in its purpose to permit resale price maintenance. The program, however, does not meet the second requirement for *Parker* immunity. The State simply authorizes price-setting and enforces the prices established by private parties. The State neither establishes prices nor reviews the reasonableness of the price schedules; nor does it regulate the terms of fair trade contracts. The State does not monitor market conditions or engage in any "pointed reexamination" of the program.[9] The national policy in favor of competition cannot be thwarted by casting such a gauzy cloak of state involvement over what is essentially a private price fixing arrangement. As *Parker* teaches, "a state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful. . . ." 317 U. S., at 351.

III

Petitioner contends that even if California's system of wine pricing is not protected state action, the Twenty-first Amendment bars application of the Sherman Act in this case. Section 1 of that Amendment repealed the Eighteenth Amendment's prohibition on the manufacture, sale or transportation of liquor. The second section reserved to the States certain power to regulate traffic in liquor: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." The remaining question before us is whether § 2 permits California to countermand the congressional policy—adopted under the commerce power—in favor of competition.

A

In determining state powers under the Twenty-first Amendment, the Court has focused primarily on the language of the provision rather than the history behind it. *State Board* v. *Young's Market Co.*, 299 U. S. 59, 63-64 (1936).[10] In terms,

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[8] See *Norman's On the Waterfront, Inc.* v. *Wheatley*, 444 F. 2d 1011, 1018 (CA3 1971); *Asheville Tobacco Bd.* v. *FTC*, 263 F. 2d 502, 509-510 (CA4 1959); Note, *Parker* v. *Brown* Revisited: The State Action Doctrine After *Goldfarb, Cantor*, and *Bates*, 77 Colum. L. Rev. 898, 916 (1977).

[9] The California program contrasts with the approach of those States that completely control the distribution of liquor within their boundaries. *E. g.*, Va. Code §§ 4-15, 4-28 (Repl. Vol. 1979). Such comprehensive regulation would be immune from the Sherman Act under *Parker* v. *Brown*, 317 U. S. 341 (1943), since the State would "displace unfettered business freedom" with its own power. *New Motor Vehicle Bd.* v. *Orrin W. Fox Co.*, 439 U. S. 96, 109 (1978); see *State Board* v. *Young's Market Co.*, 299 U. S. 59, 63 (1936).

[10] The approach is supported by sound canons of constitutional interpretation and demonstrates a wise reluctance to wade into the complex currents beneath the congressional proposal of the Amendment and its ratification in the state conventions. The Senate sponsor of the Amendment resolution said the purpose of § 2 was "to restore to the States . . . absolute control in effect over interstate commerce affecting intoxicating liquors. . . ." 76 Cong. Rec. 4143 (1933) (remarks of Sen. Blaine). Yet he also made statements supporting Midcal's claim that § 2 was designed only to ensure that "dry" States could not be force by the Federal Government to permit the sale of liquor. See *id.*, at 4140-4141. The sketchy records of the state conventions reflect no consensus on the thrust of § 2, although delegates at several conventions expressed their hope that state regulation of liquor traffic would begin immediately. E. Brown, Ratification of the Twenty-first Amendment to the Constitution 104 (1938) (Wilson, President of the Idaho Convention); *id.*, at 191-192 (Darnall, President of Maryland Convention); *id.*, at 247 (Gaylord, Chairman of Missouri Convention); *id.*, at 469-473 (resolution adopted at Washington Convention calling for state action "to regulate the liquor traffic"). See generally Note, The Effect of the Twenty-first Amendment on State Authority to Control Intoxicating Liquors, 75 Colum. L. Rev. 1578, 1580 (1975); Note, Economic Localism in State Alcoholic Beverage Laws—Experience Under the Twenty-first Amendment, 72 Harv. L. Rev. 1145, 1147 (1959).

the Amendment gives the States control over the "transportation or importation" of liquor into their territories. Of course, such control logically entails considerable regulatory power not strictly limited to importing and transporting alcohol. *Ziffrin, Inc.* v. *Reeves*, 308 U. S. 132, 138 (1939). We should not, however, lose sight of the explicit grant of authority.

This Court's early decisions on the Twenty-first Amendment recognized that each State holds great powers over the importation of liquor from other jurisdictions. *Young's Market, supra,* concerned a license fee for interstate imports of alcohol; another case focused on a law restricting the types of liquor that could be imported from other States. *Mahoney* v. *Joseph Triner Corp.*, 304 U. S. 401 (1938); two others involved "retaliation" statutes barring imports from States that proscribed shipments of liquor from other States. *Finch & Co.* v. *McKittrick*, 305 U. S. 395 (1939); *Indianapolis Brewing Co.* v. *Liquor Control Comm'n*, 305 U. S. 391 (1939). The Court upheld the challenged state authority in each case, largely on the basis of the States' special power over the "importation and transportation" of intoxicating liquors. Yet even when the States had acted under the explicit terms of the Amendment, the Court resisted the contention that § 2 "freed the States from all restrictions upon the police power to be found in other provisions of the Constitution." *Young's Market, supra*, 229 U. S., at 64.

Subsequent decisions have given "wide latitude" to state liquor regulation, *Seagram & Sons* v. *Hostetter*, 384 U. S. 35, 42 (1966), but they also have stressed that important federal interests in liquor matters survived the ratification of the Twenty-first Amendment. The States cannot tax imported liquor in violation of the Export-Import Clause. *Department of Revenue* v. *James Beam Co.*, 377 U. S. 341 (1964). Nor can they insulate the liquor industry from the Fourteenth Amendment's requirements of equal protection, *Craig* v. *Boren*, 429 U. S. 190, 204–209 (1976), and due process, *Wisconsin* v. *Constantineau*, 400 U. S. 433, 436 (1970).

More difficult to define, however, is the extent to which Congress can regulate liquor under its interstate commerce power. Although that power is directly qualified by § 2, the Court has held that the Federal Government retains some Commerce Clause authority over liquor. In *Jameson & Co.* v. *Morgenthau*, 307 U. S. 171 (1939) *(per curiam)*, this Court found no violation of the Twenty-first Amendment in a whiskey labeling requirement prescribed by the Federal Alcohol Administration Act, 49 Stat. 977 (1935). And in *Ziffrin, Inc.* v. *Reeves*, *supra*, the Court did not uphold Kentucky's system of licensing liquor haulers until it was satisfied that the state program was reasonable. 308 U. S., at 139.

The contours of Congress' commerce power over liquor were sharpened in *Hostetter* v. *Idlewild Liquor Corp.*, 377 U. S. 324, 331–332 (1964).

> "To draw a conclusion . . . that the Twenty-first Amendment has somehow operated to 'repeal' the Commerce Clause wherever regulation of intoxicating liquors is concerned would, however, be an absurd oversimplification. If the Commerce Clause had been *pro tanto* 'repealed,' then Congress would be left with no regulatory power over interstate or foreign commerce in intoxicating liquor. Such a conclusion would be patently bizarre and is demonstrably incorrect."

The Court added a significant, if elementary, observation: "Both the Twenty-first Amendment and the Commerce Clause are parts of the same Constitution. Like other provisions of the Constitution, each must be considered in the light of the other, and in the context of the issues and interests at stake in any concrete case." *Id.*, at 332. See *Craig* v. *Boren*, 429 U. S. 190, 206 (1976).[11]

This pragmatic effort to harmonize state and federal powers has been evident in several decisions where the Court held liquor companies liable for anticompetitive conduct not mandated by a State. See *Kiefer-Stewart Co.* v. *Seagram & Sons*, 340 U. S. 211 (1951); *United States* v. *Frankfort Distilleries, Inc.*, 324 U. S. 293 (1945). In *Schwegmann Bros.* v. *Calvert Corp.*, 341 U. S. 384 (1951), for example, a liquor manufacturer attempted to force a distributor to comply with Louisiana's resale price maintenance program, a program similar in many respects to the California system at issue here. The Court held that because the Louisiana statute violated the Sherman Act, it could not be enforced against the distributor. Fifteen years later, the Court rejected a Sherman Act challenge to a New York law requiring liquor dealers to attest that their prices were "no higher than the lowest price" charged anywhere in the United States. *Seagram & Sons* v. *Hostetter*, 384 U. S. 35 (1966). The Court concluded that the statute exerted "no irresistible economic pressure on the [dealers] to violate the Sherman Act in order to comply," but it also cautioned that "[n]othing in the Twenty-first Amendment, of course, would prevent the enforcement of the Sherman Act" against an interstate conspiracy to fix liquor prices. *Id.*, at 45–46. See *Burke* v. *Ford*, 389 U. S. 320 (1967) *(per curiam)*.

These decisions demonstrate that there is no bright line between federal and state powers over liquor. The Twenty-first Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system. Although States retain substantial discretion to establish other liquor regulations, those controls may be subject to the federal commerce power in appropriate situations. The competing state and federal interests can be reconciled only after careful scrutiny of those concerns in a "concrete case." *Hostetter* v. *Idlewild Liquor Corp.*, 377 U. S., at 332.

B

The federal interest in enforcing the national policy in favor of competition is both familiar and substantial.

> "Antitrust laws in general, and the Sherman Act in particular, are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms." *United States* v. *Topco Assoc.*, 405 U. S. 596, 610 (1972).

See *Northern Pacific Ry.* v. *United States*, 356 U. S. 1, 4 (1958). Although this federal interest is expressed through a statute rather than a constitutional provision, Congress "exercis[ed] all the power it possessed" under the Commerce Clause when it approved the Sherman Act. *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, 435 (1932); see *City of Lafayette* v. *Louisiana Power & Light Co.*, 435 U. S., at 398. We must acknowledge the importance of the Act's procompetition policy.

The state interests protected by California's resale price maintenance system were identified by the state courts in this

[11] In *Nippert* v. *City of Richmond*, 327 U. S. 416 (1946), the Court commented in a footnote:

"[E]ven the commerce in intoxicating liquors, over which the Twenty-first Amendment gives the States the highest degree of control, is not altogether beyond the reach of the federal commerce power, at any rate when the State's regulation squarely conflicts with regulation imposed by Congress. . . ." *Id.*, at 425, n. 15

case, 90 Cal. App. 3d, at 983, 153 Cal. Rptr., at 761 and in *Rice* v. *Alcoholic Beverage Control Appeals Bd.*, 21 Cal. 3d, at 451, 579 P. 2d, at 490.[12] Of course, the findings and conclusions of those courts are not binding on this Court to the extent that they undercut state rights guaranteed by the Twenty-first Amendment. See *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 659 (1945); *Creswill* v. *Knights of Pythias*, 225 U. S. 246, 261 (1912). Nevertheless, this Court accords "respectful consideration and great weight to the views of the state's highest court" on matters of state law, *Indiana ex rel. Anderson* v. *Brand*, 303 U. S. 95, 100 (1938), and we customarily accept the factual findings of state courts in the absence of "exceptional circumstances." *Fry Roofing Co.* v. *Wood*, 344 U. S. 157, 160 (1952).

The California Court of Appeal stated that its review of the State's system of wine pricing was "controlled by the reasoning of the [California] Supreme Court in *Rice* [*supra*]." 90 Cal. App. 3d, at 983, 153 Cal. Rptr., at 761. Therefore, we turn to that opinion's treatment of the state interests in resale price maintenance for distilled liquors.

In *Rice*, the State Supreme Court found two purposes behind liquor resale price maintenance: "to promote temperance and orderly market conditions." 21 Cal. 3d, at 451, 579 P. 2d, at 490.[13] The court found little correlation between resale price maintenance and temperance. It cited a state study showing a 42% increase in per capita liquor consumption in California from 1950 to 1972, while resale price maintenance was in effect. *Id.*, at 457–458, 579 P. 2d, at 494, citing California Dept. of Finance, Alcohol and the State: A Reappraisal of California's Alcohol Control Program, xi. 15 (1974). Such studies, the court wrote, "at the very least raise a doubt regarding the justification for such laws on the ground that they promote temperance." *Ibid.*[14]

The *Rice* opinion identified the primary state interest in orderly market conditions as "protect[ing] small licensees from predatory pricing policies of large retailers." *Id.*, at 456, 579 P. 2d, at 493.[15] In gauging this interest, the court adopted the views of the Appeals Board of the Alcoholic Beverages Control Department, which first ruled on the claim in *Rice*. The state agency "rejected the argument that fair trade laws were necessary to the economic survival of small retailers. . . ." *Ibid.* The agency relied on a congressional study of the impact on small retailers of fair trade laws enacted under the Miller-Tydings Act. The study revealed that "states with fair trade laws had a 55 per cent higher rate of firm failures than free trade states, and the rate of growth of small retail stores in free trade states between 1956 and 1972 was 32 per cent higher than in states with fair trade laws." *Ibid.*, citing S. Rep. No. 94–466, 94th Cong., 1st Sess., 3 (1975). Pointing to the congressional abandonment of fair trade in the 1975 Consumer Goods Pricing Act, see p. 5, *supra*, the State Supreme Court found no persuasive justification to continue "fair trade laws which eliminate price competition among retailers." 21 Cal. 3d, at 457, 579 P. 2d, at 494. The Court of Appeal came to the same conclusion with respect to the wholesale wine trade. 90 Cal. App. 3d, at 983.

We have no basis for disagreeing with the view of the California courts that the asserted state interests are less substantial than the national policy in favor of competition. That evaluation of the resale price maintenance system for wine is reasonable, and is supported by the evidence cited by the State Supreme Court in *Rice*. Nothing in the record in this case suggests that the wine pricing system helps sustain small retail establishments. Neither the petitioner nor the State Attorney General in his *amicus* brief has demonstrated that the program inhibits the consumption of alcohol by Californians. We need not consider whether the legitimate state interests in temperance and the protection of small retailers ever could prevail against the undoubted federal interest in a competitive economy. The unsubstantiated state concerns put forward in this case simply are not of the same stature as the goals of the Sherman Act.

We conclude that the California Court of Appeal correctly decided that the Twenty-first Amendment provides no shelter for the violation of the Sherman Act caused by the State's wine pricing program.[16] The judgment of the California Court of Appeal, Third Appellate District, is

Affirmed.

MR. JUSTICE BRENNAN did not take part in the consideration or decision of this case.

WILLIAM T. CHIDLAW, Sacramento, Calif., for petitioner; GEORGE J. ROTH, Deputy Attorney General, State of California (GEORGE DEUKMEJIAN, Attorney General, with him on the brief) for California, as amicus curiae; JACK B. OWENS, San Francisco, Calif. (ROBERT E. FREITAS, ORRICK, HERRINGTON, ROWLEY & SUTCLIFFE, ELLIOT S. KAPLAN, ROBINS, DAVIS & LYONS, FRANK C. DAMRELL, JR., and DAMRELL, DAMRELL & NELSON, with him on the brief) for respondents.

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[12] As the unusual posture of this case reflects, the State of California has shown less than an enthusiastic interest in its wine pricing system. As we noted, the state agency responsible for administering the program did not appeal the decision of the California Court of Appeal. See p. 4, *supra*; Tr. of Oral Arg. 20. Instead, this action has been maintained by the California Retail Liquor Dealers Association, a private intervenor. But neither the intervenor nor the State Attorney General, who filed a brief *amicus curiae* in support of the legislative scheme, has specified any state interests protected by the resale price maintenance system other than those noted in the state court opinions cited in text.

[13] The California Court of Appeal found no additional state interests in the instant case. 90 Cal. App. 3d, at 984, 153 Cal. Rptr., at 760–761. That court rejected the suggestion that the wine price program was designed to protect the State's wine industry, pointing out that the statutes "do not distinguish between California wines and imported wines." *Ibid.*

[14] See *Seagram & Sons* v. *Hostetter*, 384 U. S. 35, 39 (1966) (citing study concluding that resale price maintenance in New York State had "no significant effect upon the consumption of alcoholic beverages").

[15] The California Supreme Court also stated that orderly market conditions might "reduce excessive competition, thereby encouraging temperance." 21 Cal. 3d, at 456, 579 P. 2d, at 493. The concern for temperance, however, was considered by the court as an independent state interest in resale price maintenance for liquor.

[16] Since Midcal requested only injunctive relief from the state court, there is no question before us involving liability for damages under 15 U. S. C. § 15.