

Assembly Committee on.....

Date: 5/19/81.....Page: 1.....

MEMBERS PRESENT: Mr. Bennett
 Mr. Brenner
 Mr. Chaney
 Mr. Dini
 Mr. DuBois
 Mr. Jeffrey
 Mr. Kovacs
 Mr. Rusk
 Dr. Robinson

MEMBERS ABSENT: Mr. Brady (excused)
 Mr. Prengaman (excused)

Chairman Robinson called the Work Session to order at 6:00 p.m. in Room 200.

AB 598 IMPOSES ADDITIONAL REQUIREMENTS ON IMPORTERS, SUPPLIERS AND WHOLESALERS OF LIQUOR.

Dr. Robinson presented a packet of information from C. O. Watson, Executive Secretary of the Wine & Spirits Wholesalers of Nevada, attached as EXHIBIT A. This information shows that Kansas has made a totally different decision in their Supreme Court than California did. He said that the Attorney General had testified before this committee concerning the California case.

MOTION MADE BY MR. DINI TO DO PASS AB 598, SECONDED BY MR. JEFFREY. MOTION CARRIED UNANIMOUSLY OF THOSE PRESENT. Mr. Kovacs to do the floor work.

AB 579 MAKES VARIOUS ADMINISTRATIVE CHANGES IN LAW GOVERNING REAL ESTATE BROKERS AND SALESMEN.

Dr. Robinson said that it has been requested by the Senate to amend this bill to allow for a broker to be an officer of more than one corporation.

Mr. Dini suggested that rather than holding up this bill to await an amendment to be drafted, they pass it and let it be amended in the Senate.

MOTION BY MR. DINI TO DO PASS AB 579, SECONDED BY MR. JEFFREY. MOTION CARRIED UNANIMOUSLY BY THOSE PRESENT. Mr. DuBois to do the floor work.

AB 593 PROHIBITS LOCAL GOVERNMENT FROM REQUIRING OWNER OR LESSEE TO HIRE CONTRACTOR TO DO WORK ON PROPERTY.

MOTION BY MR. BENNETT TO ADOPT AMENDMENT #1042 AND DO PASS AS AMENDED, SECONDED BY MR. RUSK. MOTION CARRIED WITH MR. JEFFREY AND MR. KOVACS VOTING NO. Mr. Bennett to handle on the floor.

AB 589 ENCOURAGES BREEDING OF RACE HORSES AND GREYHOUNDS IN NEVADA.

MOTION TO INDEFINITELY POSTPONE AB 589 BY MR. KOVACS, SECONDED BY MR. JEFFREY. MOTION CARRIED UNANIMOUSLY OF THOSE PRESENT.

AB 123 REMOVES LIMITATIONS ON AGREED RATES OF INTEREST.

MOTION TO INDEFINITELY POSTPONE AB 123 BY MR. DINI, SECONDED BY MR. RUSK. MOTION CARRIED UNANIMOUSLY OF THOSE PRESENT.

AB 508 EXCLUDES FROM LIMITATION ON INTEREST RATE SHARE OF APPRECIATION OF REAL PROPERTY RESERVED BY LENDER.

Dr. Robinson said that if SB 101 passes, this bill is not needed.

MOTION BY MR. DINI TO INDEFINITELY POSTPONE AB 508, SECONDED BY MR. JEFFREY. MOTION CARRIED UNANIMOUSLY OF THOSE PRESENT.

SB 101 REMOVES LIMITATIONS ON INTEREST RATES FOR LOANS.

Dr. Robinson said Amendment #956 corrects the technical errors in this bill. Since the amendment is so extensive, Mr. Dini requested the bill be amended and returned to Committee for further study.

MOTION BY MR. DINI TO AMEND SB 101 PER AMENDMENT #956 AND RETURN THE REPRINT TO COMMITTEE, SECONDED BY MR. KOVACS. MOTION CARRIED UNANIMOUSLY BY THOSE PRESENT.

AB 578 REGULATES EXTENSION OF CREDIT BY INSURERS.

MOTION BY MR. JEFFREY TO INDEFINITELY POSTPONE AB 578, SECONDED BY MR. KOVACS. MOTION CARRIED UNANIMOUSLY WITH THOSE PRESENT.

AB 581 CLARIFIES PROVISIONS RELATING TO THE TERM OF CREDIT LIFE AND CREDIT HEALTH INSURANCE.

After discussion of a memo from Patsy Redmond of the Insurance Division, MOTION BY MR. KOVACS TO AMEND AB 581 PER AMENDMENT #907 AND DO PASS, SECONDED BY MR. JEFFREY. MOTION CARRIED UNANIMOUSLY PER THOSE PRESENT. Mr. Rusk to do the floor work.

AB 592 REMOVES INSURED'S CHOICE OF TYPES OF POLICIES UPON CONVERSION OF GROUP HEALTH INSURANCE POLICY TO INDIVIDUAL POLICY.

MOTION BY MR. RUSK TO AMEND AB 592 PER AMENDMENT #1047 AND DO PASS, SECONDED BY MR. BENNETT. MOTION CARRIED UNANIMOUSLY WITH THOSE PRESENT.

AB 600 REVISES MEASURES FOR COMPLIANCE WITH PROVISIONS OF LAW REQUIRING MOTOR VEHICLE INSURANCE.

MOTION BY MR. DINI TO ADOPT AMENDMENT #1050 TO AB 600 AND DO PASS TO RE-REFER TO WAYS AND MEANS, SECONDED BY MR. KOVACS.

Mr. DuBois brought up the point that on page 1 line 1 the number should read 482 instead of 485. Dr. Robinson responded that that was in error according to the bill drafter; 485 is correct.

MOTION CARRIED WITH MR. BREMNER VOTING NO.

AB 554 REQUIRES LANDLORDS TO HOLD TENANTS' SECURITY DEPOSITS IN SEPARATE INTEREST BEARING ACCOUNTS.

After discussion, MOTION BY MR. CHANEY TO ADOPT AMENDMENT #1052 TO AB 554 AND DO PASS, SECONDED BY MR. RUSK. MOTION NOT CARRIED DUE TO LACK OF A MAJORITY WITH MR. DINI, MR. DU BOIS AND MR. BENNETT VOTING NO AND MR. BREMNER, MR. BRADY AND MR. PRENGAMAN ABSENT.

AB 599 STRENGTHENS PROFESSIONAL MONOPOLY OF PROFESSIONAL ENGINEERS.

Dr. Robinson said the title of the bill has been amended, and section 2 has been deleted. There is new language in section 1.

MOTION BY MR. DU BOIS TO ADOPT AMENDMENT #1044 AND DO PASS AS AMENDED, SECONDED BY MR. DINI. MOTION CARRIED UNANIMOUSLY OF THOSE PRESENT. Mr. Jeffrey to do the floor work.

AB 612. AUTHORIZES BOARD OF PSYCHOLOGICAL EXAMINERS TO LICENSE PERSONS WHO PRACTICE HYPNOSIS.

Bill tabled since the report has not been received from Mr. Prengaman.

SB 625 LIMITS CERTAIN EXEMPTION FROM EXAMINATION FOR LICENSING OF INSURANCE AGENTS, BROKERS AND SOLICITORS.

MOTION BY MR. RUSK TO AMEND TO REDUCE THE GRACE PERIOD TO SIX MONTHS AND DO PASS AS AMENDED, SECONDED BY MR. JEFFREY. (COPY OF AMENDMENT NOT AVAILABLE YET.) MOTION CARRIED UNANIMOUSLY OF THOSE PRESENT.

SB 443 EXTENDS EXEMPTION FROM PREMIUM TAX TO ANNUITIES FOR DEFERRED COMPENSATION OF PUBLIC EMPLOYEES.

Bill still on hold.

SB 493 REQUIRES NOTICE OF NONGUARANTY OF CLAIMS AGAINST SOLVENT INSURERS UNDER SURPLUS LINES COVERAGE.

MOTION BY MR. BENNETT TO DO PASS, SECONDED BY MR. KOVACS, AND CARRIED UNANIMOUSLY OF THOSE PRESENT.

SB 492 EXTENDS REGULATION OVER BANK HOLDING COMPANIES AND CERTAIN MERGERS, CONVERSIONS OR CONSOLIDATIONS OF STATE BANK.

Dr. Robinson said that he has received calls from all over the states on this bill and that amendments are coming. The bill is tabled for now.

SB 231 CHANGES VARIOUS PROVISIONS OF LAW GOVERNING PHYSICAL THERAPISTS AND THEIR ASSISTANTS.

Dr. Robinson said he has requested the amendments that were agreed upon but they have not arrived yet. Bill tabled for now.

Respectfully submitted,

Patricia Hatch

Patricia Hatch,

Acting Committee Secretary

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE 5/19/81

SUBJECT AB 598 IMPOSES ADDITIONAL REQUIREMENTS ON IMPORTERS, SUPPLIERS AND WHOLESALERS OF LIQUOR.

MOTION:

Do Pass XX Amend Indefinitely Postpone Reconsider

Moved By Mr. Dini Seconded By Mr. Jeffrey

AMENDMENT:

Moved By Seconded By

AMENDMENT:

Moved By Seconded By

Table with columns: MOTION (Yes/No), AMEND (Yes/No), AMEND (Yes/No) and rows for VOTE: BENNETT, BRADY, BREMNER, CHANEY, DINI, DUBOIS, JEFFREY, KOVACS, PRENGAMAN, RUSK, ROBINSON, TALLY: 8, 0

ORIGINAL MOTION: Passed XX Defeated Withdrawn

ENDED & PASSED AMENDED & DEFEATED AMENDED & PASSED AMENDED & DEFEATED

Attached to Minutes

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE 5/19/81

SUBJECT AB 579 MAKES VARIOUS ADMINISTRATIVE CHANGES IN LAW GOVERNING REAL ESTATE BROKERS AND SALESMEN.

MOTION:

Do Pass xx Amend Indefinitely Postpone Reconsider

Moved By Mr. Dini Seconded By Mr. Jeffrey

AMENDMENT:

Moved By Seconded By

AMENDMENT:

Moved By Seconded By

Table with columns: VOTE, MOTION (Yes/No), AMEND (Yes/No), AMEND (Yes/No). Rows include names like BENNETT, BRADY, BREMNER, CHANEY, DINI, DUBOIS, JEFFREY, KOVACS, PRENGAMAN, RUSK, ROBINSON and a TALLY row showing 8 Yes and 0 No.

ORIGINAL MOTION: Passed xx Defeated Withdrawn

ENDED & PASSED AMENDED & DEFEATED

AMENDED & PASSED AMENDED & DEFEATED

Attached to Minutes

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE 5/19/81

SUBJECT AB 593 PROHIBITS LOCAL GOVERNMENT FROM REQUIRING OWNER OR LESSEE TO HIRE CONTRACTOR TO DO WORK ON PROPERTY.

MOTION:

Do Pass XX Amend XX Indefinitely Postpone Reconsider

Moved By Mr. Bennett Seconded By Mr. Rusk

AMENDMENT: Amendment #1042 attached

Moved By Seconded By

AMENDMENT:

Moved By Seconded By

Table with columns: VOTE, MOTION (Yes/No), AMEND (Yes/No), AMEND (Yes/No). Rows include names like BENNETT, BRADY, BREMNER, CHANEY, DINI, DUBOIS, JEFFREY, KOVACS, PRENGAMAN, RUSK, ROBINSON and a TALLY row showing 6 Yes and 2 No votes.

ORIGINAL MOTION: Passed xx Defeated Withdrawn

AMENDED & PASSED AMENDED & DEFEATED

AMENDED & PASSED AMENDED & DEFEATED

Attached to Minutes

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION	SENATE ACTION Assembly.....	AMENDMENT BLANK
Adopted <input type="checkbox"/>	Adopted <input type="checkbox"/>	AMENDMENTS to	Assembly
Lost <input type="checkbox"/>	Lost <input type="checkbox"/>	Bill No. 593	Joint
Date: <input type="checkbox"/>	Date: <input type="checkbox"/>		Resolution No.
Initial: <input type="checkbox"/>	Initial: <input type="checkbox"/>	BDR. 54-1607	
Concurred in <input type="checkbox"/>	Concurred in <input type="checkbox"/>	Proposed by	Committee on Commerce
Not concurred in <input type="checkbox"/>	Not concurred in <input type="checkbox"/>		
Date: <input type="checkbox"/>	Date: <input type="checkbox"/>		
Initial: <input type="checkbox"/>	Initial: <input type="checkbox"/>		

Amendment N^o 1042



Amend section 1, page 1, line 6, by deleting "occupies." and inserting:

"occupies, unless:

1. The repair, alteration, construction or renovation is structural or electrical or involves plumbing; or
2. The cost of the repair, alteration, construction or renovation is \$2,500 or more."

Amend the title of the bill on the second line by deleting "work on certain property;" and inserting:

"certain work;".

To: E & E
LCB File
Journal
Engrossment
Bill

Drafted by DGS: smc Date 5-15-61

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE 5/19/81

SUBJECT AB 589 ENCOURAGES BREEDING OF RACE HORSES AND GREYHOUNDS IN NEVADA.

MOTION:

Do Pass ___ Amend ___ Indefinitely Postpone XX Reconsider ___

Moved By Mr. Kovacs Seconded By Mr. Jeffrey

AMENDMENT:

Moved By ___ Seconded By ___

AMENDMENT:

Moved By ___ Seconded By ___

Table with columns: VOTE, MOTION (Yes/No), AMEND (Yes/No), AMEND (Yes/No). Rows include names like BENNETT, BRADY, BREMNER, CHANEY, DINI, DUBOIS, JEFFREY, KOVACS, PRENGAMAN, RUSK, ROBINSON and a TALLY row showing 8 Yes and 0 No.

ORIGINAL MOTION: Passed ___ Defeated ___ Withdrawn ___

AMENDED & PASSED ___ AMENDED & DEFEATED ___
AMENDED & PASSED ___ AMENDED & DEFEATED ___

Attached to Minutes ___

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE 5/19/81

SUBJECT AB 123 REMOVES LIMITATIONS ON AGREED RATES OF INTEREST

MOTION:

Do Pass Amend Indefinitely Postpone xx Reconsider

Moved By Mr. Dini Seconded By Mr. Rusk

AMENDMENT:

Moved By Seconded By

AMENDMENT:

Moved By Seconded By

Table with columns: MOTION (Yes, No), AMEND (Yes, No), AMEND (Yes, No). Rows include VOTE: BENNETT, BRADY, BREMNER, CHANEY, DINI, DUBOIS, JEFFREY, KOVACS, PRENGAMAN, RUSK, ROBINSON, and TALLY: 8, 0.

ORIGINAL MOTION: Passed xx Defeated Withdrawn

AMENDED & PASSED AMENDED & DEFEATED

Attached to Minutes

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE 5/19/81

SUBJECT AB 508 EXCLUDES FROM LIMITATION ON INTEREST RATE SHARE OF APPRECIATION OF REAL PROPERTY RESERVED BY LENDER.

MOTION:

Do Pass Amend Indefinitely Postpone xx Reconsider

Moved By Mr. Dini Seconded By Mr. Jeffrey

AMENDMENT:

Moved By Seconded By

AMENDMENT:

Moved By Seconded By

Table with columns: MOTION (Yes, No), AMEND (Yes, No), AMEND (Yes, No). Rows include names like BENNETT, BRADY, BREMNER, CHANEY, DINI, DUBOIS, JEFFREY, KOVACS, PRENGAMAN, RUSK, ROBINSON and a TALLY row showing 8 Yes and 0 No for the motion.

ORIGINAL MOTION: Passed xx Defeated Withdrawn

AMENDED & PASSED AMENDED & DEFEATED

AMENDED & PASSED AMENDED & DEFEATED

Attached to Minutes

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE May 19, 1981

SUBJECT SB 101: Removes limitations on interest rates for loans.

MOTION: Amend per amendment #956 (attached) on floor and refer reprint back to committee. Do Pass Amend XX Indefinitely Postpone Reconsider

Moved By Seconded By

AMENDMENT: Amend per amendment #956 attached.

Moved By Mr. Dini Seconded By Mr. Kovacs

AMENDMENT:

Moved By Seconded By

Table with columns: MOTION (Yes, No), AMEND (Yes, No), AMEND (Yes, No) and rows for VOTE: BENNETT, BRADY, BREMNER, CHANEY, DINI, DUBOIS, JEFFREY, KOVACS, PRENGAMAN, RUSK, ROBINSON, TALLY: 9, 0

ORIGINAL MOTION: Passed XX Defeated Withdrawn

ENDED & PASSED AMENDED & DEFEATED

AMENDED & PASSED AMENDED & DEFEATED

Attached to Minutes May 19, 1981

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION		SENATE ACTION	Assembly.....AMENDMENT BLANK
Adopted	<input type="checkbox"/>	Adopted	<input type="checkbox"/>	AMENDMENTS to.....Senate	
Lost	<input type="checkbox"/>	Lost	<input type="checkbox"/> Joint	
Date:		Date:		Bill No.....101..... Resolution No.
Initial:		Initial:		BDR.....8-415.....	
Concurred in	<input type="checkbox"/>	Concurred in	<input type="checkbox"/>	Proposed by.....Committee on Commerce.....	
Not concurred in	<input type="checkbox"/>	Not concurred in	<input type="checkbox"/>		
Date:		Date:			
Initial:		Initial:			

Amendment No 956

Replaces Amendment No. 368.
 Resolves conflict with § 11 of S.B. 127.
 Consistent with Amendment No. 402 if
 that amendment is adopted first.

Amend the bill as a whole by renumbering section 1 as section 1.5 and adding a new section designated section 1, preceding section 1, to read as follows:

"Section 1. NRS 97.155 is hereby amended to read as follows:

97.155 "Time price differential," however denominated or expressed means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, annual membership fees for credit cards, delinquency charges, attorneys' fees, court costs or official fees."

Amend sec. 3, page 2, line 25, by deleting "NRS 99.050 [nor" and inserting:

"[NRS 99.050 nor]".

Amend sec. 3, page 2, line 26, by inserting an open bracket between "interest" and "applies]".

Amend sec. 4, page 2, line 31, by deleting the bracket.

Amend sec. 4, page 2, line 35, by deleting the bracket.

Amend sec. 5, page 2, line 39, after "credit" by inserting:

"of less than \$500,000"

Amend sec. 5, page 2, line 41, by deleting the bracket.

To: E & E
 LCB File
 Journal
 Engrossment
 Bill

Drafted by.....DGS:smc.....Date.....5-11-81

1279
 8069

Amend sec. 5, page 2, by deleting lines 45 through 47 and inserting:
"plus 3.5 percent.

2. If the rate of interest exceeds 12 percent [:

(a) The] the lender shall certify on the loan document, under penalty".

Amend sec. 5, page 3, line 1, by deleting "(b)]" and inserting
"[(b)".

Amend sec. 5, page 3, line 3, by deleting "[(c)] (b)" and inserting
"(c)".

Amend sec. 5, page 3, line 5, after "loan." by inserting a closed
bracket.

Amend sec. 7, page 3, by deleting lines 30 through 44 and inserting:
"Sec. 7. Section 2 of chapter 48, Statutes of Nevada 1981, is
hereby amended to read as follows:

Sec. 2. 1. Except as provided in subsection 3, every
licensee may make loans of any amount with cash advance not
exceeding \$10,000, repayable except as otherwise provided in
section 4 of this act, in substantially equal consecutive
monthly installments of principal and interest combined, and
may charge, contract for, collect and receive a charge for
interest at a rate not exceeding the [equivalent of the
greater of the following:

(a) The] total of:

[(1)] (a) Thirty-six percent per year on that part of
the unpaid balance of the amount of cash advanced which is
[\$300] \$2,000 or less; and

[(2)] Twenty-one percent per year on that part of the
unpaid balance of the amount of cash advanced which exceeds
\$300 but does not exceed \$1,000; and

(3) Fifteen] (b) Thirty percent per year on that part
of the unpaid balance of the amount of cash advanced which
exceeds [\$1,000; or

(b) Eighteen percent per year on the unpaid balance of the
amount of cash advanced.] \$2,000.

2. Except as otherwise provided in this subsection, the charge for interest must be calculated according to the actuarial method, which is the method of allocating payments between principal and interest pursuant to which a payment is applied first to the accumulated interest and the balance, if any, is applied to the unpaid principal. A licensee may, at the time the loan is made, precompute the charge for interest at the agreed-upon rate on the scheduled unpaid principal balances according to the terms of the contract and add that interest to the principal of the loan. Where the charge for interest is precomputed the face amount of any note or contract may exceed \$10,000 by the amount of charges authorized by this chapter added to principal. If the charge for interest is precomputed, payments on account may be applied to the combined total of principal and precomputed interest until the contract is fully paid. All payments on account, except those applied to default or deferment charges, must be applied to the installments in the order in which they fall due. The effect of prepayment of a precomputed loan is governed by the provisions relating to refund upon prepayment in full.

3. All loans secured by mobile homes or factory-built housing which constitute real estate on real property as defined by NRS 361.035 the charge for interest may not exceed [18] 30 percent on the unpaid balance of the amount of cash advanced."

Amend sec. 11, page 5, line 42, by deleting "NRS 675.290 and 675.320 are" and inserting:

"NRS 99.035 is".

Amend sec. 12, page 5, by deleting line 44 and inserting:

"1. Under subsection (b) (2) of section 501 of the Depository Institutions Deregula-".

Amend section 12, page 5, line 45, by deleting "1981," and inserting "1980,"

Amend sec. 12, page 5, line 47, by deleting "section 501 of that act" and inserting:

"that section".

Amend sec. 12, page 5, line 49, by deleting "subsection 512" and inserting:

"section 511".

Amend sec. 12, page 6, line 1, by deleting "subsection 512" and inserting:

"section 511".

Amend sec. 12, page 6, line 2, by deleting "\$25,000" and inserting: "\$1,000".

Amend sec. 12, page 6, line 3, by deleting "act," and inserting "act."

Amend sec. 12, page 6, by deleting lines 4 through 6.

Amend sec. 13, page 6, by deleting lines 7 through 9.

Amend sec. 13, page 6, line 10, by deleting "2." and inserting "Sec. 13."

Amend the title of the bill on the first line after "removing" by inserting:

"or increasing".

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE May 19, 1981

SUBJECT AB 578: Regulates extension of credit by insurers.

MOTION: INDEFINITELY POSTPONE

Do Pass ___ Amend ___ Indefinitely Postpone XX Reconsider ___

Moved By Mr. Jeffrey Seconded By Mr. Kovacs

AMENDMENT: [Blank lines for amendment text]

Moved By ___ Seconded By ___

AMENDMENT: [Blank lines for amendment text]

Moved By ___ Seconded By ___

VOTE:	MOTION		AMEND		AMEND	
	Yes	No	Yes	No	Yes	No
BENNETT	X	___	___	___	___	___
BRADY	absent	___	___	___	___	___
BREMNER	X	___	___	___	___	___
CHANEY	X	___	___	___	___	___
DINI	X	___	___	___	___	___
DUBOIS	X	___	___	___	___	___
JEFFREY	X	___	___	___	___	___
KOVACS	X	___	___	___	___	___
PRENGAMAN	absent	___	___	___	___	___
RUSK	X	___	___	___	___	___
ROBINSON	X	___	___	___	___	___
TALLY:	9	0	___	___	___	___

ORIGINAL MOTION: Passed XX Defeated ___ Withdrawn ___

AMENDED & PASSED ___ AMENDED & DEFEATED ___
AMENDED & PASSED ___ AMENDED & DEFEATED ___

Attached to Minutes May 19, 1981

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE May 19, 1981

SUBJECT AB 581: Clarifies provisions relating to the term of credit life and credit health insurance.

MOTION: AMEND AND DO PASS AS AMENDED

Do Pass XX Amend XX Indefinitely Postpone Reconsider

Moved By Mr. Kovacs Seconded By Mr. Jeffrey

AMENDMENT: Amend per amendment #907 (attached)

Moved By Seconded By

AMENDMENT:

Moved By Seconded By

Table with columns: MOTION (Yes, No), AMEND (Yes, No), AMEND (Yes, No). Rows include VOTE: BENNETT, BRADY, BREMNER, CHANEY, DINI, DUBOIS, JEFFREY, KOVACS, PRENGAMAN, RUSK, ROBINSON, and TALLY: 9, 0.

ORIGINAL MOTION: Passed XX Defeated Withdrawn

ENDED & PASSED AMENDED & DEFEATED

AMENDED & PASSED AMENDED & DEFEATED

Attached to Minutes May 19, 1981

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION	SENATE ACTION	Assembly	AMENDMENT BLANK
Adopted <input type="checkbox"/>	Adopted <input type="checkbox"/>	AMENDMENTS to <u>Assembly</u>	
Lost <input type="checkbox"/>	Lost <input type="checkbox"/>	<u>Joint</u>	
Date:	Date:	Bill No. <u>581</u>	<u>Resolution No.</u>
Initial:	Initial:	BDR <u>57-1588</u>	
Concurred in <input type="checkbox"/>	Concurred in <input type="checkbox"/>	Proposed by <u>Committee on Commerce</u>	
Not concurred in <input type="checkbox"/>	Not concurred in <input type="checkbox"/>		
Date:	Date:		
Initial:	Initial:		

Amendment N^o 907



Amend section 1, pages 1 and 2, by deleting lines 17 through 25 on page 1 and lines 1 through 4 on page 2 and inserting:
 "ment of any charge to the debtor for insurance. [The term of such insurance shall not extend more than 15 days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor.]

4. The insurance must remain in effect until the day on which the final payment is scheduled to be made. If the indebtedness is discharged [due to] by renewal or refinancing [prior to the scheduled maturity date,] before the date on which it would have been repaid if payments had been made as scheduled, the insurance in force [shall] must be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of [such] termination [prior to] before scheduled maturity, a refund [shall] must be paid or credited as provided in NRS 690A.090.

5. An insurer is not liable for payments not made by the insured or for charges not paid before the date of a loss which gives use to a claim."

To: E & E
 LCB File
 Journal
 Engrossment
 Bill ✓

Drafted by DGS:smc Date 5-8-81 **1285**

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE May 19, 1981

SUBJECT AB 592: Removes insured's choice of types of policies upon conversion of group health insurance policy to individual policy.

MOTION: AMEND AND DO PASS AS AMENDED

Do Pass XX Amend XX Indefinitely Postpone Reconsider

Moved By Mr. Rusk Seconded By Mr. Bennett

AMENDMENT: Amend per amendment #1047 (attached)

Moved By Seconded By

AMENDMENT:

Moved By Seconded By

VOTE:	MOTION		AMEND		AMEND	
	Yes	No	Yes	No	Yes	No
BENNETT	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
BRADY	<u>absent</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
BREMNER	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
CHANEY	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
DINI	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
DUBOIS	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
JEFFREY	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
KOVACS	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
PRENGAMAN	<u>absent</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
RUSK	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
ROBINSON	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
TALLY:	<u>9</u>	<u>0</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

ORIGINAL MOTION: Passed XX Defeated Withdrawn

AMENDED & PASSED AMENDED & DEFEATED

AMENDED & PASSED AMENDED & DEFEATED

Attached to Minutes May 19, 1981

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION		SENATE ACTION		Assembly	AMENDMENT BLANK
Adopted	<input type="checkbox"/>	Adopted	<input type="checkbox"/>	AMENDMENTS to	Assembly
Lost	<input type="checkbox"/>	Lost	<input type="checkbox"/>		Joint
Date:		Date:		Bill No.	592
Initial:		Initial:			Resolution No.
Concurred in	<input type="checkbox"/>	Concurred in	<input type="checkbox"/>	BDR	57-1856
Not concurred in	<input type="checkbox"/>	Not concurred in	<input type="checkbox"/>	Proposed by	Committee on Commerce
Date:		Date:			
Initial:		Initial:			

Amendment N^o 1047



Amend section 1, page 1, line 2, by deleting the bracket.

Amend section 1, page 1, by deleting lines 4 through 7, and inserting:

"an expense-incurred basis.

2. [The converted policy may] At least one choice among the three types of policies must include major medical or catastrophic".

Amend the bill as a whole by deleting section 2.

Amend the title of the bill on the first line by deleting "removing" and inserting:

"requiring certain coverages among".

To: E & E
LCB File
Journal
Engrossment
BLL

Drafted by DGS:smc Date 5-15-81

1287

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE May 19, 1981

SUBJECT AB 600: Revises measures for compliance with provisions of law requiring motor vehicle insurance.

MOTION: AMEND AND DO PASS AS AMENDED AND REREFER TO WAYS AND MEANS

Do Pass XX Amend XX Indefinitely Postpone Reconsider

Moved By Mr. Dini Seconded By Mr. Kovacs

AMENDMENT: Amend per amendment #1050 (attached)

Moved By Seconded By

AMENDMENT:

Moved By Seconded By

Table with columns: VOTE, MOTION (Yes/No), AMEND (Yes/No), AMEND (Yes/No). Rows include names like BENNETT, BRADY, BREMNER, CHANEY, DINI, DUBOIS, JEFFREY, KOVACS, PRENGAMAN, RUSK, ROBINSON and a TALLY row.

ORIGINAL MOTION: Passed XX Defeated Withdrawn

ENDED & PASSED AMENDED & DEFEATED

AMENDED & PASSED AMENDED & DEFEATED

Attached to Minutes May 19, 1981

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION		SENATE ACTION	Assembly.....	AMENDMENT BLANK
Adopted	<input type="checkbox"/>	Adopted	<input type="checkbox"/>	AMENDMENTS to	Assembly
Lost	<input type="checkbox"/>	Lost	<input type="checkbox"/>		Joint
Date:		Date:		Bill No.....	500.....
Initial:		Initial:			Resolution No.....
Concurred in	<input type="checkbox"/>	Concurred in	<input type="checkbox"/>	BDR.....	43-2020.....
Not concurred in	<input type="checkbox"/>	Not concurred in	<input type="checkbox"/>	Proposed by	Committee on Commerce
Date:		Date:			
Initial:		Initial:			

Amendment N^o 1050



Amend sec. 2, page 2, line 8, after "insurer," by inserting:
"its agents,".

Amend sec. 2, page 2, by deleting lines 45 and 46 and inserting:
 "5. For purposes of the declaration required by (paragraphs (e)
 and (f)) paragraph (e) of subsection 3:".

Amend sec. 2, page 3, line 2, before "The owner" by inserting an open
 bracket.

Amend sec. 2, page 3, line 3, after the period by inserting a closed
 bracket.

Amend sec. 2, page 3, line 8, before "The owner" by inserting an
 open bracket.

Amend the bill as a whole by renumbering section 4 as section 5 and by
 adding a new section designated section 4, following section 3, to
 read as follows:

"Sec. 4. Chapter 690B of NRS is hereby amended by adding thereto,
 a new section which shall read as follows:

If security for the operation of a motor vehicle is provided by a
 contract of insurance, the insurer shall provide evidence of insurance
 to the insured on a form provided by the commissioner. The evidence
 of insurance must show:

1. The name and address of the policyholder;
2. The insured vehicle or vehicles;
3. The term of the insurance; and
4. That the coverage meets the requirements set forth in NRS

485.285."

To: E & E
 LCB File
 Journal
 Engrsment
 Bill ✓

Drafted by DS:ab Date 8-16-81

1289

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE May 19, 1981

SUBJECT AB 554: Requires landlords to hold tenants' security deposits in separate interest bearing accounts.

MOTION: AMEND AND DO PASS AS AMENDED
Do Pass XX Amend XX Indefinitely Postpone Reconsider
Moved By Mr. Chaney Seconded By Mr. Rusk

AMENDMENT: Amend as per amendment #1052 (attached)
Moved By Seconded By

AMENDMENT:
Moved By Seconded By

Table with columns: VOTE, MOTION (Yes/No), AMEND (Yes/No), AMEND (Yes/No). Rows include BENNETT, BRADY, BREMNER, CHANEY, DINI, DUBOIS, JEFFREY, KOVACS, PRENGAMAN, RUSK, ROBINSON, and TALLY (5/3).

ORIGINAL MOTION: Died for lack of a majority. Passed Defeated Withdrawn
AMENDED & PASSED AMENDED & DEFEATED
AMENDED & PASSED AMENDED & DEFEATED

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION	SENATE ACTION	Assembly	AMENDMENT BLANK
Adopted <input type="checkbox"/>	Adopted <input type="checkbox"/>	AMENDMENTS to <u>Assembly</u>	
Lost <input type="checkbox"/>	Lost <input type="checkbox"/>	<u>Joint</u>	
Date: <input type="checkbox"/>	Date: <input type="checkbox"/>	Bill No. <u>554</u>	<u>Resolution No.</u>
Initial: <input type="checkbox"/>	Initial: <input type="checkbox"/>	BDR. <u>10-1526</u>	
Concurred in <input type="checkbox"/>	Concurred in <input type="checkbox"/>	Proposed by <u>Committee on Commerce</u>	
Not concurred in <input type="checkbox"/>	Not concurred in <input type="checkbox"/>		
Date: <input type="checkbox"/>	Date: <input type="checkbox"/>		
Initial: <input type="checkbox"/>	Initial: <input type="checkbox"/>		

Amendment N^o 1052



Amend section 1, page 1, by deleting line 4 and inserting:
"provisions of this section:".

Amend section 1, page 1, line 14, by deleting the bracket.

Amend section 1, page 2, line 18, before "The bad faith" by inserting an open bracket.

Amend section 1, page 2, line 20, by deleting "damages." and inserting "damages.] If the landlord fails or refuses to return the remainder of a security deposit within 21 days after the end of a tenancy, he shall return the entire deposit without any deduction. A person who fails or refuses to return a security deposit in full in response to a judgment within a reasonable time after the judgment is entered is guilty of a misdemeanor."

Amend section 1, page 2, line 26, by deleting the closed bracket.

Amend the bill as a whole by deleting sections 2 through 8 and by adding a new section designated as section 2, following section 1, to read as follows:

"Sec. 2. NRS 118A.260 is hereby amended to read as follows:

118A.260

1. The landlord, or any person authorized to enter into a rental agreement on his behalf, shall disclose to the tenant in writing at or before the commencement of the tenancy:

(a) The name and address of:

(1) The persons authorized to manage the premises;

(2) An owner of the premises or person authorized to act for and on behalf of the landlord for the purpose of service of process and receiving notices and demands; and

(3) The principal or corporate owner.

(b) A telephone number at which a responsible person may be called in case of emergency.

To: E & E
LCB File
Journal
Engrossment ✓
BJ

Drafted by DS:ab

Date 5-15-81

2. The information required to be furnished by this section [shall] must be kept current and this section is enforceable against any successor landlord or manager of the premises.

3. A party who enters into a rental agreement on behalf of the landlord and fails to comply with this section is an agent of the landlord for purposes of:

- (a) Service of process and receiving notices and demands; and
- (b) Performing the obligations of the landlord under law and under the rental agreement.

4. [If the identity of the landlord is not disclosed as required by this section, the] If the landlord does not reside or do business within this state, unless he has designated a representative within the state to receive service of process in any action brought by the tenants or others, the person authorized to manage the premises is the representative for that purpose. The obligations of the landlord devolve upon the persons authorized to enter into a rental agreement on his behalf.

5. This section does not limit or remove the liability of an undisclosed landlord.

Amend the title of the bill to read as follows:

"AN ACT relating to landlords and tenants; prescribing penalties for failure to return security deposits; amending provisions for designating persons to receive process; and providing other matters properly relating thereto."

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE May 19, 1981

SUBJECT AB 599: Strengthens professional monopoly of professional engineers.

MOTION: AMEND AND DO PASS AS AMENDED

Do Pass XX Amend XX Indefinitely Postpone _____ Reconsider _____

Moved By Mr. DuBois Seconded By Mr. Dini

AMENDMENT: Amend per amendment #1044 (attached)

Moved By _____ Seconded By _____

AMENDMENT: _____

Moved By _____ Seconded By _____

VOTE:	MOTION		AMEND		AMEND	
	Yes	No	Yes	No	Yes	No
BENNETT	X	_____	_____	_____	_____	_____
BRADY	absent	_____	_____	_____	_____	_____
BREMNER	absent	_____	_____	_____	_____	_____
CHANEY	X	_____	_____	_____	_____	_____
DINI	X	_____	_____	_____	_____	_____
DUBOIS	X	_____	_____	_____	_____	_____
JEFFREY	X	_____	_____	_____	_____	_____
KOVACS	X	_____	_____	_____	_____	_____
PRENGAMAN	absent	_____	_____	_____	_____	_____
RUSK	X	_____	_____	_____	_____	_____
ROBINSON	X	_____	_____	_____	_____	_____
TALLY:	8	0	_____	_____	_____	_____

ORIGINAL MOTION: Passed XX Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

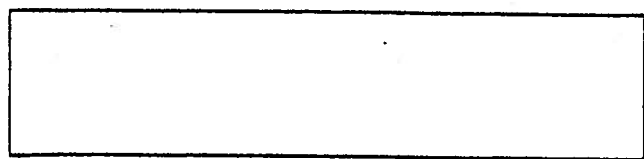
AMENDED & PASSED _____ AMENDED & DEFEATED _____

Attached to Minutes May 19, 1981

1981 REGULAR SESSION (61st)

ASSEMBLY ACTION	SENATE ACTION	Assembly	AMENDMENT BLANK
Adopted <input type="checkbox"/>	Adopted <input type="checkbox"/>	AMENDMENTS to <u>Assembly</u>	
Lost <input type="checkbox"/>	Lost <input type="checkbox"/>	<u>Joint</u>	
Date:	Date:	Bill No. <u>599</u> Resolution No.	
Initial:	Initial:	BDR <u>54-1787</u>	
Concurred in <input type="checkbox"/>	Concurred in <input type="checkbox"/>	Proposed by <u>Committee on Commerce</u>	
Not concurred in <input type="checkbox"/>	Not concurred in <input type="checkbox"/>		
Date:	Date:		
Initial:	Initial:		

Amendment N^o 1044



Amend the bill as a whole by deleting section 2 and renumbering section 3 as section 2.

Amend the title of the bill to read as follows:

"AN ACT relating to professional engineers; amending requirements for firms which engage in professional engineering; prohibiting use of certain forms of the word "engineer"; and providing other matters properly relating thereto."

To: E & E
LCB File
Journal
Engrossment
Bill ✓

Drafted by SGS:smc Date 5-13-81

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE May 19, 1981

SUBJECT SB 625: Limits certain exemption from examination for licensing of insurance agents, brokers and solicitors.

MOTION: AMEND AND DO PASS AS AMENDED

Do Pass XX Amend XX Indefinitely Postpone Reconsider

Moved By Mr. Rusk Seconded By Mr. Jeffrey

AMENDMENT: Amend to reduce the grace period to six months.

Moved By Seconded By

AMENDMENT:

Moved By Seconded By

Table with columns: VOTE, MOTION (Yes/No), AMEND (Yes/No), AMEND (Yes/No). Rows include BENNETT, BRADY, BREMNER, CHANEY, DINI, DUBOIS, JEFFREY, KOVACS, PRENGAMAN, RUSK, ROBINSON, and TALLY (8/0).

ORIGINAL MOTION: Passed XX Defeated Withdrawn

AMENDED & PASSED AMENDED & DEFEATED

AMENDED & PASSED AMENDED & DEFEATED

Attached to Minutes May 19, 1981

61st SESSION NEVADA LEGISLATURE

ASSEMBLY COMMERCE COMMITTEE

LEGISLATION ACTION

DATE May 19, 1981

SUBJECT SB 493: Requires notice of nonguaranty of claims against solvent insurers under surplus lines coverage.

MOTION: DO PASS

Do Pass xx Amend _____ Indefinitely Postpone _____ Reconsider _____

Moved By Mr. Bennett Seconded By Mr. Kovacs

AMENDMENT: _____

Moved By _____ Seconded By _____

AMENDMENT: _____

Moved By _____ Seconded By _____

VOTE:	<u>MOTION</u>		<u>AMEND</u>		<u>AMEND</u>	
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
BENNETT	<u>X</u>	_____	_____	_____	_____	_____
BRADY	<u>absent</u>	_____	_____	_____	_____	_____
BREMNER	<u>absent</u>	_____	_____	_____	_____	_____
CHANEY	<u>X</u>	_____	_____	_____	_____	_____
DINI	<u>X</u>	_____	_____	_____	_____	_____
DUBOIS	<u>X</u>	_____	_____	_____	_____	_____
JEFFREY	<u>X</u>	_____	_____	_____	_____	_____
KOVACS	<u>X</u>	_____	_____	_____	_____	_____
PRENGAMAN	<u>absent</u>	_____	_____	_____	_____	_____
RUSK	<u>X</u>	_____	_____	_____	_____	_____
ROBINSON	<u>X</u>	_____	_____	_____	_____	_____
TALLY:	<u>8</u>	<u>0</u>	_____	_____	_____	_____

ORIGINAL MOTION: Passed xx Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

Attached to Minutes May 19, 1981



WINE & SPIRITS WHOLESALERS
OF NEVADA

P.O. BOX 338
RENO, NEVADA 89504



May 18, 1981

Exhibit A

Dr. Robert Robinson
Chairman
Commerce Committee
Capitol Complex
Carson City, Nevada 89701

RE: AB 598

Dear Dr. Robinson:

I am pleased to attach a copy of a letter dated May 15, 1981 from Abraham Tunick, Washington Counsel for the Wine & Spirits Wholesalers of America, Inc.

Attached to his letter is a copy of a Decision by the Kansas Supreme Court.

Mr. Tunick's letter also addresses the status of the situation in the State of Nevada.

Based on the enclosed, it would seem reasonable to expect that favorable consideration could be given to AB 598 as submitted.

Needless to say, your consideration with reference to the enclosure and AB 598 will be appreciated.

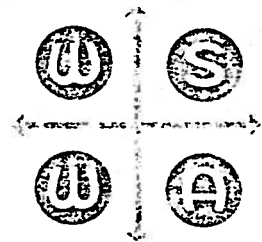
Sincerely,

C. O. WATSON
Executive Secretary

CW/jw
Attachment
CC: Richard Bryan, w/enc.

1776 K, STREET, N.W.
WASHINGTON, D.C. 20006
466-2333 AREA CODE 202

ABRAHAM TUNICK
WASHINGTON COUNSEL



WINE AND SPIRITS WHOLESALERS OF AMERICA, INC.

May 15, 1981

Mr. C. O. Watson
Wine and Spirits Wholesalers
of Nevada
1701 Plumas Street
Reno, Nevada 85909

RE: Baxter Rice, Director, Department of Alcoholic
Beverage Control, State of California, et al.,
Petitioners, v. Norman Williams Company, et al.,
Respondents.

Dear C.O.,

This will confirm our telephone conversation with reference to the above matter.

Petitions for a writ of certiorari have been filed with the U.S. Supreme Court by the above-named Petitioners and by Wine and Spirits Wholesalers of California and Bohemian Distributing Company as intervenors.

A brief of amicus curiae urging the court to grant certiorari and reverse the decision of the California Court of Appeal have been filed by Wine and Spirits Wholesalers Association joined by the United States Brewers Association, and the liquor administrators of 10 states.

On March 23 the Supreme Court requested the Solicitor General to file a brief showing the views of the United States. We expect the brief to be filed within the next two weeks. I am enclosing, for your information, a copy of the opinion of the Kansas Supreme Court in the Colby case (now known as the Grant-Billingsley case). This case, among other things, involved a challenge to the Kansas primary source law, which incidentally went much further than the California law. The Kansas court held the law to be Constitutional and an appeal was taken to the U.S. Supreme Court. On November 3, 1980, the Supreme Court dismissed the appeal for want of substantial federal question.

Please call if you desire any further information.

Sincerely,

Ab

1298

In the Supreme Court of the State of Kansas

No. 51428

January 19, 1980

Colby Distributing Co., Inc., et al.,
Appellees,

Michael Lennon, et al.,
Appellants.

Syllabus by the Court

1. Pursuant to the Twenty-first Amendment, a state may absolutely prohibit the manufacture, transportation, importation, sale or possession of alcoholic liquors irrespective of when or where produced or obtained, or the use to which they are to be put, and may adopt measures reasonably appropriate to effectuate those prohibitions and exercise full police authority in respect to them, unfettered by the due process clause, the equal protection clause or the commerce clause.

2. The constitutionality of a statute is presumed, all doubts must be resolved in favor of its validity, and before the statute may be stricken down, it must clearly appear the statute violates the constitution.

3. In determining constitutionality, it is the court's duty to uphold a statute under attack rather than defeat it and if there is any reasonable way to construe the statute as constitutionally valid, that should be done.

4. In a civil action, the record is examined and it is held: The trial court erred in holding pertinent sections of House Bill 2020 unconstitutional.

HERD, Justice:

This is an action seeking a declaratory judgment and permanent injunction from the enforcement of 1979 amendments to the Kansas Liquor Control Act (K.S.A. 41-101 *et seq.*). The amendments were enacted by the legislature, effective May 10, 1979 and are designated House Bill 2020. The trial court found the act constitutional but found certain sections of the amendments in violation of the Sherman Anti-Trust Act, 15 U.S.C. § 1 *et seq.* We hold H.B. 2020 constitutional, thus reversing in part and affirming in part the judgment of the trial court.

A brief discussion of the history of Kansas liquor laws will be helpful in understanding the issues before us. In 1880, Kansas amended its constitution providing for prohibition. Kan.Const. art. 15, § 10. Bootleggers and illegal saloons flourished, however, until Carry Nation and others aroused public indignation by their attacks on illegal liquor traffic at the turn of the century. Feelings of both anti-saloon and pro-saloon forces became increasingly violent until finally, urged on by the fear of armed conflict, the legislature passed laws making it a penal offense for one to give another a drink of alcoholic liquor, to be found in a place where it was sold, to sell it and finally to possess alcoholic liquor. L.1881, Ch. 128, §§ 2, 10. The latter was known as the "bone dry law."

662

Ultimately in 1948, the citizens of Kansas recognized prohibition neither ended liquor consumption nor eliminated its sale. The constitution was amended to permit the legal sale of liquor. L.1947, Ch. 248, §1. As a result the Kansas Liquor Control Act (K.S.A. 41-101 *et seq.*) was passed in 1949 ending 69 years of constitutional prohibition. It provided for the regulation of the manufacture, distribution, sale, possession and consumption of alcoholic liquors. The act has remained virtually unchanged except for the 1965 Private Club Act (K.S.A. 41-2601 *et seq.*) and the 1978 Restaurant Club Act (K.S.A. 1978 Supp. 41-2601 *et seq.* and K.S.A. 1978 Supp. 41-803). It provides for a three-tiered distribution system composed of a manufacturer, distributor and retailer, none of whom may own any interest in the other and all are licensed by the state.

The original law required that alcoholic liquor be sold subject to the provisions of the Kansas Fair Trade Act (G.S. 1949, 50-301—50-310) which effectively established a minimum price. The Fair Trade Act was declared unconstitutional and void, in violation of Art. 2, §1 of the Constitution of Kansas, in 1958. *Quality Oil Co. v. du Pont & Co.*, 192 Kan. 488, 322 P.2d 731 (1958). During the 1959 legislative session, a liquor price control act was enacted which governed the sale price of alcoholic liquors. In 1961 it was found unconstitutional by this court on the grounds it was an unauthorized delegation of legislative authority to private persons without guidelines. *State, ex rel. v. Mermis*, 187 Kan. 611, 358 P.2d 936 (1961).

Immediately following that decision, the legislature enacted the liquor price control law (K.S.A. 41-1111—41-

1121) which remained effective until H.B. 2020 went into effect. It provided that the pricing began with the manufacturer who must sell to the distributor at a price "as low as the lowest price for which the item is sold anywhere in any state in the continental United States . . ." K.S.A. 41-1112. This is known as a price affirmation law. It should be noted the legislature delegated the authority to fix the beginning price on liquor to the manufacturer from prices determined by competition. This arrangement was held valid in *Laird & Company v. Cheney*, 196 Kan. 675, 414 P.2d 18 (1966).

After the manufacturer established the beginning price and had it affirmed, the Alcoholic Beverage Control Board of Review (ABC) established a reasonable markup for the distributor and retailer taking into consideration all business costs and a reasonable profit. Each distributor was authorized to sell any brand of liquor anywhere in the state to any retailer. This system is known as "open franchising." In addition, it prohibited retailers from purchasing from a manufacturer and having him send invoices to distributors who in turn would bill the retailer with the goods sent directly from manufacturer to retailer. Kansas requires the liquor to be shipped exclusively to the distributor's warehouse. This is known as an "at rest" law. Kansas law also requires distributors to purchase liquor only from brand owners or manufacturers, or their exclusive agents. This purchase arrangement has been categorized as a "primary source" law. An excellent discussion of the historical and economic background of alcoholic liquor in Kansas is found in an unpublished article, "The

Status of Alcoholic Liquor in the State of Kansas: A Progress Report," written by William T. Terrell, Associate Professor of Economics at Wichita State University.

Reflecting constituent complaints on pricing and ABC complaints of illegal retail purchases out of state, the 1978 legislature created a Special Committee on Liquor Laws to conduct a study seeking remedies for the complaints. H.B. 2020 was the result of the Committee's study.

Briefly, H.B. 2020 is an attempt to obtain liquor prices which are competitive with surrounding states by introducing competition into the three-tiered structure. The affirmation technique at the manufacturer level was retained but at the distributor level, H.B. 2020 permits the distributor to negotiate brand franchise contracts for a territory statewide area or less, and allows the price to seek its own level in the market place as a result of competition between brands. The wholesale price established by the competition plus a reasonable markup determined by the ABC Board then becomes the retailer's minimum price to the consumer. The distributor must respect the franchise territory he has acquired and may not sell outside that area. There were nine licensed liquor distributors in Kansas at the time of trial: Standard Liquor Corporation; Grant-Billingsley Fruit Co., d/b/a Grant-Billingsley Wholesale Liquor Co., Inc.; Colby Distributing Co., Inc.; Kansas Distributors, Inc.; Eastern Distributing, Inc.; A-B Sales, Inc.; Sunflower Sales Co.; Famous Companies, Inc.; and W. A. Winters Co., a sole proprietorship. Neither Famous nor Winters are parties or intervenors in this suit. Colby sold

its business to Standard during the pendency of the appeal. The Wholesale Dealer's Association supported the passage of H.B. 2020; however, after its enactment, in the scramble for brand franchises, Colby, Grant-Billingsley, and Kansas Distributors were unsuccessful in obtaining the brands or area they sought. Standard and Famous each obtained statewide franchises on numerous popular brands of liquor. A-B Sales, Sunflower and Eastern Distributing were satisfied with their franchises, although the areas are less than statewide and are for fewer brands than Standard and Famous. The franchise alignment resulted in at least two wholesale competitors for all types of alcoholic liquor in every area of the state.

H.B. 2020 became effective May 10, 1979, but provided all distributors would have 120 days thereafter to dispose of the accumulated inventories of liquor brands for which they had not obtained a franchise. This action was filed July 17, 1979, by Kansas Distributors, Colby and Grant-Billingsley, against the secretary of revenue, director of alcoholic beverage control and members of the Alcoholic Beverage Control Board of Review. At that time, the trial court entered a temporary restraining order preventing implementation of H.B. 2020 until August 31, 1979.

On August 3, 1979, Standard, A-B Sales, Sunflower and Eastern were permitted to intervene in opposition to plaintiff's position; Vern Miller, Sedgwick County District Attorney, and The Kansas Retail Liquor Dealers Association intervened in support of the plaintiffs. It was never claimed by the parties why the district attorney of Sedgwick county was permitted to intervene on behalf of the people of Kansas in opposition to the attorney general.

The case was tried August 6 and 7, 1979. Plaintiff's evidence consisted of the testimony of John F. Grant, president of Grant-Billingsley Wholesale Liquor Co. and Albert C. Becker, president of Kansas Distributors, Inc., both of whom testified they did not oppose H.B. 2020 until they discovered they could not obtain the brand franchise or the territory they had anticipated. They stated Standard and Famous each held statewide franchises on a number of well known brands of wines and distilled spirits representing 32.33% and 31.83%, respectively of the total brands sold. They introduced documents showing the specific brands each had negotiated with suppliers. Both witnesses admitted plaintiffs had mutually agreed Colby would take the western Kansas territory, Grant-Billingsley central Kansas, and Kansas Distributors, Inc. eastern Kansas. Each would have the same brands, altogether constituting a statewide franchise. They further testified that as a result of Famous and Standard obtaining statewide franchises on so many popular brands, their projected volume would be reduced by two-thirds and they would be driven out of business.

Plaintiff's one other witness was William T. Terrell, a Wichita State University economist who had made a study of the Kansas Liquor Control Act. He testified in his opinion the exclusive franchise provisions of H.B. 2020 would create a wholesale liquor monopoly. He also stated, however, that under the law prior to H.B. 2020, Kansas was more of a control or monopoly state than a license state.

Defendants called Sen. Frank Gaites who testified the legislature intended to maintain the three-tiered liquor

control system in Kansas and passed H.B. 2020 as an exercise of the police power to lower prices to the consumer, maintain an orderly market and eliminate the importation of illegal liquor from out of state, thereby collecting more taxes within the state.

The defendants also called Leslie J. Rudd, president of Standard Liquor Corporation. He testified there would be brand competition under H.B. 2020 because of the proprietary or economic interest each distributor had in his franchised brands. That interest would create a savings in freight costs, a reduction in warehouse inventory and a more efficient operation, all resulting in a savings to the consumer. He also testified the prices he had filed with the ABC for September were below the prices for the same brands previously filed under the old law.

The challenge to the bill's constitutionality generally centers around the actions dealing with exclusive franchising and price fixing by distributors. The sections under attack are too lengthy to include in this opinion. We have therefore, included the trial court's brief summation of the pertinent sections of H.B. 2020.

"a. Sec. 2 allows distributors to sell only such brands of alcoholic liquor to only those retailers whose licensed premises are located within the geographic territory for which such distributor is authorized to sell such brand as designated in the notice or notices filed with the Director pursuant to Sec. 3;

"b. Sec. 3 prohibits any distributor from selling any alcoholic liquor in this state unless such distributor has filed with the Director a written notice stating each geographic territory as has been agreed upon be-

tween such distributor and a distiller within which such distributor shall sell to retailers one or more brands of such distiller. Said section further provides that no distiller shall grant such a franchise for the distribution of a brand to more than one distributor for all or part of any designated territory. Said section likewise proscribes and limits in subsections (3), (4), (5) and (6) the ability of any such distiller or such distributor to terminate or modify any such franchise or to alter the geographic territory designated in such franchise agreement, except for reasonable cause;

"c. Sec. 4 prohibits any distributor of alcoholic liquor from selling a brand or kind of such liquor to any retailer whose licensed premises are located outside said distributor's exclusive franchise territory for such brand as established under Sec. 3 described hereinabove. Sec. 4 further prohibits any distiller or distributor from fixing, maintaining, coercing or controlling the resale price of such alcoholic liquor to be resold by such distributor or distiller, but specifically authorizes distributors to furnish licensed retailers with a price list of the retail minimum price, including the minimum mark-up, for all such liquor sold by such distributors to such retailers;

"d. Sec. 5 prohibits any distributor of alcoholic liquor from purchasing any such liquor from any distiller unless such distiller shall file with the Director a written statement agreeing to sell any of the brands or kinds of such liquor manufactured and distributed by such distiller to any distributor licensed in this state and having a franchise to distribute such brands of such liquor, pursuant to Sec. 3, and to make such sales to all franchised distributors at the same current price and without discrimination and to file periodic price lists showing their current prices with the office

of the Director. Sec. 5 further prohibits any licensed retailer from purchasing any such liquor from any such distributor unless such distributor shall file with the Director a written statement agreeing to sell any of the brands or kinds of such liquor distributed by such distributor and to provide service in connection therewith to any licensed retailer whose licensed premises are located within the geographic territory of such distributor's franchise for such liquor, to make such sales to all such licensed retailers at the same current bottle and case price, and without discrimination and to file price lists showing such current bottle and case price in the office of the Director periodically;

"e. Sec. 6 specifically provides that the sales price of alcoholic liquor sold by distiller to licensed distributors of alcoholic liquor shall be no higher than the lowest price for which same is sold to distributors anywhere in the continental United States, and that the minimum mark-ups of such liquor to be sold by retailers licensed in this state should be determined and regulated by the ABC Board and thereby eliminates from any regulation whatsoever the price at which such liquor can be sold by distributors to retailers and the minimum price at which such liquor can be sold by retailers to consumers;

"f. Sec. 7, Sec. 8, Sec. 9 and Sec. 10 deal with the establishment of ABC Board of minimum mark-up which shall be charged by retailers in sales of alcoholic liquor to consumers;

"g. New Sec. 11 provides for a period of 120 days or until September 10, 1979, wherein a presently licensed distributor, such as the Plaintiffs herein, may sell any alcoholic liquors that such distributor may

have on hand at the time this Act takes effect in the same manner, and to the same purchasers as such distributor was authorized to sell the same prior to May 10, 1979."

Section 14 is the amending and repealing portion of the bill.

The trial court rendered its decision August 31, 1979. It found:

"4. The state has the right to establish and regulate franchise areas under the police power to regulate the liquor industry so long as these laws do not interfere or impede valid federal law or constitutional safeguards. Providing for suppliers and distributors to establish exclusive franchise areas without state intervention or state power to control or regulate has no reasonable rational relation to the purpose of fostering temperance and orderly marketing conditions. The effect of the exclusive franchise system authorizes private persons to engage in anti-competitive conduct and constitutes a violation of the Sherman Act.

"5. It is even more pernicious to allow price fixing with an exclusive franchise to sell, both controlled by the same non-government entity, without regulation by the state.

"Therefore, the following sections are declared void in accordance with these findings, conclusions and decisions:

- a. Section 7
- b. Section 8
- c. Section 9
- d. Section 10

"12. The following sections are valid except as follows:

a. New Section 3(1)—Delete 'No manufacturers, importer or other supplier shall grant a franchise for the distribution of a brand to more than one distributor for all or part of any designated territory.'

b. Section 6—Delete 'and (b) that minimum mark-ups on alcoholic liquor sold by retailers licensed in this state should be determined and regulated by law.'

c. Section 10(2)—Delete 'plus minimum mark-up.'

All other sections are valid."

A permanent injunction was granted with the judgment barring implementation and enforcement of the invalid portions of H.B. 2020.

On September 5, 1979, the trial court denied defendants' application for an injunction pending an appeal, which enabled the defendants and the ABC Board to continue operating under the prior law, but stayed the judgment until September 10, 1979. Defendants perfected their appeal and on September 10 requested a stay of H.B. 2020 and the trial court's judgment pending the appeal. This court stayed the trial court's order but refused to stay H.B. 2020 which became effective that day.

The plaintiffs cross appealed on September 17, 1979, placing all of the issues raised by the pleadings and the judgment of the trial court before this court, challenging the constitutionality of H.B. 2020.

For purposes of clarity, we will hereafter refer to the plaintiffs as appellees and the defendants as appellants.

We will begin our discussion by reviewing several well established rules pertaining to legislative enactments.

"It is fundamental that our state constitution limits rather than confers powers. Where the constitutionality of a statute is involved, the question presented, is therefore, not whether the act is authorized by the constitution, but whether it is prohibited thereby. [Citations omitted.]

"The constitutionality of a statute is presumed, all doubts must be resolved in favor of its validity, and before the statute may be stricken down, it must clearly appear the statute violates the constitution. [Citations omitted.]

"In determining constitutionality, it is the court's duty to uphold a statute under attack rather than defeat it and if there is any reasonable way to construe the statute as constitutionally valid, that should be done. [Citations omitted.]

"Statutes are not stricken down unless the infringement of the superior law is clear beyond substantial doubt. [Citations omitted.]

"Courts do not strike down legislative enactments on the mere ground they fail to conform with a strictly legalistic definition or technically correct interpretation of constitutional provisions. The test is rather whether the legislation conforms with the common understanding of the masses at the time they adopted such provisions and the presumption is in favor of the natural and popular meaning in which the words were understood by the adopters. [Citations omitted.]" *State ex rel. Schneider v. Kennedy*, 225 Kan. 13, 20-21, 587 P.2d 844, 850 (1978).

City of Baxter Springs v. Bryant, 226 Kan. 383, 598 P.2d 1051 (1979).

As a result of the stays granted in this litigation, in addition to the legislative 120 day delay postponing the effective date of the act (new Section 11, H.B. 2020), the provisions of H.B. 2020 were not in effect on the date of trial, rendering the evidence presented highly speculative. Our concern here is primarily with the constitutionality of the provisions of H.B. 2020 on its face. Appellees allege sections 2, 3, 11 and 14 violate the Sherman Anti-Trust Act and, as such, are invalid under the supremacy clause of the U.S. Constitution. U.S. Const., art. VI, cl.2.

In considering any state law regulating intoxicating liquors, we must begin with the Twenty-first Amendment, the second section of which provides:

"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 manufacture, sale and use of intoxicating liquors has traditionally been a subject of governmental regulation at both federal and state levels. Such regulation is viewed as a valid exercise of the police power to protect the public health, welfare and morals. See *Crane v. Campbell*, 245 U.S. 304, 38 S.Ct. 98, 62 L.Ed. 304 (1917); *Mugler v. Kansas*, 123 U.S. 623, 8 S.Ct. 273, 31 L.Ed. 205 (1887); *The License Cases*, 46 U.S. 504, 12 L.Ed. 256 (1847). When the Eighteenth Amendment was repealed in 1933 by the Twenty-first Amendment, each state was granted broad regulatory power over liquor traffic within its boundaries.

That regulatory power included the authority to completely forbid the importation of liquor if a state so desired. *U. S. v. Frankfort Distilleries*, 324 U.S. 293, 65 S.Ct. 661, 89 L.Ed. 951 (1945); *State Board v. Young's Market Co.*, 299 U.S. 59, 57 S.Ct. 77, 81 L.Ed. 38 (1936). A state's power to regulate intrastate operations of liquor traffic is not restricted by the commerce clause. *Ziffrin, Inc. v. Reeves*, 308 U.S. 132, 60 S.Ct. 163, 84 L.Ed. 128 (1939). In *Hostetter v. Idlewild Liquor Corp.*, 377 U.S. 324, 330, 84 S.Ct. 1293, 1296, 12 L.Ed.2d 350 (1964), the Supreme Court held 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." That holding was more recently affirmed in *Seagram & Sons v. Hostetter*, 384 U.S. 35, 42, 86 S.Ct. 1254, 1259, 16 L.Ed.2d 336 (1966).

Although the Twenty-first Amendment grants broad regulatory powers to a state with regard to intrastate regulation of liquor traffic, a state may not exercise exclusive control over liquor shipments passing through its borders which are destined for interstate use. See *Hostetter v. Idlewild Liquor Corp.*, 377 U.S. 324, 84 S.Ct. 1293, 12 L.Ed.2d 350; and *Collins v. Yosemite Park Co.*, 304 U.S. 518, 58 S.Ct. 1009, 82 L.Ed. 1502 (1938).

It is argued the state's almost absolute regulatory control recognized in *Seagram & Sons* was modified in *Craig v. Boren*, 429 U.S. 190, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976). In that case, the Supreme Court struck down an Oklahoma law which prohibited the sale of 3.2% beer to males under the age of 21 and females under the age of 18. Okla.

Stat. tit. 37, §§ 241 and 245 (1958 and Supp. 1976). The court found the "gender-based differential" contained in the statutes constituted a denial of equal protection to males between the ages of 18 and 20. Because the case concerned statutes pertaining to liquor regulation, the court discussed the role of the Twenty-first Amendment and whether the power it conferred upon states in the field of liquor regulation was strong enough to withstand an equal protection challenge. The court held "the Twenty-first Amendment does not save the invidious gender-based discrimination from invalidation as a denial of equal protection of the laws in violation of the Fourteenth Amendment." *Craig v. Boren*, 429 U.S. at 201-205, 97 S.Ct. at 461. The issues before the court did not directly involve an application of the Commerce Clause. The court did, however, reaffirm the rule that while the Twenty-first Amendment did not repeal the Commerce Clause, the Amendment "created an exception to the normal operation of the Commerce Clause." *Craig v. Boren*, 429 U.S. at 206, 97 S.Ct. at 461. That exception is clearly the overwhelming power granted the states in the area of liquor regulation. We find the issues before the court in *Craig* did not directly involve the state's regulatory power in liquor traffic and the earlier holdings conferring that power were not modified.

This court has followed the rationale of U.S. Supreme Court cases, commencing with *State v. Payne*, 183 Kan. 396, 403, 327 P.2d 1071, 1078 (1958), where we stated:

"It has been repeatedly held that under the 21st Amendment a state may absolutely prohibit the manufacture, transportation, importation, sale or possession of alcoholic liquors irrespective of when or where

produced or obtained, or the use to which they are to be put, and may adopt measures reasonably appropriate to effectuate those inhibitions and exercise full police authority in respect to them, unfettered by the due process clause, the equal protection clause or the commerce clause."

These general principles were followed in *Laird & Company v. Cheney*, 196 Kan. 675, 414 P.2d 18; and *Tri-State Hotel Co. v. Londerholm*, 195 Kan. 748, 408 P.2d 877 (1965).

It is argued by appellees that this court deviated from those rules in *City of Baxter Springs v. Bryant*, 226 Kan. 383, 598 P.2d 1051. We do not agree with that rationale. *City of Baxter Springs* involved a suit by the city against the proprietor of a local disco for violation of city ordinances prohibiting dispensing of beer and allowing dancing in the disco. In addition, the proprietor was charged with failure to provide an unobstructed view of the premises from the street. We discussed the application of the Twenty-first Amendment in considering the constitutionality of the city ordinances which pertained to regulation of establishments serving cereal malt beverages. The court held the ordinances unconstitutional because they were not "reasonably calculated to promote the health, sanitation, morals, or general welfare of the residents of Baxter Springs. . . ." *City of Baxter Springs v. Bryant*, 226 Kan. at 392, 598 P.2d at 1059. The central issue before the court in that case was the regulation of certain types of activity in or around an establishment that dispensed cereal malt beverages. This court found a state may not, under color of the Twenty-first Amendment, impinge upon individual

rights protected by the Due Process and Equal Protection clauses. See *Craig v. Boren*, 429 U.S. 190, 97 S.Ct. 451. The case did not, however, deal directly with the state's broad authority to regulate the manufacture, distribution, sale, possession and consumption of alcoholic liquor. We find that regulatory power was not modified or lessened in *City of Baxter Springs*.

In addition to the weight of authority, both federal and state, which supports the broad regulatory power of a state, in the area of alcoholic liquor, we find another rationale for upholding H.B. 2020. The provisions of H.B. 2020 on its face will allow sufficient brand and price competition to withstand allegations of a violation of the Sherman Anti-Trust Act. The law is neutral and provides that any licensed distributor may obtain an exclusive franchise for one or more brand of alcoholic liquor from any licensed manufacturer for any designated area of the state. There are eight distributors, 14 categories of liquor, approximately 80 manufacturers, and well in excess of the 260 brands of alcoholic liquor initially referred to in trial exhibits, each of which is subject to a separate franchise. On its face, that would appear to present ample opportunity for each to exercise its own perseverance to obtain products and territory. If one or more fails to obtain its share of the market the law is not at fault; it is one of the hazards of a free market.

Although appellees introduced testimony showing Standard has 32.33% of the market and Famous has 31.83% of the market, there is no evidence the two companies have together embarked upon a monopolistic venture. Appellees

further admit Colby, Grant-Billingsley and Kansas Distributors jointly agreed to make franchise applications for the same brands, each taking a prearranged portion of the state. This indicates they themselves may have conspired to restrain trade. Nothing in the testimony or exhibits proves H.B. 2020, on its face, provides for a combination in restraint of trade. Mr. Terrell concluded a monopoly would eventually result. We believe we may assume competition presently exists and will continue. Should any manufacturer, distributor or combination thereof conspire to restrain trade, the anti-trust laws are available as a remedy.

By allowing the liquor price to seek its own level at the second tier of the liquor system, the legislature has released liquor pricing from its former status as a totally controlled commodity. The price is no longer totally regulated, totally fixed and can now fluctuate as the competition in the market place will determine. With respect to exclusive franchising, we have noted there are now at least two distributors operating in every area of the state. Each distributes different brands, which compete with one another. Although each distributor completely controls the distribution of its brands within its territory we find the competition among brands to be sufficient to withstand claims of restraint of trade. We are urged by appellees to consider the recent California cases of *Midcal Aluminum, Inc. v. Rice*, 90 Cal.App.3d 979, 153 Cal.Rptr. 757 (1979), and *Rice v. Alcoholic Bev. etc. Appeals Bd.*, 21 Cal. 3d 431, 146 Cal.Rptr. 585, 579 P.2d 476 (1978). *Rice* struck down California price maintenance statutes as a violation of policies of the Sherman Anti-Trust Act, while *Midcal*

Aluminum, Inc. struck down fair trade and wine price posting provisions of the California Alcoholic Beverage Control Act, as violative of the Sherman Act. We have carefully considered these cases and find them contrary to our law and without precedent in Kansas.

We now turn to appellees' specific constitutional arguments. Appellees argue they are denied due process because they are denied the right to continue a lawful occupation. In addition, they argue the Act creates classifications which have no rationale, real or substantial relationship to public safety, health, general welfare or legislative purpose in violation of the Fourteenth Amendment of the U.S. Constitution and sections 1 and 2 of the Bill of Rights of the Kansas Constitution. From our examination of the Act, we discern no such classifications or denial of the right to continue operating. All distributors are eligible to franchise any brand with state-wide territory or less. Nothing in the law denies a distributor the right to pursue liquor wholesaling. The legislature enacted legislation permitting exclusive brand franchising comparable to franchises in other industries. The size of the franchise territory and the designation of the brands are left to private agreement under the best traditions of a free society. The stated legislative purpose is to introduce competition into the pricing of liquor to the public, thereby promoting the public welfare and stopping illegal liquor traffic from out of state by offering a more competitive price. There is nothing before us to show the stated purpose is not working. The appellees' complaint is an economic one over which this court has little control. As the court stated in

Seagram & Sons v. Hostetter, 354 U.S. at 47, 86 S.Ct. at 1262:

"[I]t 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.'"

See also *State ex rel. Schneider v. Kennedy*, 225 Kan. at 21, 587 P.2d 844.

Appellees' final point is that sections 2 through 11 and section 14 of H.B. 2020 are unconstitutional because they provide for an impermissible delegation of legislative authority to private persons in violation of Article 2, section 1 of the Kansas Constitution. They cite *Quality Oil Co. v. du Pont & Co.*, 182 Kan. 488, 323 P.2d 731, in support of the argument. *Quality* is distinguishable from the instant case. There, this court considered the Kansas Fair Trade Act which authorized a trademark owner to contract with one retailer for a minimum retail price for a named brand commodity and all retailers were bound thereby with notice. The non-signers were bound by the price agreement even though they were not parties to the contract. It left to the trademark owner the determination of whether or not a minimum price would be imposed upon which commodities and the amount. Here, the legislature determined it would not regulate wholesale prices but would let them seek their level in the competition of the market place. We understand this technique to be tradi-

tional in the capitalist society and thought by most to be the best method of determining a fair market price as long as competition is present. It is difficult to comprehend the logic of how a purposeful legislative decision to remove regulation can be transformed to the unlawful delegation of authority to regulate.

H.B. 2020 reflects the legislature's determination that a minimum price was necessary to insure an orderly market and to promote temperance and that it should be determined by the competition among wholesalers plus a minimum markup determined by the ABC Board of Review from the formula furnished by the legislature. This constitutes a permissible delegation of the ministerial act of administering the pricing regulation with a clear cut guideline. In *Laird & Company v. Cheney*, 196 Kan. 675, 414 P.2d 18, we held fixing wholesale liquor prices at the lowest price for which the item is sold anywhere in the United States was not violative of the commerce clause, the due process or equal protection clauses of the Fourteenth Amendment or comparable sections of the Kansas Constitution. Such practice is completely parallel to the method authorized in H.B. 2020.

We hold pursuant to the power and authority granted the state by the Twenty-first Amendment and pursuant to Article 15, §10 of the Kansas Constitution, to promote temperance and for the protection of the general welfare, health and safety of the people of Kansas, the legislature properly acted to permit a system of exclusive brand franchises for distributors of alcoholic liquor in Kansas for the purpose of introducing competitive pricing into the

Appendix B

In the Third Judicial District
District Court, Shawnee County, Kansas

Case No. 79-CV-896

[August 31, 1979]

Colby Distributing Co., Inc., et al.,	} Plaintiffs,
vs.	
Michael C. Lennen, et al.,	} Defendants.

MEMORANDUM OPINION

This is an action filed by three wholesalers (distributors) against the Secretary of Revenue, the Director of Alcohol Beverage Control and members of the Alcohol Beverage Control Board of Review of the State of Kansas seeking a declaratory judgment and permanent injunction from the enforcement of House Bill No. 2020, enacted by the state legislature, effective May 10, 1979.

The plaintiffs are licensed distributors of alcoholic liquor in accordance with the Kansas Liquor Act, pursuant to K.S.A. 1978 Supp. 41-103(8), 41-306 and 41-311. The intervenors are four licensed distributors, Standard Liquor Corporation, A-B Sales, Inc.; Sunflower Sales Company; and Eastern Distributing Company; the District Attorney of Sedgwick County, Kansas; and the Kansas Retail Liquor Dealers Association as amicus.

The defendants are the duly qualified agencies who regulate and enforce the liquor laws of Kansas.

Appendix A

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middle tier of the Kansas liquor distribution system and in passing the results of the competition onto the consumer through the retailer at not less than the competitive price, plus minimum markup. We hold Chapter 153 of the 1979 Session Laws of Kansas, known as H.B. 2020, a wholly constitutional enactment of the legislature.

The judgment of the trial court is affirmed in part and reversed in part in conformity with this opinion.

FROMME, J., not participating.