

A Bill for an Act Relating to Discriminatory Pricing in Supply Liquor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 281, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . PRICE DISCRIMINATION IN SUPPLYING LIQUOR

Sec. 281- Definitions. Whenever used in this part, unless otherwise apparent from the context:

(1) “Supplier” means any person engaged in business as a manufacturer, dis-

tiller, rectifier, importer, broker or agent which distributes any or all of its liquors through wholesalers licensed pursuant to this chapter.

- (2) "Hawaii wholesaler" means any person licensed under this chapter to sell liquors at wholesale to retail licensees or to others who are by law authorized to resell but are not by law required to hold a license.
- (3) "Liquor" has the meaning defined by section 281-1, except it shall not include beer and wine, as defined by that section.

Sec. 281- Price discrimination. No supplier shall sell or offer to sell to any Hawaii wholesaler any item of liquor at a price which is higher than the lowest price at which such item is currently being sold or offered for sale by such supplier to any wholesaler in any other state of the United States or the District of Columbia or to any state (or state agency) which owns and operates retail liquor outlets. In determining the lowest price for which any item of liquor is or was sold by such supplier in any other state or in the District of Columbia, or to any state (or state agency) which owns and operates retail liquor outlets, appropriate reductions shall be made for all discounts, rebates, free goods, allowances and other inducements of any kind whatsoever offered or given by such supplier to any such wholesaler in another state or in the District of Columbia or to any state (or state agency) which owns and operates retail liquor outlets; provided that differentials in price which make only due allowance for differences in state taxes and fees and for the actual cost of delivery are permissible. As used in this section, the term "state taxes and fees" means the excise taxes imposed or the fees required by any state or the District of Columbia upon, or based upon, a gallon or liter of liquor, and the term "gallon" means one hundred twenty-eight fluid ounces and the term "liter" means one thousand milliliters.

Sec. 281- Price affirmation; schedule, etc. Within sixty days after the effective date of this part, every supplier desiring to distribute liquor to a Hawaii wholesaler shall first file with the commission:

- (1) An affirmation, duly verified, certifying that such supplier will not sell or offer to sell any item of liquor in any state or the District of Columbia at a price lower than the price for which the same item is sold or offered for sale by such supplier to a Hawaii wholesaler, and
- (2) A current schedule of prices, duly verified and filed in the number of copies and form as required by the commission, for each brand and each size of liquor sold or offered for sale in Hawaii by such supplier, which prices are not higher than the lowest price at which the brand and size are offered for sale by such supplier to any wholesaler, distributor, jobber or retailer in any other state or the District of Columbia or to any state (or state agency) which owns and operates retail liquor outlets. On July 1 of each year after the initial filing hereunder, there shall be filed with the commission either a revised schedule or a statement that no revision is being made. In addition, any supplier may file a revised schedule at any time to reflect changed or modified prices, provided that any price increase shall not be effective until thirty days from the date of such filing.

Sec. 281- Violation; penalty. (a) It shall be unlawful for any supplier distributing liquor in this State to:

ACT 280

- (1) Fail to file the affirmation required by section 281- (a) (1) or to file a false affirmation;
- (2) Fail to file the schedule of prices or revision thereof required by section 281- (a) (2) or to file a false schedule or revision;
- (3) Sell or offer to sell any item of liquor to a Hawaii wholesaler in violation of section 281- or section 281- , or both, unless prior written permission of the commission is granted for such sale or offer, which permission shall be given only upon good cause shown and for reasons not inconsistent with the purposes of this part.

(b) Each violation of this part shall constitute a misdemeanor and upon conviction shall be punishable by a fine of not more than \$1,000 or imprisonment for a term of not more than one year, or both. In addition, the commission may bring proceedings to enjoin the violation of any of the provisions of this part.

(c) Any wholesaler injured in its business or property by reason of anything forbidden in this part may (1) bring proceedings to enjoin the violation of any of the provisions of this part, and if the decree is for the plaintiff, it shall be awarded reasonable attorney's fees together with the cost of suit, and (2) sue for damages sustained by it, and, if the judgment is for the plaintiff, it shall be awarded three-fold the damages by it sustained and reasonable attorney's fees together with the cost of suit."

SECTION 2. This Act shall take effect upon its approval and shall expire June 30, 1982.

(Approved June 16, 1980.)