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TRADE RESTRAINTS - UNLAWFUL TRADE STATUTES - SALES BY EMPLOYERS TO EMPLOYEES OF GOODS NOT HANDLED IN REGULAR COURSE OF BUSINESS

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TRADE RESTRAINTS — UNLAWFUL TRADE STATUTES — SALES BY EMPLOYERS TO EMPLOYEES OF GOODS NOT HANDLED IN REGULAR COURSE OF BUSINESS — The title of that once popular tune may soon be changed to "I *Can't* Get It For You Wholesale." During the last two years the legislatures of four states have passed laws[1] making it unlaw-

[1] Ill. Laws (1941), p. 1119, Stat. (Smith-Hurd, Supp. 1941), c. 121½, §§ 204-205; Mich. Pub. Acts (1941), No. 271, Stat. Ann. (Supp. 1941), §§28.79 (1) to 28.79 (12); Pa. Laws (1941), p. 900, Stat. (Purdon, Supp. 1941), tit. 43, §§ 941-944; Wis. Laws (1939), c. 129, as amended by c. 490, Stat. (1941), § 348.54.

ful for employers, either individuals, corporations, or other associations, to sell merchandise or other products to their employees unless these articles were actually manufactured by the employer or sold by him in the regular course of his business. It is the purpose of this comment to discuss the need and advisability of such legislation, the statutes which have been enacted, and their enforcement and constitutionality.

1. *The Need and Advisability of Legislation*

Buying at a discount has increased during the last two decades because of the growing demand for products which have a high unit price, such as electric refrigerators, stoves, washing machines, and radios. Since the retail mark-up on such items is usually at least forty per cent, it has become worthwhile for purchasers to "pull a few strings" to obtain these articles at a discount. In response to this condition many corporations have used their influence to secure discounts for their employees,[2] purchasing at less than the retail rate and selling to employees with little or no mark-up. The volume of this buying has risen to such proportions that an estimated $1,500,000,000 of business is diverted each year from regular retail channels.[3]

As a result, a person who works for a large corporation may have a real advantage over the small business man and the farmer who have no means of buying at a discount. Favored treatment of this kind, though undesirable, might not in itself justify a legislative enactment to correct the situation. The American public, however, insist upon seeing, touching, and testing the articles which they are about to buy. Consequently, it is the usual procedure for employees of large organizations to go to retail stores, examine the various makes of the article in which they are interested, and after making a decision, place their order with the purchasing agent of the organization for which they work. This "parasitical buying" resulting from the use of retail service without paying for it stamps this practice as an evil because it increases the retailing costs which the unfavored retail customers must bear.

The inequity of the practice is shown in a recent study appearing in the *Harvard Business Review* which reveals that discount buying is extremely prevalent in the higher income groups while it is rarely prac-

[2] "I Bought It Wholesale," 26 NATION'S BUSINESS 62 (Dec. 1938); Breese, "Only Saps Pay Retail Prices," 42 AM. MERCURY 255 (1937); Tallman, "When Consumers buy at 'Wholesale'," 17 HARV. BUS. REV. 339 (1939).

[3] Report by William Chency, RETAILING 14 (Home Furnishings Ed., Jan. 31, 1938).

ticed by those with very low incomes.[4] Since this practice leads to an undesirable economic and social result, it needs remedying in some manner, but whether or not legislation is the correct solution to the problem may be open to controversy.

There are some, including a few retailers, who are of the opinion that little help can be expected from fair trade or price regulations laws; they feel that the proper solution is for retailers to cut down the cost of retailing and to make sure that they are providing the service the public demands.[5] This solution, however, would not solve the problem of the parasitical use of retail service whereby persons select the desired article in retail stores and then buy directly from the producer through the purchasing agent of the organization for which they work. Another solution was worked out in New York where one hundred and fifty large corporations discontinued the practice of their own accord after being convinced by retail merchants that such practices were detrimental to their own interests.[6] This procedure, extensively used, would make legislation unnecessary and destroy the evil at its source. But there would appear little chance of its extensive adoption, since to be successful all employers would have to cooperate voluntarily in the plan.

[4] The following results were obtained from an investigation made by Gerald B. Tallman and reported in "When Consumers Buy at Wholesale," 17 HARV. BUS. REV. 339 at 344 (1939):

Monthly rental	No. of families	Percentage getting discounts	Average discount
Total	837	67.1%	17.7%
$100 or over	76	88.1%	29.4%
$71-99	80	88.7%	27.0%
$56-70	96	82.3%	23.9%
$41-55	121	78.5%	17.3%
$26-40	271	66.1%	13.9%
$15-25	179	37.4%	6.9%
$15 and under	14	21.4%	6.2%

Eight items were investigated in this study: refrigerators, vacuum cleaners, radios, washing machines, watches, tires, original furniture and recently purchased furniture. Although many of the families in the low-income groups probably work for employers through whom discounts might be available, they are often unable to take advantage of this opportunity because most of their purchases have to be made on the installment plan. The study also revealed that individuals engaged in the marketing of goods or those who occupied executive positions had greater opportunities to obtain discounts than those engaged in menial labor.

[5] Lacey, "Merchandising for Today's Needs," PROGRESS THROUGH DISTRIBUTION 26 (1938) (address delivered before the twenty-sixth annual meeting of the United States Chamber of Commerce).

[6] It is probably true that many of the employers are not in favor of the practice but find that they must engage in it because other employers are obtaining merchandise at a discount for their employees.

In spite of these possible solutions, discount buying is reaching alarming proportions. Retailing offers a real service to the community by providing a means of inspecting and comparing articles before buying, by providing an immediate supply without waiting, by informing the public of new products through advertising, and by insuring consumer satisfaction (since a retailer's success depends on repeat sales).[7] Retailers would seem to deserve protection from this growing danger, and legislation may be the most comprehensive and effective method of affording it.[8]

2. *The Statutes and Their Enforcement*

All of the statutes except that of Michigan employ almost identical language to make it unlawful for any person, firm or corporation to sell, procure for sale, or have in its possession for sale to its employees any article, product or material not manufactured by, or handled by, the employer in his regular course of business.[9] The Michigan statute does not make it unlawful for the articles to be in the possession of the employer, but contains a provision prohibiting the exhibition of catalogues displaying articles obtainable at a discount, and a prohibition against an employer's securing orders for such purchases.[10] Sale of articles to employees at retail rather than at a discount would not escape the sanctions of the statutes.[11]

These statutes expressly exempt the sale of meals, candy bars, cigarettes, tobacco, and beverages, as well as articles necessary to protect the safety and health of the employees at work.[12] At least the objection of "parasitical buying" is not present in the sale of candy bars and other low-priced items where no "shopping around" is needed before purchasing, and there are definite policy reasons justifying the exemption

[7] McClain, "Unfair Competition with Retailers," PROGRESS THROUGH DISTRIBUTION 14 (1938) (address delivered before the twenty-sixth annual meeting of the United States Chamber of Commerce).

[8] Legislation of this type does have the disadvantage of rigidifying the economic system. However, legislatures feel that comprehensive regulation by legislation is the proper solution to trade problems, as recent trends in both federal and state legislation adopting "fair trade" practice acts indicate.

[9] The statute in Illinois is typical. Ill. Laws (1941), p. 1119, Stat. (Smith-Hurd, Supp. 1941), c. 121½, §§ 204-205.

[10] The Michigan Statute, Mich. Pub. Acts (1941), No. 271, § 6, makes it unlawful "for any employer to purchase or cause to be purchased, or exhibited catalogues for the purchase of, or receive orders for the purchase of, any goods, wares . . . for any other purpose than for use or resale in the regular course of business of such employer. . . ."

[11] The Michigan statute, Mich. Pub. Acts (1941), No. 271, § 6, in addition to prohibiting sales at retail, provides that goods may not be sold to employees at discounts available to the employers. Since sales to employees are prohibited, it would seem unnecessary also to prohibit sales at a discount. But see note 37, infra.

[12] The Illinois statute, Ill. Stat. (Smith-Hurd, Supp. 1941), c. 121½, § 204, says: "excepting such specialized appliances and paraphenalia as may be required in said business enterprise for the safety or health of its employees."

of articles promoting the workers' safety and health. The Michigan statute excepts tools and equipment of all kinds used by the employees in their work, and the addition of more exceptions may be found advisable in the future.[13]

These statutes seem to write "finis" to the company stores which sell only to employees. If the employer, desiring to avoid the statute, establishes a store to sell products to employees, the sales will be allowed only if made to the public as well; otherwise the sales are not in the "regular course of business" [14] of the employer, the element necessary to escape the prohibitions of the statute. The Pennsylvania statute explicitly deals with this problem, allowing a person, firm or corporation to set up a store provided it sells to others besides employees, and sells at retail. Since corporations cannot set up such stores unless authorized by their articles of incorporation, it is unlikely that stores will be established merely to provide a means of selling articles to employees at a discount, especially when the same opportunity would have to be offered to all comers to constitute "regular course of business."

The acts uniformly prohibit sale by the employer to employees either directly or indirectly, by itself or through a subsidiary agency.[15] Thus employees of Buick Corporation could not buy a General Electric Refrigerator at a discount because both corporations are subsidiaries of

[13] The Wisconsin legislature has recently amended its statute, Wis. Laws (1939), c. 490, Stat. (1941), § 348.54, to exempt articles used by employees in the manufacture of food products which insure more sanitary conditions and are productive of a higher quality of food. Public policy may dictate that more articles used in the manufacturing process be exempted from the operation of the statute when they lead to more satisfactory working conditions and the production of higher quality products.

[14] All of the statutes allow employers to sell products either made or handled by the employer in his "regular course of business." This clause may lead to various interpretations in the various states. BLACK, LAW DICTIONARY, 3d ed., 1519 (1933), defines this to mean "normal operations which constitute business," citing Sgattone v. Mulholland & Gotwals, 290 Pa. 341 at 347, 138 A. 855 (1927). It is unlikely that in view of the purpose of the statutes merely selling to one's own employees would be considered to be the normal operation of a business. It is clear, however, that retail stores will be able to sell any of their merchandise at a discount to their employees if they also sell this same merchandise to the public. There is no danger of "parasitical" buying in the case of the retail store's selling its own merchandise to its employees, since inspection can be made at the store itself. This is also true if any employer sells to his employees goods which he manufactures or handles in the normal operation of his business.

[15] The Illinois, Pennsylvania and Wisconsin statutes have substantially similar provisions. The Illinois statute, Ill. Stat. (Smith-Hurd, Supp. 1941), c. 121½, § 204, provides: "No person, firm or corporation engaged in any business enterprise in this state shall, by any method or procedure, directly or indirectly, by itself or through a subsidiary agency owned or controlled in whole or part by such person, firm or corporation, sell or procure for sale. . . ." The Michigan statute, Mich. Pub. Acts (1941), No. 271, § 6, does not contain a provision relating to purchase through subsidiaries, but since the employer must be handling the goods in his "regular course of business," substantially the same results should be realized under this statute.

General Motors. This is a salutary provision in the statutes, since a great deal of this discount buying has been done where the selling company and the buying company were subsidiaries in the same organization.

It is inevitable that the enforcement of these statutes will be difficult. Devious means may be resorted to by employers to conceal such sales, and the success of the statutes must necessarily depend upon the cooperation of employers. The provisions of all the statutes, except that of Michigan, making it unlawful to have such articles in the possession or control of the employer may be essential to effective enforcement of the acts, and the Michigan legislature may find it necessary to add this provision to its statute. The statutes of Illinois and Wisconsin, which impose heavy fines for each offense,[16] may successfully deter such activity, but this means of enforcement may be held unconstitutional on the ground that criminal penalties are imposed without requirement of criminal intent.[17] The Michigan and Pennsylvania statutes merely provide for the issuance of injunctions after the violation is committed. Though these statutes have considerably less "teeth," they still may be effective since the employer may be liable for contempt of court if he repeats the act.[18] The statutes will at least provide a ready excuse to deny such service to their employees for those employers who do not favor such activities, but who have considered themselves compelled to provide this service to their employees because other employers were doing so.

3. *Constitutionality of the Statutes*

Before its decision in *Nebbia v. New York*,[19] the Supreme Court of the United States repeatedly held that the right to sell one's own property and fix the price thereof was a property right which could not be interfered with unless the business operated under a franchise or was affected with a public interest or was historically subject to price control.[20] The *Nebbia* case, however, held that due process under the

[16] The Illinois statute, Ill. Stat. (Smith-Hurd, Supp. 1941), c. 121½, § 205, and the Wisconsin statute, Wis. Laws (1939), c. 129, as amended by c. 490, § 1 (2), Stat. (1941), § 348.54, both provide for a fine of not less than one hundred dollars nor more than five hundred dollars for the first offense, and for a second or subsequent offense provide a fine of not less than five hundred nor more than one thousand dollars. Each prohibited act done constitutes a separate offense.

[17] See note 30, infra.

[18] Mich. Pub. Acts (1941), No. 271, § 8; Pa. Stat. (Purdon, Supp. 1941), tit. 43, § 943. This method of enforcement will necessarily prove more cumbersome because of the additional judicial steps which must be taken in getting an injunction and then enforcing the injunction in a contempt proceeding.

[19] 291 U. S. 502, 54 S. Ct. 505 (1934).

[20] Munn v. Illinois, 94 U. S. 113 (1877); German Alliance Ins. Co. v. Lewis, 233 U. S. 389, 34 S. Ct. 612 (1914); Tyson & Bro. v. Banton, 273 U. S. 418, 47 S.

Federal Constitution protects only against arbitrary or unreasonable action of the legislature and that the Court will not interfere with the economic policies of lawmaking bodies.[21] Since the purpose of the statutes in question is to eliminate certain unfair trade practices, they probably do not violate the due process clause of the Federal Constitution.[22]

These statutes, however, may be held invalid under the due process clauses of the state constitutions, and if the decision is clearly based on the provisions of the state constitution rather than the Federal Constitution, review by the Supreme Court is precluded.[23]

The statute adopted by Wisconsin probably will be held constitutional, since the supreme court of that state has indicated that it will follow the reasoning of the *Nebbia* case in interpreting the due process clause of the state constitution. As long as the regulatory law has a reasonable relation to a proper legislative purpose, it will not be invalidated because of the type of business regulated.[24] There is real doubt,

Ct. 426 (1927); Ribnik v. McBride, 277 U. S. 350, 48 S. Ct. 545 (1938); Williams v. Standard Oil Co. of Louisiana, 278 U. S. 235, 49 S. Ct. 115 (1929); New State Ice Co. v. Liebmann, 285 U. S. 262, 52 S. Ct. 371 (1932).

[21] Nebbia v. New York, 291 U. S. 502 at 539, 537, 54 S. Ct. 505 (1934): "Price control . . . is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt. . . . a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare. . . ."

[22] Id., 291 U. S. at 538. See 15 TULANE L. REV. 277 (1941); Sunshine Anthracite Coal Co. v. Adkins, 310 U. S. 381, 60 S. Ct. 907 (1940), upholding the price-fixing provisions of the Bituminous Coal Act.

[23] For a discussion of when the Supreme Court will review state court decisions involving federal and nonfederal questions, see 40 MICH. L. REV. 84 (1941).

[24] State ex rel. Finnegan v. Lincoln Dairy Co., 221 Wis. 1 at 12, 265 N. W. 197, 851 (1936): "It is considered that the contention of the defendant that the law is invalid because the milk industry is not subject to regulation in the exercise of the police power, and the further contention that price-fixing provisions are unconstitutional, are fully considered and disposed of in Nebbia v. New York, 291 U. S. 502, 54 S. Ct. 505 (1934) and Hegeman Farms Corp. v. Baldwin, 293 U. S. 163, 55 S. Ct. 7 (1934)." The "Fair Trade" act of Wisconsin was upheld in Weco Products Co. v. Reed Drug Co., 225 Wis. 474, 274 N. W. 426 (1937). However, the Wisconsin court declared a state franchise tax imposed on the gross income of chain stores unconstitutional as being so arbitrary and discriminatory as to constitute a denial of "equal protection" of the laws. Schuster & Co. v. Henry, 218 Wis. 506, 261 N. W. 20 (1935). Since the interpretation given the equal protection clause of the state constitution often reflects the state court's attitude toward state statutes regulating trade, this might indicate that the Wisconsin court would also declare the statute outlawing sales to employees by employers unconstitutional; but this does not seem likely since even in the Schuster case the court indicated that it would uphold a tax laying a heavier burden on the chain stores than on individual stores if the tax reflected more accurately the added advantage of operating several stores under the same management. See also, In re State ex rel. Atorney General, 220 Wis. 25, 264 N. W. 633 (1936).

however, whether the clause exempting lumber producers and dealers and other cooperatives will be upheld because of the decision in *Weco Products Co. v. Reed Drug Co.*,[25] in which the Wisconsin court held invalid a section exempting cooperative associations from regulation under the "Fair Trade Act" of the state.[26]

Whether the Missouri court will uphold its statute is yet to be determined, since litigation concerning similar legislation has not come before the court. There is some indication that the court will hold the statute valid because of its interpretation of the police power in *State ex rel. City of St. Louis v. Public Service Commission*,[27] where the court quoted the following statement from a United States Supreme Court case:[28]

> "...And it is also settled that the police power embraces regulations designed to promote *the public convenience or the general welfare and prosperity*, as well as those in the interest of the public health, morals and safety."

Since this case involved a statute declaring contracts made by foreign corporations void if the corporations were not licensed to do business in the state, it is possible that the court may assume a different attitude in regard to a statute regulating legitimate private business.

The Illinois court indicated recently that it will follow the reasoning of the *Nebbia* case when it upheld the "Fair Trade Act" of the state in *Triner Corporation v. McNeil*.[29] The court said that the private

[25] 225 Wis. 474, 274 N. W. 426 (1937).

[26] The court said that exemptions are good only if they are germane to the general objects of the legislation. The purpose of the "fair trade" act to protect the manufacturer from price-cutting which defeats good will would be equally defeated if nonprofit cooperatives were able to sell these products at prices below the "fixed" price. Since the purpose of the statute forbidding employers to sell goods to employees is to prevent diversion of retail sales from legitimate trade channels, the court may find that these exemptions are so arbitrary and discriminatory as to be unconstitutional. For an able discussion of whether cooperative organizations should be exempted from the operation of legislation regulating trade, see Bunn, "Consumers' Co-operatives and Price Fixing Laws," 40 MICH. L. REV. 165 (1941).

[27] 331 Mo. 1098 at 1113, 56 S. W. (2d) 398 (1932).

[28] Chicago & A. R. R. v. Tranbarger, 238 U. S. 67 at 77, 35 S. Ct. 678 (1914) (italics the Missouri court's).

[29] 363 Ill. 559, 2 N. E. (2d) 929 (1936). This decision upheld the fair trade act of Illinois and declared that the manufacturer of a trademarked article has a property right in the good will he has created through the sale of his product and that it is good public policy to protect that property right from destruction by persons wishing to cut the price of the article. By the same reasoning the court is likely to decide that the retailers have a property right in the service they perform which deserves protection. The court cites the Nebbia case as authority and states that the police power of the state may be used to promote the general welfare.

character of the business does not necessarily remove it from regulation if such legislation promotes the general welfare. The Illinois statute, as well as the statutes of Wisconsin and Missouri, may, however, be held invalid since violations of the act are misdemeanors and heavy fines are imposed for each offense committed.[30] Because there is no requirement of criminal intent these statutes may be held repugnant to the due process clauses.[31] This is undoubtedly the most vulnerable feature of these acts, and it may be necessary for the legislature to provide other means of enforcement, or to limit the penal provisions to cases where discounts are given with actual intent to injure retail business.

The Pennsylvania statute successfully avoids this difficulty by imposing no criminal sanctions whatsoever and requiring that sales at a discount be made willfully and knowingly.[32] Such prohibited acts may be enjoined, but no damages may be assessed. This is undoubtedly an attempt to avoid the fate of that state's first "Fair Trade Act," which was held invalid because criminal sanctions were imposed without requiring intent. The act was amended to require a finding of actual intent to destroy fair competition.[33] Although the constitutionality of this statute has not been challenged since the amendment, it still is not clear how far the Pennsylvania court will go in allowing regulation of private business under the police power. In *Equitable Loan Association v. Bell*,[34] decided in 1940, the court permitted regulation of the pawnbroker business, but some of the members of the court dissented vigorously on the ground that it was a denial of due process to regulate private business in this way. This latter decision creates real uncertainty as to whether the Pennsylvania court will uphold the statute prohibiting sales to employees.

[30] See note 16, supra, for penalties imposed by the Wisconsin and Illinois statutes.

[31] In Fairmont Creamery Co. v. Minnesota, 274 U. S. 1, 47 S. Ct. 506 (1927), the Supreme Court declared unconstitutional a Minnesota statute which prohibited price discrimination, provided penal sanctions for violators, but did not require "intent." A South Dakota statute which punished the practice of price discrimination as a crime only when this discrimination was intentionally designed to destroy competition of other established dealers was upheld by the Supreme Court in Central Lumber Co. v. South Dakota, 226 U. S. 157, 33 S. Ct. 66 (1912). This South Dakota statute provided that selling below cost was presumptively done with intent to destroy competition, but this presumption was rebuttable. See Wilson, "California Unfair Practice Acts and Fair Trade Act," 27 A. B. A. J. 249 at 250 (1941). For a discussion of when the police power of a state may be used to punish crimes without "intent," see 15 TULANE L. REV. 277 at 287 (1941). See also regarding this general problem Coffey v. Harlan County, 204 U. S. 659, 27 S. Ct. 305 (1906); International Harvester Co. of America v. Kentucky, 234 U. S. 216, 34 S. Ct. 853 (1914); Champlin Refining Co. v. Corporation Commission of Oklahoma, 286 U. S. 210, 52 S. Ct. 559 (1932).

[32] Pa. Stat. (Purdon, Supp. 1941), tit. 43, § 943.

[33] Pa. Stat. (Purdon, Supp 1941), tit. 74, § 213.

[34] 339 Pa. 449, 14 A. (2d) 316 (1940).

The Michigan statute does not contain criminal sanctions, but provides merely that such sales may be rescinded, and that an injunction may be obtained to prevent repetition of the prohibited acts. But the case of *People v. Victor*,[35] decided in 1939 and arising under Michigan's "Fair Trade Act," indicated that a majority of the court would not follow the reasoning of the *Nebbia* case in view of the position taken that price-fixing was permissible only when applied to business affected with a public interest.[36] A vigorous dissent was filed by two of the judges, who insisted that the *Nebbia* case should be followed on the ground that changed economic conditions necessitate greater regulation of business to promote the general welfare.[37] Unless the majority of the court have changed their views and are now ready to follow the view of the minority in the above decision, it is quite possible that the Michigan statute will be declared unconstitutional. There is, however, an additional feature of the Michigan statute, contained in none of the other statutes, which may prevent its invalidation. Part of the purpose of the act is to prevent the leakage in the sales tax revenue by prohibiting these discount sales upon which no sales tax is collected. The act may be upheld as necessary for a more effective enforcement of the sales tax law.[38]

[35] 287 Mich. 506, 283 N. W. 666 (1939).

[36] The case involved the Michigan fair trade act, which attempted to prevent price discrimination and unfair trade practices in producing, distributing and selling bakery and petroleum products. The court said that the statute was unconstitutional because these businesses were private businesses not affected with a public interest. The court does, however, indicate that a differently worded statute that would prevent price wars might be constitutional.

[37] 287 Mich. 506 at 518. Judge McAllister said that because of the great economic changes that have taken place in the last half century a change has taken place also in the judicial conception of the police power of the state to regulate and restrain the business activities of its citizens in the public interest and for the general welfare. He further points out that it seems odd that similar language in the due process clause of the Federal Constitution is interpreted differently by the Supreme Court than it is by the Michigan court in the case at bar.

[38] Mich. Pub. Acts (1933), No. 167, Stat. Ann. (1938), § 7.521 et seq. If the statute is upheld solely on this ground, employers might be able to take out sales tax licenses and sell merchandise to their employees at a discount in a company store even though no sales were made to the public, since the only constitutional objective of the statute would be accomplished. To give such an interpretation, the court would have to ignore one of the stated purposes of the statute, which is to prevent diversion of trade unfairly from established retail sources which leads to higher retail prices. If this interpretation is given the statute, the evil of "parasitical" buying will not be corrected although sales tax revenue will be increased. There is some indication that the Michigan legislature intended that employers could sell to their employees if sales tax licenses were taken out and that the statute was framed in this way to preclude opposition to the statute from employee groups interested in getting discounts through the organization by which they are employed.

Whether or not these statutes will be held constitutional in the various states will depend in part upon the attitude of the state supreme courts toward legislation shielding certain groups. These statutes were undoubtedly passed through the efforts of retailers' associations. In spite of the evils which might be corrected, some state courts may refuse to uphold this legislation even if they purport to follow the doctrine of the *Nebbia* case, since the protection of particular groups may not be considered conducive to the general welfare.

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