

## LEGISLATIVE BILL 371

Approved by the Governor April 17, 1989

Introduced by Ashford, 6

AN ACT relating to beer distribution; to amend section 87-402, Reissue Revised Statutes of Nebraska, 1943; to state intent; to define terms; to prohibit certain acts by suppliers and wholesalers; to provide for certain notices; to provide requirements for distribution agreements; to provide for applicability; to provide for the enforcement of agreements; to harmonize provisions; to provide severability; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. The purpose of sections 1 to 23 of this act is to provide fair, efficient, and competitive distribution of beer by (1) regulating the termination, expiration, and renewal of distribution agreements between beer suppliers and beer wholesalers, (2) promoting a distribution system in which each beer wholesaler will devote reasonable efforts and resources to sales, distribution, and quality control of the beer it sells, (3) promoting the continued availability of good quality beer for the consumers of Nebraska through orderly marketing and vigorous interbrand competition, (4) preventing a beer supplier from unfairly depriving a beer wholesaler of the value of the investment the wholesaler made in its business in terms of money, time, effort, and skill, and (5) controlling the sale of malt beverages in this state and facilitating the lawful and orderly marketing of malt beverages pursuant to the police powers of this state.

Sec. 2. For purposes of sections 1 to 23 of this act, the definitions found in sections 3 to 15 of this act shall be used.

Sec. 3. Advertising shall mean the commercial use of media forms used to make consumers aware of or familiar with the supplier's trademark, trade name, logo, slogan, colors, signs, or product. The term media forms shall include, but not be limited to, television, radio, newspaper, billboards, and point-of-sale signs produced by the supplier for use by the wholesaler. The terms promote, promotional, promotion, market, and

marketing shall be considered separate and distinct from advertising in meaning and application.

Sec. 4. Agreement shall mean any agreement between a wholesaler and a supplier, whether oral or written, by which a wholesaler is granted the right to purchase and sell a brand or brands of beer sold by a supplier.

Sec. 5. Ancillary business shall mean a business owned by a wholesaler, by a substantial stockholder of a wholesaler, or by a substantial partner of a wholesaler, the primary business of which is directly related to the transporting, storing, or marketing of the brand or brands of beer of a supplier with whom the wholesaler has an agreement, or a business owned by a wholesaler, by a substantial stockholder of a wholesaler, or by a substantial partner of a wholesaler which recycles empty beverage containers.

Sec. 6. Control of a wholesaler's business shall mean that combination of ownership interests which legally or in practical effect has the power to determine the policies under which the wholesaler's business shall be operated and shall include, but not be limited to, any change of ownership of twenty-five percent or more interest in the wholesaler's business or any change in the form of business entity being utilized by the wholesaler, including, but not limited to, a change from a sole proprietorship to a corporation.

Sec. 7. Designated member shall mean the spouse, child, grandchild, parent, brother, or sister of a deceased individual who owned an interest in a wholesaler who inherits the deceased individual's ownership interest under the terms of the deceased individual's will, who has otherwise succeeded the deceased individual in the wholesaler's business, or who inherits such ownership interest under the laws of intestate succession of this state. With respect to an incapacitated individual having an ownership interest in a wholesaler, the term shall mean the person appointed by the court as the conservator of such individual's property. The term shall also include the appointed and qualified personal representative and the testamentary trustee of a deceased individual having an ownership interest in a wholesaler.

Sec. 8. Good faith shall mean honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade, as defined in and interpreted under section 1-201, Uniform Commercial Code.

Sec. 9. Reasonable qualifications shall mean the standard of the reasonable criteria established and

consistently used by the supplier for similarly situated Nebraska wholesalers that entered into, continued, or renewed an agreement with the supplier during a period of twenty-four months prior to the proposed transfer of the wholesaler's business or for similarly situated Nebraska wholesalers who have changed managers or designated managers during a period of twenty-four months prior to the proposed change in the manager or successor manager of the wholesaler's business.

Sec. 10. Retaliatory action shall include, but not be limited to, the refusal to continue an agreement or a material reduction in the quality of service or quantity of products available to a wholesaler under an agreement, which refusal or reduction is not made in good faith.

Sec. 11. Sales territory shall mean an area of exclusive sales responsibility for the brand or brands and quality thereof granted to a wholesaler by a supplier as designated in an agreement between them.

Sec. 12. Substantial stockholder or substantial partner shall mean a stockholder or partner in the wholesaler who owns fifty percent or more of the capital stock of a corporate wholesaler or of the partnership.

Sec. 13. Supplier shall mean a manufacturer or importer of beer licensed by the State of Nebraska.

Sec. 14. Transfer of the wholesaler's business shall mean the voluntary sale, assignment, or other transfer (1) of all or control of the wholesaler's business, (2) of all or substantially all of the assets of the wholesaler, or (3) of all or control of the capital stock of the wholesaler, including the sale or other transfer of capital stock or assets by merger, consolidation, or dissolution, or of the capital stock of the parent corporation, or of the capital stock or beneficial ownership of any other entity owning or controlling the wholesaler.

Sec. 15. Wholesaler shall mean a wholesaler of beer licensed by the State of Nebraska.

Sec. 16. A supplier shall not:

(1) Fail to provide each wholesaler of the supplier's brand or brands with a written agreement which contains the entire agreement with the wholesaler and designates a specific, exclusive sales territory. Any agreement which is in existence on the effective date of this act shall be renewed in a manner consistent with sections 1 to 23 of this act, and the provisions of such sections may be incorporated by reference in the agreement. Nothing in such sections shall prevent a

supplier from making a one-time appointment, for a period not to exceed ninety days, of a wholesaler to temporarily service a sales territory not designated to another wholesaler until such time as a wholesaler is appointed by the supplier. The wholesaler who is designated to service the sales territory during the period of temporary service shall not be in violation of such sections and, with respect to the temporary sales territory, shall not have any of the rights provided under sections 18 and 20 of this act. The temporary service period may be extended beyond ninety days by the Nebraska Liquor Control Commission if justifiable circumstances exist as determined by the commission.

(2) Fix, maintain, establish, or unduly influence the price at which a wholesaler shall be required to sell any beer;

(3) Enter into an additional agreement with any other wholesaler for or to sell to any other wholesaler the same brand or brands of beer in the same sales territory or any portion thereof or to sell directly to any retailer in this state;

(4) Coerce or attempt to coerce any wholesaler to accept delivery of any beer or other commodity which has not been ordered by the wholesaler, except that a supplier may impose reasonable inventory requirements upon a wholesaler if the requirements are made in good faith and are generally applied to other similarly situated Nebraska wholesalers having an agreement with the supplier;

(5) Coerce or attempt to coerce any wholesaler to accept delivery of any beer or other commodity ordered by a wholesaler if the order was canceled by the wholesaler in accordance with acceptable procedures;

(6) Coerce or attempt to coerce any wholesaler to do any illegal act or to violate any law, rule, or regulation by threatening to amend, modify, cancel, terminate, or refuse to renew any agreement existing between the supplier and wholesaler;

(7) Require a wholesaler to assent to any condition, stipulation, or provision limiting the wholesaler's right to sell the brand or brands of beer or other products of any other supplier unless the acquisition of the brand or brands or products of another supplier would materially impair or adversely affect the wholesaler's quality of service, sales, or ability to compete effectively in representing the brand or brands of the supplier presently being sold by the wholesaler. The supplier shall have the burden of proving that such acquisition of such other brand or

brands or products would have such effect;

(8) Require a wholesaler to purchase one or more brands of beer or other products in order for the wholesaler to purchase another brand or brands of beer for any reason. A wholesaler that has agreed to distribute a brand or brands before the effective date of this act shall continue to distribute the brand or brands in conformance with sections 1 to 23 of this act;

(9) Require a wholesaler to submit audited profit and loss statements, audited balance sheets, or audited financial records as a condition of renewal or continuation of an agreement. A supplier may require profit and loss statements, balance sheets, or financial records which are certified by the wholesaler or an officer thereof;

(10) Coerce, compel, or require a wholesaler to provide or divulge specific information regarding the wholesaler's individual accounts or customers or his or her exclusive relationship with them or coerce, compel, or require a wholesaler to provide specific information concerning competitive brands;

(11) Use the threat of losing or withholding its credit as a means of compelling a wholesaler to standards of performance in any area of business except that area directly relating to credit;

(12) Withhold delivery of beer ordered by a wholesaler or change a wholesaler's quota of a brand or brands if the withholding or change is not made in good faith;

(13) Require a wholesaler by any means directly to participate in or contribute to any local or national advertising fund controlled, directly or indirectly, by a supplier;

(14) Willfully discriminate, directly or indirectly, in price, programs, or terms of sale offered to franchisees if the effect of such discrimination may be to substantially lessen competition or to give to one holder of a franchise any economic, business, or competitive advantage not offered to all holders of the same or similar franchise. This subdivision shall not govern dock prices;

(15) Take any action against a wholesaler who files a complaint regarding an alleged violation by the supplier of a federal, state, or local law, rule, or regulation in retaliation for such complaint;

(16) Restrict or inhibit, directly or indirectly, the right of free association among wholesalers for any lawful purpose;

(17) Require or prohibit, without just cause,

any change in the manager or successor manager of any wholesaler who has been approved by the supplier as of or subsequent to the effective date of this act. If a wholesaler changes an approved manager or successor manager, a supplier shall not require or prohibit the change unless the person selected by the wholesaler fails to meet the reasonable qualifications for managers of Nebraska wholesalers of the supplier, which reasonable qualifications previously have been consistently applied to similarly situated Nebraska wholesalers by the supplier. The supplier shall have the burden of proving that such person fails to meet such reasonable qualifications and that the qualifications have been consistently applied to similarly situated Nebraska wholesalers;

(18) Upon written notice of intent to transfer the wholesaler's business, interfere with, prevent, or unreasonably delay for a period of sixty days or more the transfer of the wholesaler's business if the proposed transferee is a designated member; or

(19) Upon written notice of intent to transfer the wholesaler's business other than to a designated member, withhold consent to or approval of, or unreasonably delay for a period of sixty days or more after receipt of all material information reasonably requested of the wholesaler a response to a request by the wholesaler for, any transfer of a wholesaler's business if the proposed transferee meets the reasonable qualifications required by the supplier for similarly situated Nebraska wholesalers. The supplier shall have the burden of proving that the proposed transferee fails to meet such reasonable qualifications and that the qualifications have been consistently applied to similarly situated Nebraska wholesalers.

Sec. 17. A wholesaler shall not:

(1) Fail to devote such efforts as are required in the agreement between the supplier and wholesaler within the supplier's designated sales territory relating to the sale and distribution of the supplier's brand or brands of beer which the wholesaler has been granted the right to sell or distribute;

(2) Sell or deliver beer to a retail licensee located outside the sales territory designated to the wholesaler by the supplier of a particular brand or brands of beer, except that during a period of temporary service interruption impacting a particular sales territory, a wholesaler who normally services the impacted sales territory shall file with the Nebraska Liquor Control Commission and give to the affected

supplier written notice designating the specific wholesaler or wholesalers, not disapproved by the supplier, who will service the sales territory during the period of temporary service interruption and the approximate length of time of the service interruption. Each wholesaler designated to temporarily service a sales territory shall be a wholesaler who has a current agreement with a supplier for the brand or brands affected. When the temporary service interruption is over, the wholesaler who normally services the sales territory shall notify the commission, the supplier, and the wholesaler or wholesalers servicing the sales territory on a temporary basis of this fact in writing, and any wholesaler servicing the sales territory on a temporary basis shall cease servicing the sales territory upon receipt of the notice. A wholesaler who is designated to service a sales territory during a period of temporary service shall not be in violation of sections 1 to 23 of this act and, with respect to the sales territory, shall not have any of the rights provided under sections 18 and 20 of this act; or

(3) Transfer his or her business without giving the supplier written notice of intent to transfer the business and, when required by sections 1 to 23 of this act, receiving the supplier's approval for the proposed transfer. Consent or approval from the supplier shall not be required for any transfer of the wholesaler's business to a designated member or any transfer of less than control of the wholesaler's business. The wholesaler shall give the supplier written notice of any change in ownership of the wholesaler.

Sec. 18. (1) Notwithstanding any agreement and except as otherwise provided for in sections 1 to 23 of this act, a supplier shall not amend or modify an agreement, cause a wholesaler to resign from an agreement, or cancel, terminate, fail to renew, or refuse to continue under an agreement unless the supplier has:

(a) Satisfied the applicable notice requirements of subsection (3) of this section;

(b) Acted in good faith; and

(c) Good cause for the amendment, modification, forced resignation, cancellation, termination, nonrenewal, or discontinuance.

(2) For each amendment, modification, cancellation, termination, nonrenewal, or discontinuance, the supplier shall have the burden of proving that it has acted in good faith, that the notice

requirements under this section have been complied with, and that there was good cause for the amendment, modification, cancellation, termination, nonrenewal, or discontinuance.

(3) Notwithstanding any agreement and except as to new products and as otherwise provided in this section and in addition to the time limits set forth in subdivision (4)(e) of this section, the supplier shall furnish written notice of the amendment, modification, cancellation, termination, nonrenewal, or discontinuance of an agreement to the wholesaler not less than thirty days before the effective date of the amendment, modification, cancellation, termination, nonrenewal, or discontinuance. The notice shall be sent by certified mail and shall contain:

(a) A statement of intention to amend, modify, cancel, terminate, not renew, or discontinue the agreement;

(b) A statement of the reason for the amendment, modification, cancellation, termination, nonrenewal, or discontinuance; and

(c) The date on which the amendment, modification, cancellation, termination, nonrenewal, or discontinuance shall take effect.

(4) Notwithstanding any agreement, good cause shall exist for the purposes of a cancellation, termination, nonrenewal, or discontinuance under subdivision (1)(c) of this section when:

(a) There is a failure by the wholesaler to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the wholesaler and the supplier;

(b) The supplier first acquired knowledge of the failure described in subdivision (a) of this subsection not more than twenty-four months before the date notification was given pursuant to subsection (3) of this section;

(c) The wholesaler was given notice by the supplier of failure to comply with the agreement within twenty-four months of such failure;

(d) The wholesaler was afforded a reasonable opportunity to assert good faith efforts to comply with the agreement within the time limits provided for in subdivision (e) of this subsection; and

(e) The wholesaler has been afforded thirty days in which to submit a plan of corrective action to comply with the agreement and an additional ninety days to cure such noncompliance in accordance with the plan.

(5) Notwithstanding subsections (1) and (3) of



this section, a supplier may cancel, terminate, fail to renew, or discontinue an agreement immediately upon written notice given in the manner and containing the information required by subsection (3) of this section if:

(a) The wholesaler becomes insolvent, files or has filed against it a petition under any bankruptcy or receivership law, makes an assignment for the benefit of creditors, or is dissolved or liquidated and such action materially affects the wholesaler's ability to remain in business;

(b) The wholesaler's state or federal license is revoked or suspended by the appropriate regulatory agency and the wholesaler cannot service the wholesaler's sales territory for more than sixty-one days;

(c) The wholesaler or a partner or an individual who owns ten percent or more of the partnership or stock of a corporate wholesaler has been convicted of a felony under the United States Code or the laws of any state which reasonably may adversely affect the goodwill or interest of the wholesaler or supplier. An existing stockholder or partner or a designated member shall have, subject to the provisions of sections 1 to 23 of this act, the right to purchase the partnership interest or the stock of the offending partner or stockholder, and if the sale is completed prior to conviction, the provisions of this subdivision shall not apply; or

(d) The supplier and wholesaler agree to a termination.

(6) Notwithstanding subsections (1), (3), and (4) of this section, upon not less than fifteen days' written notice given in the manner and containing the information required by subsection (3) of this section, a supplier may cancel, terminate, fail to renew, or discontinue an agreement if:

(a) There was intentional fraudulent conduct relating to a material matter on the part of the wholesaler in dealings with the supplier or its producers. The supplier shall have the burden of proving intentional fraudulent conduct relating to a material matter on the part of the wholesaler;

(b) The wholesaler failed to confine its sales of a brand or brands to retailers in its designated sales territory. This subdivision shall not apply if there is a dispute between two or more wholesalers as to the boundaries of the assigned territory and the boundaries cannot be determined by a reading of the

description contained in the agreements between the supplier and the wholesalers;

(c) A wholesaler who has failed to pay for beer ordered and delivered in accordance with established terms with the supplier fails to make full payment within two business days after receipt of written notice of the delinquency and demand for immediate payment from the supplier;

(d) A wholesaler intentionally has made a transfer of the wholesaler's business, other than a transfer to a designated member or pursuant to a loan agreement or debt instrument, without prior written notice to the supplier and has failed, within thirty days from the receipt of written notice from the supplier of its intent to terminate on the ground of such transfer, to reverse the transfer of the wholesaler's business;

(e) A wholesaler intentionally has made a transfer of his or her business, other than a transfer to a designated member, although the wholesaler has prior to the transfer received from the supplier a timely notice of disapproval of the transfer in accordance with sections 1 to 23 of this act; or

(f) The wholesaler intentionally ceases or ceases for a period of more than thirty-one days to carry on business with respect to any of the supplier's brand or brands previously serviced by a wholesaler in its sales territory designated by the supplier unless such cessation is due to a force beyond the control of the wholesaler or to a labor dispute and the wholesaler has made good faith efforts to overcome such events. This subdivision shall affect only that brand or brands with respect to which the wholesaler ceased to carry on business.

(7) Notwithstanding subsections (1), (3), (5), and (6) of this section, a supplier may cancel, terminate, not renew, or discontinue an agreement upon not less than thirty days' written notice if the supplier discontinues production or discontinues distribution in this state of all the brands sold by the supplier to the wholesaler. Nothing in this section shall prohibit a supplier from (a) upon not less than thirty days' written notice, discontinuing the distribution of any particular brand or package of beer or (b) conducting test marketing of a new brand of beer or of a brand of beer which is not currently being sold in this state if the supplier has notified the Nebraska Liquor Control Commission in writing of its plans to test market. The notice to the commission shall

describe the market area in which the test will be conducted, the name or names of the wholesaler or wholesalers who will be selling the beer, the name or names of the brand of beer being tested, and the period of time, not to exceed eighteen months, during which the testing will take place.

(8) Each wholesaler who sells beer to a retailer in this state shall service for the purpose of quality control all the beer it sells to that retailer. Each wholesaler shall, to the extent permitted by the Nebraska Liquor Control Act and the rules and regulations adopted and promulgated pursuant to such act:

(a) Rotate the beer it sold to a retailer no less frequently than may be specified from time to time by the brand owner so that beer produced first will be sold first;

(b) Clean and maintain tap equipment and provide related services as may be specified from time to time by the brand owner;

(c) Remove and replace with the same kind of beer any beer it sold to a retailer which has not been resold to a consumer within the time limits specified by the brand owner; and

(d) Provide whatever additional quality control services and comply with whatever additional quality control requirements are specified in writing from time to time by the brand owner, subject to the conditions that those services and requirements are reasonable and are reasonably related to promotion of quality control and that the wholesaler has received written notice of the services to be provided and the requirements to be satisfied and has been granted a reasonable time within which to comply.

(9) Except in the event of a temporary service interruption, a wholesaler shall not sell beer (a) to a retailer who does not have a location within the wholesaler's sales territory at which the retailer is entitled to resell beer to consumers or who the wholesaler knows or reasonably should know does not have a location within the wholesaler's sales territory at which the retailer is entitled to resell beer or (b) to any person who the wholesaler has reason to believe will sell or supply all or part of such beer to any retailer who does not have a location within the wholesaler's sales territory at which the retailer is entitled to resell beer. During a period of temporary service interruption impacting a particular wholesaler's sales territory, the wholesaler who normally services the

sales territory shall file with the Nebraska Liquor Control Commission and serve on his or her suppliers a written notice stating that a temporary service interruption has occurred and indicating the anticipated duration of the temporary service interruption. After receiving such notice the supplier may designate another wholesaler or wholesalers to service the sales territory during the period of temporary service interruption. After the temporary service interruption, the wholesaler who normally services the sales territory shall file with the commission and serve on each wholesaler providing temporary service and each supplier a written notice stating that the temporary service interruption has ended. Each wholesaler providing temporary service shall cease servicing the sales territory after receiving such notice.

Sec. 19. (1) Upon written notice of intent to transfer the wholesaler's business, any individual owning or personal representative of a deceased individual who owned an interest in a wholesaler's business may transfer the wholesaler's business to a designated member or to any other person who meets the reasonable qualifications required by the supplier for Nebraska wholesalers. The consent or approval of the supplier shall not be required of any transfer of the wholesaler's business, including the assignment of wholesaler's rights under the agreement, to a designated member except as provided in this subsection and shall not be withheld or unreasonably delayed to a proposed transferee other than a designated member who meets such reasonable qualifications. The supplier shall have the burden of proving that the proposed transferee fails to meet such reasonable qualifications and that the qualifications are consistently applied to Nebraska wholesalers by the supplier. A designated member or transferee shall not be qualified as a transferee without the written approval or consent of the supplier if such proposed transferee:

(a) Has been insolvent, has filed a voluntary or involuntary petition under any bankruptcy or receivership law, or has executed an assignment for the benefit of creditors;

(b) Has had a license issued under the Nebraska Liquor Control Act revoked or suspended for a period of sixty-one days or more;

(c) Has been convicted of a felony under the United States Code or the laws of any state which reasonably may adversely affect the goodwill or interest of the wholesaler or supplier; or

(d) Has had an agreement involuntarily canceled, terminated, not renewed, or discontinued by a supplier for good cause.

(2) The supplier shall not interfere with, prevent, or unreasonably delay the transfer of the wholesaler's business, including an assignment of wholesaler's rights under the agreement, if the proposed transferee is a designated member or if the transferee other than a designated member meets the reasonable qualifications required by the supplier for Nebraska wholesalers. When the transferee is other than a designated member, the supplier may, in good faith and for good cause related to the reasonable qualifications, refuse to accept the transfer of the wholesaler's business or the assignment of wholesaler's rights under the agreement. The supplier shall have the burden of proving that it has acted in good faith and that there was good cause for failure to accept or consent to the transfer of the wholesaler's business or the assignment of wholesaler's rights under the agreement.

Sec. 20. A supplier that, in violation of section 18 or 19 of this act, (1) has amended, modified, canceled, terminated, or refused to renew any agreement, (2) has caused a wholesaler to resign from an agreement, or (3) has interfered with, prevented, or unreasonably delayed or, when required by sections 1 to 23 of this act, has unreasonably withheld or unreasonably delayed consent to or approval of any assignment or transfer of a wholesaler's business shall pay the wholesaler reasonable compensation for the diminished value of the wholesaler's business, including any ancillary business which has been negatively affected by the act of the supplier. The value of the wholesaler's business or ancillary business shall include, but not be limited to, any goodwill. Nothing in such sections shall give rise to a claim against the supplier or wholesaler by any proposed purchaser of the wholesaler's business.

Sec. 21. A wholesaler may not waive any of the rights granted in sections 1 to 23 of this act, and the provisions of any agreement which would have such an effect shall be null and void. Nothing in such sections shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

Sec. 22. (1) Sections 1 to 23 of this act shall apply to agreements in existence on the effective date of this act and agreements entered into or renewed after such date.

(2) A transferee of a wholesaler that

continues in business as a wholesaler shall have the benefit of and be bound by all terms and conditions of the agreement with the supplier in effect on the date of the transfer. A transfer of a wholesaler's business which requires the supplier's consent or approval but is disapproved by the supplier shall be null and void.

(3) A successor to a supplier that continues in business as a supplier shall be bound by all terms and conditions of each distribution agreement that the predecessor was a party to at the time of transfer with respect to each brand the successor continues to make available for sale in this state.

Sec. 23. (1) If a supplier engages in conduct prohibited under sections 1 to 23 of this act, a wholesaler with whom the supplier has an agreement may maintain a civil action against the supplier to recover actual damages reasonably incurred as the result of the prohibited conduct. If a wholesaler engages in conduct prohibited under such sections, a supplier with whom the wholesaler has an agreement may maintain a civil action against the wholesaler to recover actual damages reasonably incurred as the result of the prohibited conduct.

(2) A supplier who violates any provision of such sections shall be liable for all actual damages, all court costs, and, in the court's discretion, reasonable attorney's fees incurred by a wholesaler as a result of the violation. A wholesaler who violates any provision of such sections shall be liable for all actual damages, all court costs, and, in the court's discretion, reasonable attorney's fees incurred by the supplier as a result of the violation.

(3) A supplier or wholesaler may bring an action for declaratory judgment for determination of any controversy arising pursuant to such sections.

(4) Upon proper application to the court, a supplier or wholesaler may obtain injunctive relief against any violation of such sections. If the court grants injunctive relief or issues a temporary restraining order, bond shall be posted.

(5) The remedies provided by such sections are not exclusive, and nothing contained in such sections shall abolish any cause of action or remedy available to the supplier or the wholesaler existing on the effective date of this act.

(6) Any legal action taken under such sections or relating to a dispute arising out of an agreement or breach thereof or over the provisions of an agreement shall be filed in a state or federal court located in

Nebraska, which state court is located in, or which federal court has jurisdiction and venue of, the county in which the wholesaler maintains its principal place of business in this state.

Sec. 24. That section 87-402, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-402. As used in sections 87-401 to 87-410 For purposes of the Franchise Practices Act, unless the context otherwise requires:

(1) Franchise shall mean (a) a written arrangement for a definite or indefinite period, in which a person grants to another person for a franchise fee a license to use a trade name, trademark, service mark, or related characteristics, and in which there is a community of interest in the marketing of goods or services at wholesale, or retail, or by lease, agreement, or otherwise; and (b) any arrangement, agreement, or contract, either expressed or implied, for the sale, distribution, or marketing of beer or nonalcoholic beverages at wholesale, retail, or otherwise. Franchise shall not include any arrangement, agreement, or contract, either expressed or implied, for the sale, distribution, or marketing of petroleum products at wholesale, retail, or otherwise;

(2) Person shall mean every natural person, firm, copartnership, association, or corporation;

(3) Franchisor shall mean a person who grants a franchise to another person;

(4) Franchisee shall mean a person to whom a franchise is offered or granted;

(5) Franchise fee shall include any payment made by the franchisee to the franchisor other than a payment for the purchase of goods or services, for a surety bond, for a surety deposit, or for security for payment of debts due;

(6) Sale, transfer, or assignment shall mean any disposition of a franchise or any interest therein, with or without consideration, ~~to~~ which shall include, but not be limited to, bequest, inheritance, gift, exchange, lease, or license;

(7) Place of business shall mean a fixed geographical location at which the franchisee displays for sale and sells the franchisor's goods or offers for sale and sells the franchisor's services. Place of business shall not mean an office, a warehouse, a place of storage, a residence, or a vehicle; and

(8) Good cause for terminating, canceling, or failure to renew a franchise shall be limited to failure

by the franchisee to substantially comply with the requirements imposed upon him or her by the franchise.

Sec. 25. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 26. That original section 87-402, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 27. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.