

LEGISLATIVE BILL 32

Approved by the Governor May 23, 1983

Introduced by Warner, 25

AN ACT to amend sections 59-801, 59-802, 59-805, 59-815, and 59-825, Reissue Revised Statutes of Nebraska, 1943, relating to unlawful restraint of trade; to change penalties; to provide the Attorney General with certain powers and duties as prescribed; to provide for the recovery of damages as prescribed; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 59-801, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-801. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce, within this state, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a Class IV felony. ~~I misdemeanor~~

Sec. 2. That section 59-802, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-802. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce, within this state, shall be deemed guilty of a Class IV felony. ~~I misdemeanor~~

Sec. 3. That section 59-805, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-805. Every person, corporation, joint stock company, or other association engaged in business within this state, who shall enter into any contract, combination, or conspiracy, or who shall give any direction or authority to do any act for the purpose of driving out of business any other person engaged therein, or who for such purpose shall in the course of such business sell any article or product at less than

its fair market value, or at a less price than it is accustomed to demand or receive therefor in any other place under like conditions; or who shall sell any article upon a condition, contract, or understanding that it shall not be sold again by the purchaser, or restrain such sale by the purchaser, shall be deemed guilty of a Class IV felony. ~~if misdemeanor.~~

Sec. 3. That section 59-815, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-815. Any corporation, joint stock company, or other association, and any president, director, treasurer, officer, corporator, copartner, associate, or agent thereof, who shall in its behalf engage in such business in violation of sections 59-801 to 59-828, shall for each offense, in addition to such penalty for contempt as the court in case of disobedience to its lawful order may impose, be guilty of a Class IV felony. ~~if misdemeanor.~~

Sec. 4. That section 59-825, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-825. Any person who shall neglect or refuse to make returns, attend and testify or answer any lawful requirement hereinbefore provided for, or produce books, papers, contracts, agreements, and documents, if in his or her custody, control, or power to do so, in obedience to the subpoena of the courts or lawful requirements of the Attorney General, shall be deemed guilty of a Class IV felony. ~~if misdemeanor.~~

Sec. 5. In the enforcement of sections 59-1601 to 59-1622 the Attorney General may bring an action in the name of the state in the district court of the county in which the alleged violator resides or has his or her principal place of business or in Lancaster County.

Sec. 6. When the Attorney General, on behalf of a state agency or political subdivision, is authorized to investigate, file suit, or otherwise take action in connection with violations under sections 59-801 to 59-830, any recovery of damages or costs by judgment, court decree, settlement in or out of court, or other final result shall be subject to the following:

(1) Upon recovery of damages or any monetary payment except criminal penalties, the costs, expenses, or billings incurred by any state agency or political subdivision in any investigation or other action arising out of a violation under sections 59-801 to 59-830 shall be sought out in any judgment, court decree, settlement in or out of court, or other final result. Any recovered costs shall be deposited by the Attorney General in the fund from which such costs were expended; and

(2) When the Attorney General makes recovery pursuant to sections 59-801 to 59-830 on behalf of a state agency or political subdivision of any money, funds, securities, or other things of value in the nature of civil damages or other, except criminal penalties, whether such recovery shall be by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, such money, funds, securities, or other things of value shall be deposited by the Attorney General in the fund from which the funds which are being recovered were expended.

Sec. 7. When the Attorney General, on behalf of a state agency or political subdivision, is authorized to investigate, file suit, or otherwise take action in connection with violations under sections 59-1601 to 59-1623, any recovery of damages or costs by judgment, court decree, settlement in or out of court, or other final result shall be subject to the following:

(1) Upon recovery of damages or any monetary payment except criminal penalties, the costs, expenses, or billings incurred by any state agency or political subdivision in any investigation or other action arising out of a violation under sections 59-1601 to 59-1623 shall be sought out in any judgment, court decree, settlement in or out of court, or other final result. Any recovered costs shall be deposited by the Attorney General in the fund from which such costs were expended; and

(2) When the Attorney General makes recovery pursuant to sections 59-1601 to 59-1623 on behalf of a state agency or political subdivision of any money, funds, securities, or other things of value in the nature of civil damages or other, except criminal penalties, whether such recovery shall be by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, such money, funds, securities, or other things of value shall be deposited by the Attorney General in the fund from which the funds which are being recovered were expended.

Sec. 8. That original sections 59-801, 59-802, 59-805, 59-815, and 59-825, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 9. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.