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Failed to Pass House.....

February 10, 1939.

Senate File 222.

Passed on File.

By LEVIS, BERG, BALDWIN, CROMWELL, ZEIGLER, KIRKETEG, EVANS, CORWIN, BEARDSLEY and HARVEY.

A BILL FOR

An Act to repeal chapter three hundred twenty-nine-G one (329-G1) of the 1935 Code of Iowa, known as the "Chain Store Tax Act of 1935", and to enact in lieu thereof the following bill, to be entitled "Chain Store Regulatory Act of 1939"; to define chain stores; to provide for the equalization of assessments and taxes of chain stores with other stores; to provide a method of determining assessed values of stocks of merchandise and inventories; to fix requirements upon the operators of chain stores for the making of returns to assessors; to define certain acts and practices as unfair and discriminatory and to prohibit the same; to prohibit the sale or advertisement of merchandise at less than cost for the purpose of injuring competitors; to prohibit discriminatory prices to retailers in the purchase of goods; to provide jurisdiction for prevention of violations of this Act, by injunction; and to fix penalties for violation of this Act.

WHEREAS, the Supreme Court of the United States has held subsection b of section sixty-nine hundred forty-three-g four (6943-g4), chapter three hundred twenty-nine-G one (329-G1) of the 1935 Code of Iowa as unconstitutional; and

WHEREAS, the valid portion of said act, which is known as the "Chain Store Tax Act of 1935" creates a tax upon chain stores which is burdensome to the State compared with the revenues received therefrom, creates no benefit to independent merchants and is not a remedy for the reason that there are certain advantages inherent to the business of operating chain stores which cannot be equalized by any license fee or franchise tax assessed against the units of chain stores in this state upon any fair or equitable basis; and

WHEREAS, it is deemed to be against the best policy of this state that competition in any business should be either regulated or destroyed by a punitive or discriminatory tax; and

WHEREAS, the theory of assessing chain stores upon the number of units is wholly arbitrary and discriminatory and does not take into consideration either the nature of the various businesses conducted by various chain stores, nor the differences in volume or methods of conducting such businesses; and

WHEREAS, chain stores, by reason of their method of distributing merchandise for retail sales, are able to carry smaller stocks of merchandise in their various stores than are merchants who do a comparable volume of business in the same community; and

WHEREAS, it is, therefore, necessary to equalize the basis of assessing stocks of chain stores in order that the total stocks of merchandise, including merchandise in transit or otherwise held in reserve and available to the demand of individual stores, shall be considered in computing the stock of merchandise assessed for taxation at any individual store; and

WHEREAS, the advantage accruing to chain stores in reporting inventories for taxation by reason of quantity purchases accrues to the advantage of the so-called chain store operator and places the independent merchant at a disadvantage in the payment of personal property taxes; and

WHEREAS, it is believed that such additional revenue as may be derived from the equalization of taxes on chain stores with the independent merchants should accrue to the several communities in which the so-called chain store units may be located, rather than to the State of Iowa; and

WHEREAS, it is the policy of this state that acts and practices of all merchants, indulged in for the purpose of destroying competition and of deceiving the buying public, through the use of so-called Loss-Leaders and unfair trade practices, are against the best interests of the entire state, tend toward monopoly and destruction of private initiative, cause unemployment and financial distress and interfere with the channels of trade; and

WHEREAS, it is more desirable to regulate trade practices and to equalize the burden of doing business than to license,

through taxation, a continuation of improper practices and inequalities; therefore,

Be It Enacted by the General Assembly of the State of Iowa:

1 Section 1. This act shall be known as the “Chain Store
2 Regulatory Act of 1939” and may be cited as such.

DIVISION I

1 Sec. 2. Chapter three hundred twenty-nine-G one (329-G1)
2 Code, 1935, is hereby repealed.

DIVISION II

1 Sec. 3. Conducting a business by a system of chain stores
2 shall be construed to mean the business of operating or maintaining
3 as part of a group or chain any store or stores in this state
4 where goods, wares, merchandise or commodities of any descrip-
5 tion whatsoever are sold or offered for sale at retail under
6 the same general management, supervision, ownership or control
7 whether such business is so operated wholly within or partly
8 without the state of Iowa.

1 Sec. 4. In assessing the value of the stock of merchandise
2 of a store which is defined as a chain store, the assessor shall
3 take the average stock of merchandise as of December 1st and
4 December 31st, as hereinafter provided, the value of which shall
5 be determined according to the provisions of section sixty-nine
6 hundred seventy-two (6972), Code, 1935, to which sum shall be
7 added the average amount of merchandise which is held in storage
8 for said store or is ordered for or in transit to said store and
9 ultimately received by it, and such amount so added shall be

10 determined by dividing the total value of merchandise sold at
11 retail by said store during the preceding year by the number of
12 business days it was in operation in said year, excluding Sundays
13 and legal holidays.

1 Sec. 5. The term “value” as used in the preceding section
2 and in the following section, shall mean the cost of the merchan-
3 dise to the retailer, but shall in no event be less than the
4 average cost of the same merchandise or merchandise of like kind
5 and quality to merchants generally, in the same taxing district.

1 Sec. 6. On or before March 1st of each year, commencing in
2 1940, the manager of each chain store shall furnish to the assess-
3 or, and to the state board of assessment and review, on such
4 forms as shall be provided for that purpose by said board, a
5 verified written statement which shall show the itemized inven-
6 tories and values of stock on December 1st and December 31st of
7 the preceding year, also the total value of merchandise sold by
8 said store during the preceding year and the number of business
9 days said store was in operation during said year, excluding
10 Sundays and legal holidays, and such other information as the
11 said state board of assessment and review may determine to be
12 necessary to carry out the purposes of this act. He shall also
13 preserve, for the inspection of the assessor, all invoices of
14 goods received and all books and records of the business for
15 the preceding year. A duplicate copy of the assessment roll
16 of each chain store as finally determined by the county board
17 of review shall be filed with the state board of assessment

18 and review.

1 Sec. 7. In the event of the failure of a chain store mana-
2 ger to comply with the provisions of the preceding section, the
3 board of assessment and review may audit the books and records
4 of his store and take an inventory thereof; and the expense
5 incurred thereby shall be certified to the county treasurer of
6 the county in which the store is located, and collected as other
7 taxes of said store.

DIVISION III

1 Sec. 8. (a) When used in this act, the term "cost to the
2 retailer" shall mean the invoice cost of the merchandise to
3 the retailer, or the replacement cost of the merchandise to the
4 retailer (within thirty (30) days prior to the date of sale, in
5 the quantity last purchased), whichever is lower; less all
6 trade discounts except customary discounts for cash; to which
7 shall be added (1) freight charges not otherwise included in
8 the cost of the merchandise, (2) cartage to retail outlet if
9 done or paid for by the retailer, which cartage cost shall be
10 deemed to be three-fourths ($\frac{3}{4}$) of one (1) per cent of the
11 cost of the merchandise to the retailer as herein defined,
12 unless said retailer claims and proves a lower cartage cost,
13 and (3) a mark-up to cover in part the cost of doing business,
14 which mark-up, in the absence of proof of a lesser cost, shall
15 be six (6) per cent of the total cost at retail outlet.

16 (b) When used in this act, the term "cost to the whole-
17 saler" shall mean the invoice cost of the merchandise to the

18 wholesaler, or the replacement cost of the merchandise to the
19 wholesaler within thirty (30) days prior to date of sale, in the
20 quantity last purchased, whichever is lower; less all trade
21 discounts except customary discounts for cash; to which shall
22 be added (1) freight charges not otherwise included in the cost
23 of the merchandise, and (2) cartage to the retail outlet if done
24 or paid for by the wholesaler, which cartage shall be deemed to
25 be three-fourth ($\frac{3}{4}$) of one (1) per cent of the cost of the
26 merchandise to the wholesaler as herein defined, unless said
27 wholesaler claims and proves a lower cartage cost.

28 (c) Where two or more items are advertised, offered for
29 sale or sold at a combined price, the price of each item named
30 shall be governed by the provisions of paragraph (a) or (b) of
31 section eight (8) respectively.

32 (d) The terms "cost to the retailer" and "cost to the
33 wholesaler", as defined in paragraphs (a) and (b), shall mean
34 bona fide costs; and sales to consumers, retailers and wholesalers
35 at prices which cannot be justified by existing market conditions
36 within this state shall not be used as a basis for computing
37 costs with respect to sales by retailers and wholesalers.

38 (e) The terms "sell at retail", "sales at retail", and
39 "retail sale" shall mean and include any transfer for a valuable
40 consideration, made in ordinary course of trade or in the usual
41 prosecution of the seller's business of title to tangible per-
42 sonal property to the purchaser for consumption or use other than
43 resale or further processing or manufacturing. The above term

44 shall include any such transfer of property where title is retained
45 by the seller as security for the payment of the purchase
46 price.

47 (f) The terms “sell at wholesale”, “sales at wholesale” and
48 “wholesale sales” shall mean and include any transfer for a val-
49 uable consideration made in the ordinary course of trade or the
50 usual prosecution of the seller’s business, of title to tangible
51 personal property to the purchaser for purposes of resale or
52 further processing or manufacturing. The terms shall in-
53 clude any such transfer of property where title is retained by
54 the seller as security for the payment of the purchase price.

55 (g) The term “retailer”, shall mean and include every person,
56 partnership, corporation or association engaged in the business
57 of making sales at retail within this state; provided that in
58 the case of a person, partnership, corporation or association
59 engaged in the business of making sales both at retail and at
60 wholesale, such term shall be applied only to the retail portion
61 of such business.

62 (h) The term “wholesaler” shall mean and include every per-
63 son, partnership, corporation or association engaged in the
64 business of making sales at wholesale within this state; provided
65 that, in the case of a person, partnership, corporation or asso-
66 ciation engaged in the business of making sales both at wholesale
67 and at retail, such term shall be applied only to the wholesale
68 portion of such business.

1 Sec. 9. It is hereby declared that advertisement, offer to

2 sell, or sale, or sale of any merchandise, either by retailers
3 or wholesalers, at less than cost as defined in this act, with
4 the intent, effect, or result of unfairly diverting trade from
5 or otherwise injuring a competitor, or with the result of
6 deceiving any purchaser or prospective purchaser, substantially
7 lessening competition, unreasonably restraining trade, or tending
8 to create a monopoly in any line of commerce, is an unfair
9 method of competition, contrary to public policy, and in contra-
10 vention of the policy of this act.

1 Sec. 10. Any retailer who shall, in the contravention of
2 the policy of this act, advertise, offer to sell or sell at
3 retail any item of merchandise at less than cost to the retailer
4 as defined in this act; or any wholesaler who shall, in contra-
5 vention of the policy of this act, advertise, offer to sell, or
6 sell at wholesale any item of merchandise at less than cost to
7 the wholesaler as defined in this act, shall be guilty of a mis-
8 demeanor, and upon conviction thereof shall be punished by a
9 fine of not more than five hundred (500) dollars. Proof of any
10 such advertisement, offer to sell or sale by any retailer or
11 wholesaler in contravention of the policy of this act, shall be
12 prima facie evidence of a violation of this act. Each and every
13 such advertisement, offer to sell, or sale shall constitute a
14 separate offense.

1 Sec. 11. In addition to the penalties provided in this act,
2 the courts of this state are hereby invested with jurisdiction
3 to prevent and restrain violations of this act, and it shall be

4 the duty of the several county attorneys, in their respective
5 counties, to institute proceedings in equity to prevent and
6 restrain violations. Any person shall be entitled to sue for
7 and have injunctive relief in any court of competent jurisdic-
8 tion against any threatened loss or injury by reason of a vio-
9 lation of this act.

1 Sec. 12. The provisions of this act shall not apply to sales
2 at retail or sales at wholesale (a) where merchandise is sold
3 in bona fide clearance sales, if advertised, marked, and sold
4 as such; (b) where perishable merchandise must be sold promptly
5 in order to forestall loss; (c) where merchandise is imperfect
6 or damaged or is being discontinued and is advertised, marked
7 and sold as such; (d) where merchandise is sold upon the final
8 liquidation of any business; (e) where merchandise is sold for
9 charitable purposes or to relief agencies; (f) where the price
10 of merchandise is made in good faith to meet competition; (g)
11 where merchandise is sold by any officer acting under the order
12 or direction of any court.

DIVISION IV

1 Sec. 13. It shall be unlawful for any person, firm or cor-
2 poration engaged in retail trade, directly or indirectly, know-
3 ingly to receive or to contract for the receipt of anything of
4 value as a payment, concession, rebate, commission, discount or
5 wage as compensation or consideration for the purchase or handling
6 of any commodity for resale, whereby a discriminatory price to
7 such retailer is in substance effected, unless such payment or

8 consideration is available on proportionately equal terms to all
9 other competing retailers.

1 Sec. 14. Any retailer who shall violate the preceding section
2 shall be guilty of a misdemeanor, and upon conviction thereof
3 shall be punished by a fine of not more than five hundred (500)
4 dollars and, in addition thereto, the courts of this state are
5 hereby invested with jurisdiction to prevent and restrain
6 violations of said section by injunction, and it shall be the
7 duty of the said several county attorneys, in their respective
8 counties, to institute proceedings in equity to prevent and
9 restrain violations. Each and every violation of the preceding
10 section shall constitute a separate offense.

1 Sec. 15. If any section, sentence, clause or provision of
2 this act, shall be held invalid or unconstitutional for any reason,
3 the validity of the remaining parts hereof shall not be affected
4 thereby.