

Senator PROXMIRE. Oh, yes. I would like to interrupt right there.

For example, what it showed in New York was that there was a decline in the number of managers and so forth in New York, from 618,000 to 569,000. And that included retail trade. That was a decline of 49,000; where the decline of individual retail proprietors was 87,000.

This means that other businesses increased. But I am talking about the retail area. Here is the area where we have had devastating impact of the supermarkets.

Mr. LOEVINGER. So far as I am aware, the argument of most of the supporters of resale price maintenance is that it is necessary to insure the survival of small business, particularly retail business.

However, nobody has attempted to analyze and examine the figures to determine whether or not in fact this is what such laws do.

Now, we have had as many as 45 out of the 48 States having fair trade or resale price maintenance laws in the past, as you know. The number now has declined to about 25. But over a long period of time we have had a very good laboratory-type experiment with these laws.

The Department of Justice has undertaken an analysis of the figures, and we have found that without variation, year by year, over a more than 10-year period, the business rate failures for business generally, and apparently for retail businesses, are higher in those States with resale price maintenance than they are in those States without resale price maintenance. And the difference is a very marked statistical difference.

Now, the analysis suggests why this may be true. The complaint is that small business is having a difficult time competing with large business and holding its own with chainstores and manufacturers.

However, the resale price maintenance approach puts it entirely within the power of the large manufacturer to control the price, and to establish the conditions which are supposed to help small business.

In fact, these manufacturers are mostly interested in the large retailers, and the chainstores, and in many cases are affiliated with chainstores.

Under the pending bill, in fact, there is a specific provision that permits manufacturers with their own retail outlets, their own factory stores, their own chainstore affiliations, to engage in resale price maintenance.

To say that this is a bill that will protect small business seems to me to be like saying we will deputize all of the robbers that we catch and make them part-time policemen in order to protect citizens against robbery. This just makes no sense at all.

On the other hand, the argument that is made most frequently by the very sincere, very articulate, and very well informed advocates of such legislation, is that the things that they must really guard against are so-called loss leader pricing.

It is said, and quite properly, that we cannot make the pricing system too inflexible, but that we must prevent the long purse of big business from being used to drive small business out by loss leader pricing.