A bill for an act

relating to trade regulations; providing for construction of the Minnesota Unlawful Trade Practices Act, Uniform Deceptive Trade Practices Act, Prevention of Consumer Fraud Act, and False Statement in Advertisement Act; modifying private remedies; amending Minnesota Statutes 2008, sections 8.31, subdivision 3a, by adding a subdivision; 325D.09; 325D.16; 325D.46, subdivision 1; 325D.47; 325F.67; 325F.69, by adding subdivisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 8.31, subdivision 3a, is amended to read:

Subd. 3a. **Private remedies.** In addition to the remedies otherwise provided by law and subject to subdivision 3d, any person injured by a violation of any of the laws referred to in subdivision 1 may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court. The court may, as appropriate, enter a consent judgment or decree without the finding of illegality. In any action brought by the attorney general pursuant to this section, the court may award any of the remedies allowable under this subdivision.

Sec. 2. Minnesota Statutes 2008, section 8.31, is amended by adding a subdivision to read:

Subd. 3d. **Private remedies for Unlawful Trade Practices Act, Prevention of Consumer Fraud Act, False Statement in Advertisement Act.** Civil actions pursuant to subdivision 3a for violations of the Unlawful Trade Practices Act (sections 325D.09 to 325D.16), Prevention of Consumer Fraud Act (sections 325F.68 to 325F.70), or the False Statement in Advertisement Act (section 325F.67) or other laws against false or fraudulent

advertising may be brought only by natural persons who purchase or lease goods, services, or real estate for personal, family, or household purposes. Each such person seeking to recover damages for violations of these sections, either in an individual action, a class action, or any other type of action, shall be required to plead and prove on an individual basis that the deceptive act or practice caused the person to enter into the transaction that resulted in the damages. No award of damages in an action covered by this subdivision may be made without proof that the person or persons seeking damages suffered an actual out-of-pocket loss. The term "out-of-pocket loss" means an amount of money equal to the difference between the amount paid by the consumer for the good or service and the actual market value of the good or service that the consumer actually received.

Sec. 3. Minnesota Statutes 2008, section 325D.09, is amended to read:

325D.09 UNLAWFUL TRADE PRACTICES.

Subdivision 1. **Findings.** The legislature of the state of Minnesota hereby finds: that the trade practices defined and prohibited by sections 325D.09 to 325D.16 are detrimental to labor, destructive to employment, and injurious to the best interests of workers; that they mislead consumers into believing that they are buying merchandise at prices substantially below regular retail prices, when in fact they are not; that they mislead consumers as to the quality, ingredients and origin of merchandise purchased; that they deprive consumers of various customer services offered by regularly established and bona fide retail outlets without compensating advantage to consumers; and that they constitute unfair and fraudulent competition and unsound and uneconomic methods of distribution. The legislature, acting in the exercise of the police power of the state, declares that the public policy of the state requires, and that the general welfare of the state will be benefited by, the suppression of the trade practices hereinafter defined.

Subd. 2. **Intent.** It is the intent of the legislature that in construing sections 325D.09 to 325D.16, courts shall be guided by the policies of the Federal Trade Commission and interpretations given by the Federal Trade Commission and the federal courts to section 5(a)(1) of the Federal Trade Commission Act, United States Code, title 15, section 45(a)(1), as amended.

Sec. 4. Minnesota Statutes 2008, section 325D.16, is amended to read:

325D.16 APPLICATION.

(a) Nothing in sections 325D.09 to 325D.16 shall be deemed to prohibit the sale by an employer to employees of the employer's own products or property at any price.

(b) This act shall not apply to actions or transactions otherwise permitted or regulated by the Federal Trade Commission or any other regulatory body or officer acting under statutory authority of this state or the United States.

Sec. 5. Minnesota Statutes 2008, section 325D.46, subdivision 1, is amended to read:

Subdivision 1. **Nonapplication.** Sections 325D.43 to 325D.48 do not apply to:

(1) ~~conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency~~ actions or transactions otherwise permitted or regulated by the Federal Trade Commission or any other regulatory body or officer acting under statutory authority of this state or the United States; or

(2) actions or appeals pending on July 1, 1973.

Sec. 6. Minnesota Statutes 2008, section 325D.47, is amended to read:

325D.47 UNIFORMITY OF APPLICATION AND CONSTRUCTION.

~~Sections 325D.43 to 325D.48 shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of sections 325D.43 to 325D.48 among those states which enact it.~~ It is the intent of the legislature that in construing sections 325D.43 to 325D.48, courts shall be guided by the policies of the Federal Trade Commission and interpretations given by the Federal Trade Commission and the federal courts to section 5(a)(1) of the Federal Trade Commission Act, United States Code, title 15, section 45(a)(1), as amended.

Sec. 7. Minnesota Statutes 2008, section 325F.67, is amended to read:

325F.67 FALSE STATEMENT IN ADVERTISEMENT.

Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of

fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

This section shall not apply to actions or transactions otherwise permitted or regulated by the Federal Trade Commission or any other regulatory body or officer acting under statutory authority of this state or the United States. It is the intent of the legislature that in construing this section, courts shall be guided by the policies of the Federal Trade Commission and interpretations given by the Federal Trade Commission and the federal courts to section 5(a)(1) of the Federal Trade Commission Act, United States Code, title 15, section 45(a)(1), as amended.

The duty of a strict observance and enforcement of this law and prosecution for any violation thereof is hereby expressly imposed upon the attorney general, and it shall be the duty of the county attorney of any county wherein a violation of this section shall have occurred, upon complaint being made, to prosecute any person violating any of the provisions of this section.

Sec. 8. Minnesota Statutes 2008, section 325F.69, is amended by adding a subdivision to read:

Subd. 7. **Application.** This section shall not apply to actions or transactions otherwise permitted or regulated by the Federal Trade Commission or any other regulatory body or officer acting under statutory authority of this state or the United States.

Sec. 9. Minnesota Statutes 2008, section 325F.69, is amended by adding a subdivision to read:

Subd. 8. **Construction.** It is the intent of the legislature that in construing this section, courts shall be guided by the policies of the Federal Trade Commission and interpretations given by the Federal Trade Commission and the federal courts to section 5(a)(1) of the Federal Trade Commission Act, United States Code, title 15, section 45(a)(1), as amended.

Sec. 10. **SEVERABILITY.**

The provisions of this act are severable. If any portion of this act is declared unconstitutional or the application of any part of this act to any person or circumstance is held invalid, the remaining portions of the act and their applicability to any person or circumstance shall remain valid and enforceable.

Sec. 11. **EFFECTIVE DATE.**

This act is effective the day following final enactment and shall apply to all cases pending on or filed on or after that date.