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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 4142

03/10/2022 Authored by Elkins and Stephenson The bill was read for the first time and referred to the Committee on Commerce Finance and Policy

1.1 A bill for an act
1.2 relating to consumer protection; prohibiting price discrimination in commercial
1.3 transactions; proposing coding for new law in Minnesota Statutes, chapter 325F;
1.4 repealing Minnesota Statutes 2020, section 325D.03.

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

1.6 Section 1. 325F.035 COMMERCIAL TRANSACTIONS; PRICE
1.7 DISCRIMINATION.

1.8 Subdivision 1. Price discrimination prohibited. (a) A person engaged in commerce,
1.9 in the course of the commerce, is prohibited from directly or indirectly discriminating in
1.10 price between different purchasers of commodities of like grade and quality where:

1.11 (1) either or any of the purchases involved in the discrimination are in commerce;

1.12 (2) the commodities are sold for use, consumption, or resale within Minnesota; and

1.13 (3) the effect of the discrimination lessens competition or tends to:

1.14 (i) create a monopoly or monopsony in any line of commerce; or

1.15 (ii) injure, destroy, or prevent competition with:

1.16 (A) any person who grants or knowingly receives the benefit of the discrimination; or

1.17 (B) customers of a person who grants or knowingly receives the benefit of the
1.18 discrimination.

1.19 (b) Nothing in this subdivision prevents:

2.1 (1) differentials that only make due allowance for differences in the cost of manufacture,
2.2 sale, or delivery resulting from the differing methods or quantities in which commodities
2.3 are sold or delivered to such purchasers;

2.4 (2) a person engaged in selling goods, wares, or merchandise in commerce from selecting
2.5 customers in bona fide transactions and not in restraint of trade; or

2.6 (3) price changes from time to time in response to changing conditions affecting the
2.7 market for or the marketability of the goods concerned, including but not limited to:

2.8 (i) actual or imminent deterioration of perishable goods;

2.9 (ii) obsolescence of seasonal goods;

2.10 (iii) distress sales under court process; or

2.11 (iv) sales in good faith to discontinue business in the goods concerned.

2.12 Subd. 2. **Rebuttal of prima facie case.** (a) Upon proof being made at any hearing on a
2.13 complaint made under subdivision 1 that there has been price discrimination, the burden of
2.14 rebutting the prima facie case made by showing justification is upon the person charged
2.15 with a violation of this section. Unless justification is affirmatively demonstrated, an order
2.16 terminating the discrimination may be issued.

2.17 (b) Nothing in this subdivision prevents a seller rebutting the prima facie case made by
2.18 showing that the seller's lower price to any purchaser or purchasers was made in good faith
2.19 to meet an equally low price of a competitor.

2.20 **Sec. 2. REPEALER.**

2.21 Minnesota Statutes 2020, section 325D.03, is repealed.

325D.03 DISCRIMINATION UNLAWFUL.

Any person, partnership, firm, or corporation, foreign or domestic, doing business in the state and engaged in the production, manufacture, or distribution of any printed or mimeograph matter, commodity, article, goods, wares, or merchandise in general use or consumption, who for the purpose or with the effect of injuring a competitor or destroying competition, shall discriminate between different sections, communities, or cities of this state by selling or furnishing such commodity, article, goods, wares or merchandise at a lower price, or rate in one section, community, or city, or any portion thereof, than such person, firm, or corporation, foreign or domestic, charges for such commodity, article, goods, wares, or merchandise in another section, community, or city, or any portion thereof, after making allowance for difference, if any, in the grade, quality, or quantity after equalizing the distance from the point of production, manufacture, or distribution and freight rates therefrom, shall be guilty of unfair discrimination; provided, that sections 325D.01 to 325D.07 shall not prevent any person, firm, or corporation from, in good faith, meeting local competition within any one section, community, or city. The inhibition hereof against locality discrimination shall embrace any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of sections 325D.01 to 325D.07.