

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 4216

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OFFICIAL STATUS
Introduction and first reading
Referred to Commerce and Consumer Protection Finance and Policy

1.1 A bill for an act
1.2 relating to trade regulations; prohibiting abuse of dominance; proposing coding
1.3 for new law in Minnesota Statutes, chapter 325D.

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

1.5 Section 1. 325D.035 ABUSE OF DOMINANCE.

1.6 Subdivision 1. Abuse of dominance prohibited. It is unlawful for any person or persons
1.7 with a dominant position in Minnesota with respect to: (1) conducting any business, trade,
1.8 or commerce; (2) a labor market; or (3) furnishing a service to abuse the dominant position.

1.9 Subd. 2. Evidence of dominant position. (a) In an action brought under this section, a
1.10 person's dominant position may be established by direct evidence, indirect evidence, or a
1.11 combination of direct and indirect evidence.

1.12 (b) Direct evidence includes but is not limited to: (1) the unilateral power to set prices,
1.13 terms, conditions, or standards; (2) the unilateral power to dictate nonprice contractual terms
1.14 without compensation; or (3) other evidence that a person is not constrained by meaningful
1.15 competitive pressures, including the ability to degrade quality without suffering reduction
1.16 in profitability. In labor markets, direct evidence of a dominant position may include but is
1.17 not limited to the use of noncompete clauses or no-poach agreements, or the unilateral power
1.18 to set wages.

1.19 (c) A person's dominant position may also be established by indirect evidence, which
1.20 includes the person's share of a relevant market. A person who has a share of 40 percent or
1.21 greater of a relevant market as a seller is presumed to have a dominant position in the market

2.1 under this paragraph. A person who has a share of 30 percent or greater of a relevant market
2.2 as a buyer is presumed to have a dominant position in the market under this paragraph.

2.3 (d) If direct evidence is sufficient to demonstrate that a person has a dominant position
2.4 or has abused such a dominant position, a court must not require a relevant market to be
2.5 defined in order to evaluate the evidence, find liability, or find that a claim has been stated
2.6 under this section.

2.7 Subd. 3. **Evidence of abuse of dominant position.** (a) Abuse of a dominant position
2.8 occurs when a dominant firm in a market or dominant group of firms engages in conduct
2.9 that is intended to (1) eliminate or discipline a competitor, or (2) deter future entry by new
2.10 competitors, with the result that competition is prevented or lessened substantially.

2.11 (b) In an action brought under this section, abuse of a dominant position includes but is
2.12 not limited to conduct that tends to foreclose or limit the ability or incentive of one or more
2.13 actual or potential competitors to compete, including leveraging a dominant position in one
2.14 market to limit competition in a separate market or refusing to deal with another person
2.15 with the effect of unnecessarily excluding or handicapping actual or potential competitors.

2.16 (c) In labor markets abuse of a dominant position includes but is not limited to (1)
2.17 imposing contracts by which any person is restrained from engaging in a lawful profession,
2.18 trade, or business of any kind, or (2) restricting the freedom of workers and independent
2.19 contractors to disclose wage and benefit information.

2.20 Subd. 4. **Certain evidence not a defense.** Evidence of procompetitive effects is not a
2.21 defense to abuse of dominance and does not offset or cure competitive harm.