

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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3965-20. Same—Licensee shall not display federal retail tax stamp—Violation a misdemeanor.

Injunction as remedy against a club continuously violating liquor and gaming laws. *State v. Sportsmen's Country Club*, 214M151, 7NW(2d)495. See Dun. Dig. 4483c.

Permit to drug store in dry territory to sell liquor on prescription is authorized, and does not prevent issuance of 3.2 beer license. *Op. Atty. Gen.*, (218J-3), Sept. 28, 1939.

CHAPTER 21A

Regulation of Manufactures and Sales

3976-7. Sales forbidden—Exceptions.

Device of giving a mattress away to purchaser of a bed, or some other article, at an auction of second-hand furniture, would not constitute any defense to a charge of selling a second-hand unsterilized mattress. *Op. Atty. Gen.* (270i), Feb. 24, 1942.

Statute applies to sale of bedding at auction of household goods. *Op. Atty. Gen.* (270i), Aug. 19, 1943.

3976-17. Violation is a misdemeanor.

No obligation to return fees paid before law was repealed. *Op. Atty. Gen.* (201a-4), Aug. 2, 1943.

SALE OF FIREWORKS

3976-17a. Definition of term "fireworks."—As used in this act the term "fireworks" means any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges, toy cannons, and toy canes in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sky rockets, roman candles, daygo bombs, sparklers, or other fireworks of like construction and any fireworks containing any explosive or inflammable compound, or any tablets or other device containing any explosive substance and commonly used as fireworks. The term "fireworks" shall not include toy pistols, toy guns, in which paper caps containing 25 hundredths grains or less of explosive compound are used and toy pistol caps which contain less than 20 hundredths grains of explosive mixture. (Act Apr. 8, 1941, c. 125, §1.)

[616.433]

3976-17b. Sale or use prohibited.—Except as otherwise provided in this act, it shall be unlawful for any person to offer for sale, expose for sale, sell at retail, or use or explode any fireworks. (Act Apr. 8, 1941, c. 125, §2.)

[616.434]

3976-17c. Display—Permits.—This act shall not prohibit supervised public displays of fireworks by cities, villages, and boroughs, fair associations, amusement parks, and other organizations. Except when such display is given by a municipality or fair association within its own limits, no display shall be given unless a permit therefor has first been secured. Every application for such a permit shall be made in writing to the municipal clerk at least 15 days in advance of the date of the display. The application shall be promptly referred to the chief of the fire department who shall make an investigation to determine whether the operator of the display is competent and whether the display is of such a character and is to be so located, discharged or fired that it will not be hazardous to property or endanger any person. The fire chief shall report the results of this investigation to the clerk and if he reports that in his opinion the operator is competent and that the display as planned will conform to safety requirements, including the rules and regulations of the state fire marshal hereinafter provided for, the clerk shall issue a permit for the display when the applicant pays a permit fee of two dollars. When the supervised public display for which a permit is sought to be held outside the limits of an incorporated municipality, the application shall be made to the county auditor and the duties imposed by this act upon the clerk of the municipality shall be performed in

such case by the county auditor. The duties imposed on the fire chief of the municipality by this act shall be performed in such case by the county sheriff. After such permit shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable. The state fire marshal shall adopt reasonable rules and regulations not inconsistent with the provisions of this act to insure that fireworks displays are given safely. (Act Apr. 8, 1941, c. 125, §3.)

[616.435]

3976-17d. Selling at wholesale—Illumination or ceremonial purposes.—Nothing in this act shall be construed to prohibit any resident wholesaler, dealer, or jobber, from selling at wholesale such fireworks as are not herein prohibited; or the sale of any kind of fireworks for shipment directly out of the state; or the use of fireworks by airplanes and railroads, or other transportation agencies for signal purposes or illumination; or the sale or use of blank cartridges for a show or theatre, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations. (Act Apr. 8, 1941, c. 125, §4.)

[616.436]

3976-17e. State fire marshal or sheriff to seize all stock.—The state fire marshal or any sheriff, police officer, constable, or local fire marshal shall seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this act. (Act Apr. 8, 1941, c. 125, §5.)

[616.437]

3976-17f. Offense.—Any person violating the provisions of this act shall be guilty of a misdemeanor. (Act Apr. 8, 1941, c. 125, §6.)

[616.438]

3976-17g. Effective date.—This act shall take effect and be in force from August 1, 1941. (Act Apr. 8, 1941, c. 125, §7.)

SALE OF EXPLOSIVES

3976-17h. Definitions. [Repealed.]

Repealed. Laws 1943, c. 34.
Purpose of act in addition to being a safety measure, is to have a definite record kept of all sales and possession of every kind of explosives, with specified exceptions. *Op. Atty. Gen.* (201A-4), July 24, 1941.

Compliance with state law should be had, as well as compliance with any federal law on subject. *Op. Atty. Gen.* (201A-4), Mar. 9, 1942.

Farmers purchasing sodium chlorate to be used for weed eradication need not secure license. *Op. Atty. Gen.* (201A-4), Apr. 28, 1942.

No license is necessary under state law where a farmer is buying sodium chlorate for weed eradication, but a license is necessary under the federal law, at a cost of twenty-five cents. *Op. Atty. Gen.* (201A-4), May 5, 1942.

(e). *Op. Atty. Gen.* (201A-4), July 24, 1941; note under §3976-17k.

Term "municipality" means any duly incorporated city, village, or borough, and the sheriff of Hennepin County is the licensing authority for any territory outside of such city, village, or borough. *Op. Atty. Gen.* (201A-4), July 17, 1941.

3976-17i. Explosives—Manufacture—License. [Repealed.]

Repealed. Laws 1943, c. 34.
County agents distributing explosives for use in land clearing are not required to have a license. *Op. Atty. Gen.* (201A-4), June 27, 1941.

3976-17j. Same—Sale—License. [Repealed.]

Repealed. Laws 1943, c. 34.

3976-17k. Same — Manufacture — License. [Repealed.]

Repealed. Laws 1943, c. 34.

(2) City or village is licensing authority for sale facilities in city or village, and sheriff for sale facilities or storage facilities outside corporate limits of cities or villages. Op. Atty. Gen. (201A-4), July 24, 1941.

(3) A mining company possessing explosives in many localities in county, but not within corporate limit of any city or village, need obtain only a possessor's license from sheriff of county, if company makes no sales. Op. Atty. Gen. (201A-4), July 24, 1941.

A dealer is required to obtain a license in every municipality where it is conducting business if sales are made. Id.

3976-17l to 3976-17w. [Repealed.]

Repealed. Laws 1943, c. 34.

3976-17x. Application of act. [Repealed.]

Repealed. Laws 1943, c. 34.

County agents handling explosives for land clearing purposes are within the exception provided for herein. Op. Atty. Gen. (201A-4), June 27, 1941.

3976-17y and 3976-17z. [Repealed.]

Repealed. Laws 1943, c. 34.

UNFAIR TRADE PRACTICES**PART ONE****3976-37. Application of act.**

Kentucky Unfair Practices Act, prohibiting discrimination in fixing sales prices of commodities, and sales below cost, held valid. Moore v. Northern Kentucky Independent Food Dealers Ass'n, 286Ky24, 149SW(2d)755.

3976-38. Discrimination unlawful.

Constitutional. Green v. G., 102Pac(2d)(CalApp)452. The act is constitutional. State v. Sears, 103Pac(2d)(Wash)337.

South Carolina statute making it unlawful to sell commodities in general use at a lower rate to a purchaser in one section of a city than in another, held invalid because of indefiniteness of term "section", and because it did not permit vendor to make an allowance based on quantity sold. State v. Standard Oil Co., 10SE(2d)(SC)778.

PART TWO**3976-40. Application of act.**

State unfair sales practice law held valid exercise of police power, and violation thereof by sales of merchandise at less than cost with intent of injuring competition would be enjoined. Carroll v. S., 14Atl(2d)(Conn)754.

A fair trade act prohibiting sales below cost for purpose or with effect of injuring competitors and destroying competition, held promotion of a policy within police power of state, and fixing of minimum prices in retail trade, because a reasonable means of furthering such policy, is not violative of due process, regardless of intent. McElhone v. G., 207M580, 292NW414. See Dun. Dig. 1646.

3976-41. Certain acts to be unfair discrimination.—

Any retailer or wholesaler, engaged in business within this state, which sells, offers for sale or advertises for sale, any commodity, article, goods, wares or merchandise, at less than the cost thereof to such vendor, or gives, offers to give or advertises the intent to give away any commodity, article, goods, wares or merchandise, for the purpose or with the effect of injuring competitors and destroying competition, shall be guilty of unfair discrimination, and upon conviction shall be subject to the penalty therefor provided herein.

Any retailer or wholesaler who sells goods in any part of the state of Minnesota at prices lower than those exacted by said person elsewhere in the state of Minnesota, for like qualities and grades and where the effect of such lower prices may be substantially to lessen competition or tend to create a monopoly in any line of business, or to injure, destroy or prevent competition with the person selling at such lower prices, shall be guilty of unfair competition and subject to the penalties of this act; provided that nothing shall prevent differentials in prices in different localities which make only due allowances for differences in "cost of doing business" or "overhead expense" and in costs of

delivery for such goods to different localities; nor differences in price made in good faith to meet legal competition of any other person in such locality.

The inhibition against sales below cost or 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 this act, together with all amendments thereto. (As amended Act Apr. 21, 1941, c. 326, §1.)

Anti-Sales-Below-Cost Laws have been adopted in Arizona, Arkansas, California, Colorado, Connecticut, Idaho, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Jersey, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. (1940).

Anti-Discrimination Laws of General Application have been adopted in Arkansas, California, Colorado, Florida, Idaho, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Washington, West Virginia, Wisconsin, and Wyoming. (1940).

A state under its police powers may regulate business for general welfare of public by prohibiting merchants from selling products below cost for purpose of injuring competitors and destroying competition. People v. Black's Food Store, 105Pac(2d)(Cal)361.

Plaintiff photoengraver could not enjoin and recover damages under California Unfair Trade Practices Act, providing that manufacturer could not sell below cost, where he did not show that cuts made by competitor had been sold below cost. Johnson v. F., 107Pac(2d)(Cal App)959.

In action to enjoin sale of cigarettes below cost in violation of Colorado Unfair Practices Act if a particular method adopted by merchant in determining cost cannot, under the facts disclosed, be said to be unreasonable, and does not disclose an intentional evasion of the law, the method so adopted can be accepted as correct. Dikeou v. E., 108Pac(2d)(Colo)529.

Colorado Unfair Practices Act is not a price-fixing law. Id.

Dispensing by grocery of gifts to customers was not an unfair practice where it was not shown that purpose was to injure competitors or destroy competition. Miller's Groceries Co. v. F., 109Pac(2d)(Colo)637.

That law permits specified sales in order to meet local prices of a competitor in "same locality or trade area" does not render it fatally indefinite. The phrases "same locality" and "trade area," while without precise meaning of their own, are common and susceptible of application by and to evidence. McElhone v. G., 207M580, 292NW414.

Held unconstitutional. Commonwealth v. Z., 13Atl(2d)(Pa)67.

The act is constitutional. State v. Sears, 103Pac(2d)(Wash)337.

Under the proviso as to meeting legal competitive price one who sells in good faith to meet a price which he believes to be legal is not liable. Id.

Unfair Sales Act is designed to thwart disposition to engage in reckless competition by outlawing the "loss leader" as an instrument in merchandising. State v. 20th Century Market, 236Wis215, 294NW873.

A sale below cost is not a loss leader sale unless it is used with intent or the effect of inducing purchases, diverting trade from a competitor, or otherwise injuring him. Id.

War powers—conflict between regulations and state statutes. 27 Minn-Law Rev 93.

3976-42. Definitions.—The term "retailer" as used herein shall mean any person, partnership, firm, corporation or association, foreign or domestic, selling any commodity, article, goods, wares, or merchandise to the consumer and not for the purpose of resale in any form.

The term "wholesaler" as used herein shall mean any person, firm or corporation, partnership, association, business trust, or any unincorporated organization selling or supplying any commodity, article, goods, wares, or merchandise to retailers, industrial buyers, restaurants, institutions or the selling on the part of one wholesaler to another wholesaler. Creameries, canneries and other processors of agricultural products are defined to be manufacturers or producers and not included within the meaning of the term "wholesaler" as defined in this act.

The term "cost" as applied to the wholesaler or retail vendor shall mean:

1. The actual current delivered invoice or replacement cost whichever is lower, not including customary

cash discounts, plus the cost of doing business at said location by said vendor.

The term "customary cash discounts", as used in this Act, means any allowance, not exceeding two per cent, whether a part of a larger discount or not, made to the wholesale or retail vendor, where the wholesale or retail vendor pays for merchandise within a limited or specified time.

2. Where a manufacturer publishes a list price and discounts, in determining such "cost" said manufacturer's published list price and discounts then currently in effect plus the cost of doing business by said vendor shall be prima facie evidence of "cost."

The "cost of doing business" or "overhead expense" is defined as all current costs of doing business incurred in the conduct of such business and must include without limitation the following items of expense:

Labor; including salaries and bonuses of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising, and other fixed and incidental expenses.

The "cost of doing business," including without limitation the aforesaid items of expense, incurred in the conduct of such business during the calendar year or the 12 months immediately preceding any alleged violation of this act, or in the event that any retailer or wholesaler shall have been engaged in business within the State for a shorter period of time, then such cost for such period of time immediately preceding any alleged violation of this act shall be prima facie evidence of "cost" as herein defined.

Any sale made by the retail vendor at less than 8 per cent above the manufacturer's published list price, less his published discounts, where the manufacturer publishes a list price, or in the absence of such a list price, at less than 8 per cent above the actual current delivered invoice or replacement cost, for the purpose or with the effect of injuring competitors or destroying competition, shall be prima facie evidence of the violation of this act.

Provided, however, that no prosecution shall be had or any action at law for damages or injunctive relief shall lie where the vendor sells at a price not less than 15 per cent above the manufacturer's published list price, less his published discounts, where the manufacturer publishes a list price or in the absence of such a list price, at not less than 15 per cent above the current delivered invoice or replacement cost.

Any sale made by a wholesale vendor at less than 2 per cent above the manufacturer's published list price, less his published discounts, where the manufacturer publishes a list price, or in the absence of such a list price, at less than 2 per cent above the actual current delivered invoice or replacement cost, for the purpose or with the effect of injuring competitors or destroying competition, shall be prima facie evidence of the violation of this act. (As amended Act Apr. 21, 1941, c. 326, §2.)

It is not unreasonable to define cost as "the actual current delivered invoice or replacement cost whichever is lower plus the cost of doing business at said location by said vendor," nor is it unreasonable to make manufacturers' published list prices, less current discounts, plus cost of doing business, "prima facie evidence" of cost to retailer, nor to make cost of doing business for twelve-month period immediately preceding prima facie evidence of current cost, nor to make a sale at less than 10% above manufacturer's published list price, less discounts, or in absence of such list price, at less than 10% above current delivered invoice or replacement cost, for purpose or with effect of injuring competitors, prima facie evidence of violation of law. *McElhone v. G.*, 207M 580, 292NW414.

Party charged with violation may not as a defense allege and show that particular item of merchandise may be segregated from entire business for purpose of allocating as to it "cost of doing business", since there is a common overhead expense that cannot be well apportioned to items of merchandise included in entire business. *McFadden Lambert Co. v. W.*, 209M242, 296NW18.

Definition of "cost" held sufficiently certain. *State v. Sears*, 103Pac(2d)(Wash)337.

One depending on grounds that he was in good faith endeavoring to meet legal prices of a competitor has

the burden of proof to show that his competitor's price was legal, and it is not incumbent on prosecutor to show that competitor's price was illegal prior to establishing a prima facie case. *Op. Atty. Gen.* (681a), May 28, 1941. A retailer in determining his cost under the act cannot use the ordinary 2% discount for cash for purposes of reducing the amount of cost, and if he receives a larger cash discount than 2%, anything he receives in excess thereof may be used to reduce the cost. *Id.*

(1). Merchant may base his selling price on what he actually paid for the goods or the replacement cost, whichever is lower. *Op. Atty. Gen.* (681a), July 31, 1941.

3976-44. Cost surveys may be deemed competent evidence. [Repealed.]

The provision for cost surveys is a rule of evidence and is valid. *State v. Sears*, 103Pac(2d)(Wash)337.

3976-45. Exceptions.—The provisions of Mason's Supplement 1940, Sections 3976-41, 3976-42, as amended by this act, and Mason's Supplement 1940, Section 3976-43 shall not apply to any sale made:

(a) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such stock or commodity, and in case of the sale of seasonal goods or merchandise where style is the paramount feature or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(b) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(c) By an officer acting under the orders of any court;

(d) In an endeavor made in good faith, to meet the legal prices of a competitor selling the same commodity, articles, goods, wares or merchandise in the same locality or trade area. (As amended Apr. 21, 1941, c. 326, §3.)

(d). Does not discriminate unfairly between retailers who do business on a "cash and carry" basis, with low overhead cost, and others with higher overhead, because it expressly permits sales below cost "in an endeavor made in good faith" to meet local prices of a competitor." *Fredricks v. B.*, 207M590, 292NW420.

One depending on ground that he was in good faith endeavoring to meet legal prices of a competitor has the burden of proof to show that his competitor's price was legal, and it is not incumbent on prosecutor to show that competitor's price was illegal prior to establishing a prima facie case. *Op. Atty. Gen.* (681a), May 28, 1941.

PART THREE

3976-46. Violations—Penalties.—Any person, firm or corporation, whether as principal, agent, officer, or director for himself, or itself, or for another person, firm or corporation, wilfully violating the provisions of Mason's Supplement 1940, Sections 3976-41, and 3976-42, as amended by this act, and Mason's Supplement 1940, Sections 3976-38 and 3976-43 shall be guilty of a misdemeanor.

Any person who either as director, officer or agent of any firm or corporation or as agent of any person violating the provisions of Mason's Supplement 1940, Sections 3976-41, and 3976-42, as amended by this act, and Mason's Supplement 1940, Sections 3976-38 and 3976-43 knowingly assists or aids, directly or indirectly, in such violation, shall be responsible therefor equally with the person, firm or corporation for whom or which he acts. (As amended Act Apr. 21, 1941, c. 326, §4.)

Section was listed in title of act as passed and approved. *Fredricks v. B.*, 207M590, 292NW420.

3976-47. Remedies—Injunction at suit of persons injured—Damages—Remedy at law—Privilege of party as witness.—(a) In addition to the penalties provided in this act, the courts of this state are hereby vested with jurisdiction to prevent and restrain violations of this act. Any person, partnership, corporation or association damaged or who is threatened with loss or injury by reason of a violation of this act shall be entitled to sue for and have injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of

this act and for the amount of the actual damages to him if any. In order to obtain such injunctive relief it shall not be necessary to allege or prove that an adequate remedy at law does not exist.

(b) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and documents, in any case or proceedings instituted or brought under the provisions of Mason's Supplement 1940, Sections 3976-37, 3976-38, 3976-39, 3976-40, 3976-43, 3976-48 and 3976-49, and Mason's Supplement 1940, Sections 3976-41, 3976-42, 3976-45, 3976-46, and 3976-47, as amended by this act, or in obedience to a subpoena, in any such case or proceedings, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, in any such case or proceedings, or in obedience to a subpoena, in any such case or proceedings. (As amended Act Apr. 21, 1941, c. 326, §5.)

Question whether law attempts unconstitutionally to compel self-incrimination discussed but not determined. *McElhone v. G.*, 207M580, 292NW414. See *Dun. Dig.* 10337. New York Public Service Commission has no jurisdiction of complaint for unfair trade practices, and aggrieved person must resort to courts. *City Ice & Fuel Co.*, 23NYS(2d)376, 260AppDiv537, *dism'g appeal* 173Misc 534, 18NYS(2d)588.

Injunction will not issue where evidence shows that plaintiff has not suffered injury, and defendant made money on the sales complained of; and if defendant's acts were criminal prosecution was the appropriate remedy. *Eckdahl v. H.*, 103Pac(2d)(Wyo)161.

(a) There was no error in issuing temporary restraining order in action to enjoin violation hereof. *McFadden Lambert Co. v. W.*, 209M242, 296NW18.

MINIMUM RESALE PRICES—FAIR TRADE ACT

3976-51. Definitions.

Resale Price Maintenance Laws have been adopted in all states except Delaware, Missouri, Texas, and Vermont. (1940).

Since passage of the Tydings-Miller amendment to the Sherman Anti-Trust Act it can no longer be contended that Maryland fair trade act is in conflict with the Sherman anti-trust act forbidding contracts and combinations in restraint of trade and with respect to interstate commerce. *Schill v. R.*, 17Atl(2d)(MdApp)175.

3976-52. Certain contracts not to be in violation of law.

Under New Jersey Fair Trade Act plaintiff's refusal of offer of defendant made prior to suit to enter into contract for sale of plaintiff's products and to maintain minimum resale prices held fatal to plaintiff's right to an injunction restraining price cutting by defendant. *Charmley Drug Shop v. G.*, (CCA3), 113F(2d)247, *rev'g* (DC-NJ), 31FSupp410.

Plaintiff was not entitled to an injunction against sale by defendant for less than contract prices of merchandise which it had purchased before plaintiff adopted the policy permitted by the New Jersey Fair Trade Act of making contracts stipulating resale prices for its products. *Id.*

Temporary injunction, enjoining retailer from selling plaintiff's merchandise at prices less than those provided for in plaintiff's fair trade retail sales contracts in Minnesota, should be limited so as to apply only to such merchandise as was acquired by defendant subsequent to receipt of notice of existence of plaintiff's fair trade contracts in Minnesota. *James Heddon's Sons v. C.*, (DC-Minn), 29FSupp579.

In suit to enjoin defendant from selling plaintiff's goods at prices less than those provided for in fair trade retail sales contracts, failure of complaint to show that the merchandise which was sold by the defendant was acquired by it after notice of the Fair Trade Agreements does not result in a defective pleading, but such matter may properly be set forth in answer. *Id.*

While wrong doing of other retailers is no defense of wrong doing on part of defendant, if discrimination is practiced in acquiescence of plaintiff in violations of its contracts by other retailers, a situation would be created depriving plaintiff's cause of equity. *Id.*

Retail sales agreement which provided that retailer would not sell plaintiff's products at a price less than minimum retail sales prices did not comply with statute permitting contracts which provide that buyers should not resell "except at prices stipulated by vendor" and was illegal under Louisiana statute. *Mennen Co. v. K.*, (DC-La), 37FSupp161.

Contract providing for minimum prices executed pursuant to Maryland fair trade act was not invalid because it contained exemption of books sold for circulating or public service purposes, charitable or religious purposes, etc. *Schill v. R.*, 17Atl(2d)(MdApp)175.

Contract providing for minimum prices executed pursuant to Maryland fair trade act was not invalid because it contained provision that price was subject to change in discretion of publisher. *Id.*

Contract creating minimum price for copyrighted books is not an unreasonable monopoly. *Id.*

Maryland fair trade act authorizing contract establishing minimum retail prices is constitutional. *Id.*

Michigan fair trade act regulating resale prices of trade-marked articles complies with constitutional requirements. *Weco Products Co. v. S.*, 296Mich190, 295NW 611.

When a producer operating under Fair Trade Act combines two trade-marked articles into a combination package for resale at a price less than aggregate price of articles if sold separately and independent of combination, he has abandoned his price structure as to those items which have been combined. *Bathasweet Corp. v. W.*, 15Atl(2d)(NJ)337.

Statute permitting owner of trade-mark to fix a schedule of prices and refuse to sell to retailers refusing to maintain minimum prices is valid. *Miles Laboratories v. O.*, 295NW(SD)292.

3976-53. What are violations.

Any one who willfully and knowingly advertises offers for sale or sells commodity at less than price stipulated in contract pursuant to Maryland fair trade act whether a person is or is not party to contract is engaged in unfair competition and is subject to suit on part of any person damaged. *Schill v. R.*, 17Atl(2d)(MdApp)175.

3976-54. Who may fix minimum prices.

Maryland fair trade act establishing minimum retail prices on commodities applies to copyrighted books. *Schill v. R.*, 17Atl(2d)(MdApp)175.

New York fair trade law limits right to fix prices to one whose trade-mark or brand or name is used in connection with the commodity. *Automotive Electric Service Corp. v. T.*, 24NYS(2d)733, 175Misc865.

3976-56. Unfair competition.

In suit to enjoin defendant from violating detailed prices stipulated in fair trade contracts, allegation that plaintiff's property rights in its trade name and trade-mark have been violated, and will be damaged within the state to an amount in excess of \$3,000, exclusive of interest and costs, was sufficient to bring suit within jurisdiction of federal court, placing burden on defendant to show want of jurisdiction. *James Heddon's Sons v. C.*, (DC-Minn), 28FSupp643.

In suit by trade mark owner under New Jersey Fair Trade Act to enjoin unfair competition, proof that plaintiff's sales exceeded \$14,000,000, its advertising \$1,700,000, and that it had 2,500 accounts throughout the United States, were elements establishing that value of right which plaintiff was seeking to protect exceeded \$3,000. *Caron Corp. v. Wolf Drug Co.*, (DC-NJ), 40FSupp103.

Owner of trade-mark suing to restrain sale of trade-marked articles for less than minimum prices set out in contracts with other dealers was not entitled to equitable relief where it refused offer of resale of goods on ground that they had been purchased from others, thus refusing to do equity. *Weco Products Co. v. S.*, 296Mich190, 295NW611.

In a suit by a producer under Fair Trade Act, only minimum price provisions of contract made with retailers are binding on those retailers who have not signed such contract. *Bathasweet Corp. v. W.*, 15Atl(2d)(NJ)337.

Under Fair Trade Act a signer of a price-fixing contract may be restrained from cutting prices at suit of one not signing such a contract, if he has clean hands. *Weisstein v. F.*, 22NYS(2d)510.

Under New York statute when price fixing contract has been entered into by person, firm or corporation whose trade-mark or brand or name is borne upon commodity, persons other than such person, firm or corporation may enjoin sales at prices less than those so fixed. *Automotive Electric Service Corp. v. T.*, 24NYS(2d)733, 175Misc865.

Right of retailer to sue. 24MinnLawRev139.

3976-60a. Unlawful trade practices.—The Legislature of the State of Minnesota hereby finds: That the trade practices defined and prohibited by this act are detrimental to labor, destructive to employment, and injurious to the best interests of working men; that they mislead the consumer into believing that he is buying merchandise at prices substantially below regular retail prices, when in fact he is not; that they mislead the consumer as to the quality, ingredients and origin of merchandise purchased by him; that they deprive the consumer of various customer services offered by regularly established and bona fide retail outlets without compensating advantage to the consumer; and that they constitute unfair and fraudulent

lent 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. (Act Mar. 16, 1943, c. 144, §1.)

[325.141]

Act is constitutional. Op. Atty. Gen. (681b), Nov. 27, 1943.

3976-60b. Definitions.—When used in this act:

(a) The term "person" includes any individual, firm, partnership, corporation or other organization, whether organized for profit or not.

(b) The term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employe.

(c) "Sale" or "sell" includes any sale, offer, or advertisement thereof and/or contract for the same.

(d) "Sale of merchandise at retail" includes any sale except (1) A sale for the purpose of resale or (2) a sale of a substantial quantity of merchandise for business use only. (Act Mar. 16, 1943, c. 144, §2.)

[325.142]

3976-60c. What are unlawful trade practices.—It shall be an unlawful trade practice for any seller or transferor of any goods, wares, or merchandise to advertise, claim or imply that any sale or transfer of goods, wares, or merchandise is a sale or transfer at wholesale, unless such sale or transfer is made to a transferee for resale or is a sale of a substantial quantity of merchandise for business use only. (Act Mar. 16, 1943, c. 144, §3.)

[325.143]

3976-60d. Misrepresentation by retailers.—(a) Retailers not to misrepresent nature of business.—No person engaged in the sale of merchandise at retail shall, in connection with such business, misrepresent the true nature of such business, either by use of the words manufacturer, wholesaler, broker, or any derivative thereof or synonym therefor, or otherwise.

(b) Not to misrepresent price.—No person shall, in connection with the sale of merchandise at retail misrepresent, directly or indirectly, that the price at which such merchandise is sold is an approximately wholesale price, or is less than the usual retail price, either by the use of any such expression, or of any expression having a similar meaning, or otherwise misrepresent the true nature of such sale.

(c) Not to display fictitious price tags.—No person shall, in connection with the sale of merchandise at retail, or in, or in connection with the use of, samples, catalogs, or other forms of advertising listing merchandise for sale at retail, display price tags or price quotations in any form showing prices which are fictitiously in excess of the actual prices at which such merchandise is regularly and customarily sold at retail by such person or by the person issuing such samples, catalogs, or other forms of advertising. (Act Mar. 16, 1943, c. 144, §4.)

[325.144]

3976-60e. Not to misrepresent quality, etc.—No person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise. (Act Mar. 16, 1943, c. 144, §5.)

[325.145]

3976-60f. Employer is not to dispose of other than own products.—No employer shall, directly or indirectly, by itself or through a subsidiary agency owned or controlled in whole or in part by such employer, sell, cause to be sold, or have in his possession or under his control for sale to his employes or to any other person, any merchandise not handled by such employer in the regular course of his business, nor shall any employer permit his name, his credit, or his premises to be used in connection with the sale or

offer for sale of any such merchandise; provided, however, that this section shall not apply to purchases by an employer for the purpose of resale to his employes of such specialized equipment and paraphernalia as may be required for employes' safety and health, candy, chewing gum, tobacco, or meals consumed on the premises of such employer. The provisions of this act shall not apply to any cooperative associations, duly established under the laws of the State of Minnesota, with respect to any merchandising transactions, which such cooperatives are authorized by their charters to conduct with their members. (Act Mar. 16, 1943, c. 144, §6.)

[325.146]

Packing house may furnish white overalls and other equipment to employees. Op. Atty. Gen. (681b), July 23, 1943.

3976-60g. Violation a misdemeanor.—Any person violating the provisions of this act shall be deemed guilty of a misdemeanor. Each act prohibited by this act shall constitute a separate violation and offense thereunder. (Act Mar. 16, 1943, c. 144, §7.)

[325.147(1)]

3976-60h. May issue restraining order.—In addition to the penalties provided in this act, the courts of this state are hereby vested with jurisdiction to prevent and restrain violation of this act. Any person damaged or who is threatened with loss, damage or injury by reason of a violation of this act shall be entitled to sue for and have injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this act and for the amount of the actual damages to him, if any. In order to obtain such injunctive relief, it shall not be necessary to allege or prove that an adequate remedy at law does not exist. (Act Mar. 16, 1943, c. 144, §8.)

[325.147(2)]

3976-60i. Application of act.—Nothing in this act shall be deemed to prohibit the sale by an employer to his employes of his own products or property at any price. (Act Mar. 16, 1943, c. 144, §9.)

[325.148]

3976-60j. Provisions severable.—The provisions of this act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of this act. (Act Mar. 16, 1943, c. 144, §10.)

AUTOMOBILE DEALERS ANTI-COERCION ACT

3976-71. Manufacturers not to control financing of motor vehicles.

Anti-Coercion Laws have been adopted in Arkansas, California, Colorado, Florida, Idaho, Indiana, Iowa, Kansas, Louisiana, Minnesota, Montana, New Mexico, Ohio, Oregon, Tennessee, Utah and Wisconsin. (1940).

MANUFACTURE AND SALE OF TOKENS, SLUGS, CHECKS, ETC.

3976-86. Manufacture and sale of tokens, slugs, checks, etc., prohibited.—The manufacture, sale, offering for sale, advertising for sale, or distribution of tokens, checks, or slugs, similar in size and shape to lawful coin of the United States of America, with knowledge or reason to believe that such tokens, checks or slugs may be used in substitution for any such lawful coin in any vending machine, parking meter, service meter, coin-box telephone or other coin receptacle designed to receive or be operated only by lawful coin of the United States of America in connection with the sale, use or enjoyment of property, privilege or service, is hereby prohibited. (Act Apr. 9, 1941, c. 132, §1.)

[620.243]

3976-87. Five per cent smaller or five per cent larger token or checks salable.—No person shall manufacture, sell, or offer for sale or distribute any

checks, tokens or slugs unless they shall be either five per cent larger or five per cent smaller in diameter than any lawful coin of the United States. (Act Apr. 9, 1941, c. 132, §2.) [620.244]

3976-88. Knowledge and reason to believe—Proof.—In a trial of a defendant for violation of the provisions of this act, knowledge or reason to believe, within the meaning of this act, shall be deemed to exist upon the presentation of proof to the court that any county attorney, sheriff, or chief of police in the state, or a deputy or delegate of such officer, has given written notice to the defendant that tokens, checks or slugs of the kind manufactured, sold, offered for sale, advertised for sale or distributed by him are being used in substitution for lawful coin in the operation of any such coin receptacle or machine, provided that such notice shall have been given prior to the time of the manufacture, sale, offering for sale, advertising for sale or distribution of such tokens, checks or slugs for which the defendant is being tried. (Act Apr. 9, 1941, c. 132, §3.) [620.245]

3976-89. Offense.—Any person, firm or corporation violating the provisions of this act shall be guilty of a misdemeanor. (Act Apr. 9, 1941, c. 132, §4.) [620.246]

FUEL DELIVERY TICKETS

3976-90.—Delivery tickets to accompany each delivery of fuel.—No person, firm or corporation shall deliver any domestic heating fuel without such delivery being accompanied by a delivery ticket, on which shall be distinctly expressed in pounds, the gross weight of the load, the tare of the delivery vehicle, the net quantity or quantities of fuel contained in the cart, wagon, vehicle or compartment thereof, bag, sack or container used in such deliveries when sold by weight; or the number of gallons or cubic feet that is being delivered when sold by measure, with the name of the purchaser thereof and the name of the dealer from whom purchased. The delivery ticket shall also clearly state the name, type, kind and grade of fuel being delivered. When the buyer carries away the purchase, a delivery ticket showing the actual amount delivered to the purchaser must be given to the purchaser at the time the sale is made.

Sales of wood for fuel direct from producer to consumer shall be exempt from the provisions of this act. This act shall not apply to deliveries in quantities of ten gallons or less. (Act Apr. 7, 1943, c. 328, §1.) [325.149]

3976-91. Violation a misdemeanor.—Whoever shall violate any provision of this act shall be guilty of a misdemeanor. (Act Apr. 7, 1943, c. 328, §2.) [325.149]

CHAPTER 21AA

Regulation of Motion Pictures

PREAMBLE:

WHEREAS, the motion picture industry is made up of three branches, namely, production, distribution and exhibition; and

WHEREAS, the production and distribution branches are dominated and controlled by eight major companies with great economic power and exhibition is accomplished through two classes of theatre owners, namely, those wholly owned or affiliated with the producer-distributors and the independent exhibitors; and

WHEREAS, the major producer-distributors, license, lease and distribute substantially all of the feature motion pictures exhibited in the state of Minnesota and the other states of the Union; and the needs of the independent exhibitor requires that he license or lease feature motion pictures from substantially all the major producer-distributors; and

WHEREAS, by reason of arbitrary terms and conditions imposed by the producer-distributors, the independent exhibitor has been:

(a) compelled as a condition precedent to licensing feature motion pictures to also license short subjects, newsreels, trailers, serials, re-issues, foreign and western pictures far in excess of his needs or requirements;

(b) unable to cancel feature motion pictures injurious and damaging to his business, and therefore compelled to play pictures offensive, on moral, religious or racial grounds, and undesirable and harmful to the public; and

WHEREAS, the long-established trade practice of licensing feature motion pictures for a full season (one year) is essential to the best interests of the producer-distributors, exhibitors, and the public; but the above conditions imposed by the producer-distributors have subjected the independent exhibitors to unfair disadvantages, preventing him from responding to the community and local public influence and preferences with respect to selection of desirable feature motion picture films and are inimicable to public welfare and against public policy; now, therefore,

Use of preambles or recitals 25 Minn. Law Rev. 924.

3976-101. Definitions.—For the purpose of this act, unless the context otherwise provides:

(a) the term "person" includes an individual, partnership, association, joint stock company, trust or corporation;

(b) the term "distributor" includes any person who engages or contracts to engage in the distribution of motion picture films and is a resident of or legally authorized to do business in this state;

(c) the term "exhibitor" includes any person who engages or contracts to engage in the exhibition of

motion picture films and is a resident of or legally authorized to do business in this state;

(d) the term "license" includes the offering, intending or making of a license agreement, contract, or any type of agreement whereby a film, the distribution of which is controlled by one of the parties is to be supplied to and exhibited in a theatre owned, controlled or operated by the other party;

(e) the term "feature motion picture film" means all motion pictures, whether copyrighted or uncopyrighted, including positive and negative prints and copies or reproductions of such prints, which films contain photoplays or other subjects and are produced for public exhibition. The term shall not include films commonly known as short subjects, newsreels, trailers, serials, re-issues, foreign and western pictures, and road shows;

(f) the term "exhibition season" shall mean a period of twelve months as may be selected by the producer-distributor, provided, however, that there shall be no lapse of time between the termination of one season and the beginning of the next. (Act Apr. 26, 1941, c. 460, §1.) [326.01]

3976-102. Feature picture films—Licenses to exhibit—Required provisions.—No distributor shall hereafter license feature motion picture films to an exhibitor to be exhibited, shown or performed in this state unless the license provides:

(a) that all the feature motion picture films, which such distributor will license during the exhibition season, or the unexpired portion thereof, shall be included. The term "all the feature motion picture films" shall apply to each producer for whom the distributor is acting;

(b) that the exhibitor shall have the right to cancel a minimum of 20 per cent of the total number of feature motion pictures included in such license where the exhibitor deems the same injurious and damaging to his business or offensive on moral, religious or racial grounds. Such cancellation shall be made proportionately among the several price brackets, if there