

## REGULATIONS RELATING TO TRADE

## CHAPTER 325

## REGULATION OF MANUFACTURES AND SALES

## NOTE:

## UNFAIR PRACTICES ACTS

The California Unfair Practices Act of 1935 as amended in 1937 has served as a model. The statutes in Arizona, Connecticut, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Tennessee, Virginia, and West Virginia deal with sales below cost only; the statutes in Delaware, Florida, Mississippi, Missouri, South Dakota, and Vermont deal with price discrimination only; while the statutes in Arkansas, California, Colorado, Idaho, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Carolina, Utah, Washington, Wisconsin, and Wyoming deal with both. 30 MLR 559.

L. 1921, c. 305, prohibiting locality discrimination in the dairy business was held unconstitutional in *Fairmont Creamery v Minnesota*, 274 US 1, 47 SC 506. L. 1921, c. 413, prohibiting locality discrimination generally was repealed by L. 1937, c. 116. Minnesota Unfair Practices Act, L. 1937, c. 116, was declared unconstitutional in part by *Great Atlantic and Pacific v Ervin*, 23 F. Supp. 70. L. 1939, c. 403, enacted for the purpose of correcting the defects pointed out in the *Ervin* case was interpreted in *McElhone v Geror*, 207 M 580, 292 NW 414, and *McFadden v Winston*, 209 M 245, 296 NW 18, and clarified by L. 1941, c. 326, and codified in Minnesota Statutes 1945, sections 325.01 to 325.07, 325.48, 325.49, and 325.52. 30 MLR 560.

The department of business research and development, created by L. 1947, c. 587, and coded as sections 362.07 to 362.25, is charged with certain enforcement duties relative to chapter 325.

## 325.01 DEFINITIONS.

A labor dispute is presented in an action of employer against labor union which threatens to resort to picketing because of the employer's proposal to reduce prices charged his customers and thereby lessen the compensation of numerous employees working on commission. *Lichterman v Laundry Drivers Union*, 204 M 75, 282 NW 689, 283 NW 752.

A fair trade act prohibiting sales below cost for the purpose or with the effect of injuring competitors and destroying competition promotes a policy within the police power of the state; and is not unlawful in making the manufacturers publish list price, less current discounts, plus cost of doing business "prima facie" of cost to the retailer. *McElhone v Geror*, 207 M 580, 292 NW 414.

Determination of the meaning, validity, and effect of section 17.15 as it relates to chapter 325. *State v Lanesboro Produce*, 221 M 246, 21 NW(2d) 802; *Great Atlantic & Pacific v Ervin*, 23 F. Supp. 70.

Where the operator of a chain of self-serve grocery stores sells coffee in paper bags without copying the color, words, and symbols of those of a business competitor's bag, but which, because of the arrangement and massing of similar colors, otherwise might be likely to mislead intending purchasers relying on memory rather than visual comparison of bags to believe that its bags were those of the business competitor, and where it displays on the bags its name and other facts plainly readable it effectively appraises them, and there is no unfair competition. *Winston & Newell v Piggly Wiggly*, 221 M 287, 22 NW(2d) 11.

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Unfair competition; misrepresentations; applied to federal trade commissions. 22 MLR 522.

Commerce clause in the federal constitutional convention and in contemporary comment. 25 MLR 432.

Trade marks and trade names; territorial extent of rights. 26 MLR 568.

Conflict between price regulations issued by the federal price administration and prices set pursuant to a state statute. 27 MLR 93.

Unfair practice act:

Constitutionality. 30 MLR 559.

Police power. 30 MLR 561.

Intent. 30 MLR 562, 577.

Indefiniteness and uncertainty. 30 MLR 568, 580.

### 325.02 APPLICATION.

See, *Lichterman v Laundry Drivers Union*, 204 M 75, 283 NW 752.

See, *McElhone v Geror*, 207 M 580, 292 NW 414.

See, *Great Atlantic & Pac. v Ervin*, 23 F. Supp. 70.

### 325.03 DISCRIMINATION UNLAWFUL.

The guaranty of "due process" in the fourteenth amendment demands only that the means of governmental regulation shall not be unreasonable, arbitrary, or capricious, and that they shall have a real and substantial relation to the object sought to be attained; and the object of the Minnesota unfair trade practices act to prevent the sale of merchandise below cost with the intention to injure the seller's competitors or to destroy or lessen competition, is within the police power of the state; and that part of the act prohibiting discrimination by manufacturers, producers, or distributor of merchandise with intention to destroy competition is constitutional and enforceable. *Great Atlantic & Pacific v Ervin*, 23 F. Supp. 70.

Price discrimination between localities. 22 MLR 232.

Constitutionality of unfair trade practices act. 30 MLR 559.

Price and production control through trade associations. 25 MLR 208.

State prorate marketing program. 27 MLR 468.

Federal government's immunity from state price regulation. 27 MLR 577.

### 325.04 SELLING BELOW COST FORBIDDEN.

The fair trade act prohibiting sales below cost for the purpose or with the effect of injuring competitors and destroying competition is the promotion of a policy within the police power of the state; and fixing minimum prices in the retail trade is not violative of due process. For the purposes of law, 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." *McElhone v Geror*, 207 M 580, 292 NW 414.

As used in this section, the fair trade act does not discriminate unfairly between retailers some of whom do business on a "cash and carry" basis with low overhead cost, and others with a higher overhead, because by its own terms it expressly permits sales below cost "in an endeavor made in good faith to meet the local prices of a competitor." *Fredricks v Burnquist*, 207 M 590, 292 NW 420.

Determination of the meaning, validity, and effect of section 17.15 as it relates to chapter 325. *State v Lanesboro Produce*, 221 M 246, 21 NW(2d) 802.

See, *McElhone v Ervin*, 23 F. Supp. 70.

Effect of "the general maximum price regulation" enforceable by office of price administration on Minnesota "unfair trade law." 1942 OAG 350, May 15, 1942 (681a).

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Whether the sale at a price less than permitted by the statute has been made for the purpose, or with the effect of injuring competitors or destroying competition, is a factual question. OAG Nov. 8, 1946 (681-A).

Unfair trade practices. 24 MLR 258; 26 MLR 245; 30 MLR 559.

Validity under the Robinson-Patman Act of a uniform delivered price of one seller. 31 MLR 599.

### 325.06 CLOSING OUT SALES.

See, *Fredricks v Burnquist*, 207 M 590, 292 NW 420.

Unfair competition. 23 MLR 861.

Unfair trade practices. 24 MLR 258; 26 MLR 245; 30 MLR 559.

### 325.08 CERTAIN CONTRACTS NOT TO BE IN VIOLATION OF LAW.

In determining whether federal district court has jurisdiction of a suit to enjoin the sale of commodities for less than retail prices fixed by fair trade contracts, value of the amount in controversy must be measured by loss occasioned to plaintiff's right to do business under contracts in the state wherein such court sits and the value of trade name and mark affected by defendant's alleged "cut rate" practices. Plaintiff was entitled to a temporary injunction enjoining defendant from selling or offering to sell plaintiff's trade marked fish baits to be priced less than those provided for in fair trade sales contract entered into in Minnesota only with respect to merchandise acquired by defendant after receiving notice of the existence of plaintiff's contracts in Minnesota. *Jas. Heddon's Sons v Callender*, 28 F. Supp. 643, 29 F. Supp. 579.

Trade marks and tradenames; unfair competition; fair trade acts. 25 MLR 805.

Federal power over commerce. 31 MLR 121.

### 325.09 WHAT ARE VIOLATIONS.

Price cutting under the fair trade acts. 24 MLR 297.

### 325.12 UNFAIR COMPETITION.

See, *Jas. Heddon's Sons v Callender*, 28 F. Supp. 643, 29 F. Supp. 579.

Use of paid testimonials as unfair advertising competition without indicating payment therefor. 17 MLR 681.

Unfair competition. 24 MLR 139.

Validity of a boycott as means of eliminating style policy. 25 MLR 807.

### 325.141 UNLAWFUL TRADE PRACTICES.

Constitutionality of unfair trade practices act. 30 MLR 559.

Violation of the anti-trust laws as a defense in civil actions. 31 MLR 507.

### 325.146 EMPLOYER NOT TO DISPOSE OF OTHER THAN OWN PRODUCTS.

Factories may furnish certain uniforms, overalls, or other useful and sanitary clothing equipment to employees. OAG July 23, 1943 (270).

### 325.15 MOTOR VEHICLES, MANUFACTURER FORBIDDEN TO FINANCE SALES OF.

Lawful combinations in restraint of trade. 12 MLR 341.

### 325.25 USE OF SECOND-HAND MATERIAL FORBIDDEN IN CERTAIN CASES.

A state agency may not interfere with the sale of bedding by the federal government. OAG May 4, 1946 (270-i).

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## 325.38 SALE OF FIREWORKS FORBIDDEN; EXCEPTIONS.

Sale of explosives and fireworks. 26 MLR 240.

## 325.44 PRISON-MADE GOODS ARE SUBJECT TO LAWS OF STATE.

Labeling provisions of sections 325.44 and 325.46 apply only to a Minnesota retailer and do not apply to a wholesale house shipping prison-made goods into Minnesota from another state. OAG Feb. 4, 1938 (270-J).

## 325.48 VIOLATIONS; PENALTIES.

See, *Fredricks v Burnquist*, 207 M 590, 292 NW 420.

See, *McElhone v Ervin*, 23 F. Supp. 70.

Constitutionality of fair trade practices acts. 30 MLR 559.

## 325.52 CERTAIN SALES AS PRIMA FACIE EVIDENCE; WHEN INJUNCTIVE RELIEF FORBIDDEN.

See annotations under section 325.49.

## 325.53 DEFINITIONS.

HISTORY. 1947 c. 586 s. 1.

The board of county commissioners is authorized to revoke a non-intoxicating malt liquor license if the licensee is a holder of federal retail liquor dealers special tax stamps. The question as to whether or not a person is a holder of the federal tax stamps is a fact for the determination of the board. The fact may be proven from the federal records. OAG March 24, 1947 (217-B-9).

Where the federal liquor stamps have been issued to the wife, and the 3.2 beer license is issued to the husband, the right of the license issuing officer to cancel the beer license is based upon a question of fact. If the federal special stamps were purchased with the husband's money, and the wife can be construed to be the agent of the husband, probably the beer license may be canceled. OAG March 27, 1947 (217-B-9).

There is no conflict between L. 1947, c. 586, and sections 614.06, 614.07. L. 1947, c. 586, does not impliedly repeal sections 614.06, 614.07. OAG March 27, 1947 (733).

"Bank night" enterprise is not deemed a gambling device within the provisions of L. 1947, c. 586 (ss. 325.53 to 325.62). OAG May 2, 1947 (733-G).

Whether Mystery Boxes, Play Ball, Star Parade, Big Circus, and similar devices constitute gambling devices is a question of fact and use as determined by the court, but they are not within the provisions of L. 1947, c. 586 (ss. 325.53 to 325.62). OAG May 12, 1947 (733-F).

L. 1947, c. 586, does not apply to craps, game of 14, bingo, nor football and baseball jackpot boards. OAG May 12, 1947 (733).

The law does not prohibit pinball machines which provide no payoff or which return slugs which are used only in the machine licensed. OAG May 12, 1947 (733).

Pinball machines which return tokens not redeemable in cash or merchandise but to be used only for replaying the machine, is not a gambling device within the meaning of L. 1947, c. 586. OAG May 19, 1947 (733-D).

A machine operated by a coin which returns money when certain characters or letters are formed when the machine stops is a gambling device within the meaning of L. 1947, c. 586. OAG May 21, 1947 (733-d).

In L. 1947, c. 586, relating to the revocation of licenses, punchboards are defined as gambling devices for the purposes of that act. Under it "intentional possession or wilful keeping" of a punchboard upon licensed premises constitutes cause for revocation of license.

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Under the laws existing prior to the enactment of chapter 586, which were not repealed by the passage of that chapter, operation of punchboards as a "scheme for the disposition of property by chance among persons who have paid or agreed to pay a valuable consideration for the chance \* \* \*" is illegal.

L. 1947, c. 586, relating to the revocation of licenses, does not include dice within the definition of gambling devices for the purposes of that chapter.

"There is nothing in the statutes which makes the mere possession of dice or using the same for non-gambling purposes illegal. Under section 614.06 it is the gambling with dice or keeping dice 'designed to be used in gambling' that is prohibited. Section 614.07 makes it illegal for any person 'to suffer any \* \* \* gambling device to be set up or used for the purpose of gambling' in or on the premises therein designated. When dice are so used they would, under the last cited sections, constitute a gambling device within the meaning thereof. Attention should be called to section 340.14, subd. 2, which prohibits any liquor licensee from keeping on the licensed premises or in a room adjoining the same, any gambling device or apparatus, including dice."

If a dice box is maintained and intended to be used for the purpose of gambling, it would, of course, as in the case of dice, be considered to be a gambling device under above cited sections 614.06, 614.07, and 340.14.

Dice boxes and dice are not included within the definition of gambling devices in L. 1947, c. 586, for the purposes of that chapter.

The law as to the legality of "bank nights" is discussed at length in the cases of State v Stern, 201 M 139, 275 NW 626, and State v Schubert Theatre Players Co. 203 M 366, 281 NW 369.

L. 1947, c. 586, s. 4, makes it the duty of every sheriff, deputy sheriff, constable, marshal, policeman, police officer, and peace officer to observe and inspect the premises where operations are carried on under license and ascertain whether gambling devices are present thereon and immediately report the finding thereof to the authority or authorities issuing the license or licenses applicable to the premises in question; and by section 5 an issuing authority is authorized to revoke a license upon receipt of such information from any of the peace officers referred to in section 4.

Under section 351.03 the governor may remove any of the officers therein designated when it appears to him, by competent evidence, that either has been guilty of malfeasance or non-feasance in the performance of his official duties, first giving such officer a copy of the charges against him and an opportunity to be heard in his defense. There is nothing in our statutes which relieves a sheriff of doing his duty "even though he may have a police chief under civil service in the county." If any official charged with malfeasance or non-feasance in office wishes to have the findings of the governor reviewed by the Supreme Court, he may, of course, apply for a writ of certiorari for that purpose.

"The sheriff has the general responsibility for enforcing the criminal laws throughout his county. It is his duty, so far as available means permit, to take the initiative in law enforcement without waiting for complaints, to investigate conditions respecting observance of the laws, to take such action as circumstances may require for the prevention of violations, to arrest offenders when sufficient grounds appear, to swear to criminal complaints when he has sufficient knowledge of the facts, and to investigate criminal cases and secure evidence for the prosecution thereof. Any one may report a law violation to the sheriff, who should make such investigation and take such action as the case may require."

"City or village police officers, marshals, and constables are responsible for general law enforcement within their respective jurisdictions, with duties similar to those of the sheriff as hereinbefore stated. In addition they are responsible for the enforcement of local ordinances. The presidents or mayors and trustees of villages as well as the mayors of most cities are also peace officers, with the duty of enforcing laws and ordinances for preservation of peace and order." OAG July 14, 1947 (733).

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## **325.54 GAMBLING DEVICE; POSSESSION OF.**

HISTORY. 1947 c. 586 s. 2.

Under the provisions of L. 1947, c. 586, s. 1, subd. 2, "number jars" are defined as gambling devices. If the device is a number jar, the fact that it is designated "smile jar," is not a defense to prosecution under L. 1947, c. 586, s. 2, coded as section 325.54. OAG June 2, 1947 (733).

## **325.55 ISSUING AUTHORITY TO REVOKE.**

HISTORY. 1947 c. 586 s. 3.

## **325.56 PEACE OFFICERS TO OBSERVE AND INSPECT PREMISES.**

HISTORY. 1947 c. 586 s. 4.

## **325.57 PROCEEDINGS BEFORE ISSUING AUTHORITY; ORDER TO SHOW CAUSE.**

HISTORY. 1947 c. 586 s. 5.

## **325.58 REVOCATION OF LICENSE.**

HISTORY. 1947 c. 586 s. 6.

## **325.59 DUTIES OF COUNTY ATTORNEY.**

HISTORY. 1947 c. 586 s. 7.

## **325.60 WITNESSES.**

HISTORY. 1947 c. 586 s. 8.

## **325.61 PROPERTY OWNERS LIABILITY.**

HISTORY. 1947 c. 586 s. 9.

## **325.62 APPEAL TO DISTRICT COURT; STAY; CONTINUANCE UNDER BOND; HEARING UPON ONE YEAR LIMITATION ON PREMISES.**

HISTORY. 1947 c. 586 s. 10.