

CHAPTER 32A

DAIRY INDUSTRY UNFAIR TRADE PRACTICES

Sec. 32A.01 Citation; dairy industry unfair trade practices act 32A.02 Public policy 32A.03 Definitions 32A.04 Unfair practices 32A.05 Department of agriculture, powers	Sec. 32A.06 Schedule of prices 32A.07 Unfair practices by wholesalers, manufacturers or distributors 32A.08 Certain acts of wholesalers, manufacturers or distributors forbidden 32A.09 Redress for injuries
---	--

32A.01 CITATION; DAIRY INDUSTRY UNFAIR TRADE PRACTICES ACT. Sections 32A.01 to 32A.09 shall be known as the "dairy industry unfair trade practices act."

[1957 c 821 s 1]

32A.02 PUBLIC POLICY. It is hereby declared to be the policy of the legislature, recognizing that "selected dairy products," as herein defined, are important sources of revenue to a large number of citizens of this state engaged in producing, processing, manufacturing or selling such products and are important items of food essential to the health and welfare of the people of this state and that certain trade practices have developed within this state in the sale and distribution of such products which result in unfair competition and upset the orderly marketing of such products, causing financial loss to the producers in this state of the milk or cream used in "selected dairy products," to protect the health and welfare of our people and to preserve the traditional markets and outlets for our producers of such milk or cream and to restore the orderly marketing in this state of "selected dairy products" and to eliminate certain trade and marketing practices which are done with the intent of or have the effect of destroying, lessening or restraining competition or injuring one or more competitors or injuring one or more persons dealing in "selected dairy products" or impairing or preventing fair competition in the sale of "selected dairy products", to prevent disturbances in the dairy products industry which threaten to destroy or seriously impair the supply of dairy products; and to develop and maintain satisfactory marketing conditions and bring a reasonable amount of stability and prosperity in the production and marketing of "selected dairy products", and to assure the producer a reasonable return for his product, and to eliminate discriminatory practices against independent merchants and other retailers in the sale of "selected dairy products". All of the provisions of sections 32A.01 to 32A.09 shall be liberally construed to achieve these ends and administered and enforced with a view to carrying out the above declaration of policy.

[1957 c 821 s 2; 1971 c 676 s 1]

32A.03 DEFINITIONS. Subdivision 1. When used in sections 32A.01 to 32A.09 unless the context otherwise clearly required:

Subd. 2. "Selected dairy products" means "milk" for human consumption in fluid form, "fluid milk products" as defined in section 32.391, and "frozen foods" as defined in section 32.55, subdivision 2, and cottage cheese.

Subd. 3. "Sell at retail", "sales at retail", and "retail sales" mean and include serving of a selected dairy product for a monetary consideration for consumption on the premises where sold, dispensed, or served and any transfer for a valuable consideration made in the ordinary course of trade or the usual course of the seller's business, of title to a selected dairy product to the purchaser for consumption or use other than resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

Subd. 4. "Sell at wholesale", "sale at wholesale", and "wholesale sales" mean and include any transfer for a valuable consideration made in the ordinary course of trade or the usual conduct of the seller's business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

Subd. 4a. "Wholesale price" means the price charged by a manufacturer, wholesaler, or distributor to a customer for purposes of resale or further processing or manufacture.

Subd. 5. "Retailer" means any person engaged in the business of making sales of selected dairy products at retail within this state; provided that in the case of a person engaged in the business of making sales at both retail and wholesale such term shall apply only to the sales at retail made in the course of such business. Home delivery sales, sales by the use of vending machines and sales direct to consumers through lease of a retailer's premises or any part thereof are sales at retail.

Subd. 6. "Wholesaler" means any person engaged in the business of making sales of selected dairy products at wholesale within this state; provided that, in the case of a person engaged in the business of making sales at both retail and wholesale such term shall apply only to the sales at wholesale made in the course of such business.

Subd. 7. "Manufacturer" means any person doing business in this state engaged in the manufacturing or processing of a selected dairy product in his or its own plant for sale in this state, but shall not include a producer selling or delivering milk or cream to a distributor or manufacturer.

Subd. 8. "Distributor" means any person doing business in this state including a jobber or other similar marketing operation engaged in selling at wholesale to a retailer any such selected dairy product manufactured or processed by such distributor or jobber, by a manufacturer, or by another distributor or jobber.

Subd. 9. "Producer" means any person who operates a dairy herd or herds producing milk or cream commercially and whose milk or cream is sold to, or received or handled by, a distributor or manufacturer. "Producer" for purposes of sections 32A.01 to 32A.09 shall not include any incorporated or unincorporated association of producers.

Subd. 9a. "Handling" means the activities of any manufacturer, wholesaler or distributor in bottling, processing, packaging or manufacturing selected dairy products, or in purchasing processed or manufactured selected dairy products which are resold to another manufacturer, wholesaler, distributor or retailer.

Subd. 10. "Person" means an individual, partnership, corporation, association, cooperative corporation or association.

Subd. 11. "Department" means the department of agriculture.

Subd. 12. "Commissioner" means the commissioner of agriculture.

Subd. 13. The singular shall include the plural and the plural the singular.

Subd. 14. Any "wholesaler", "manufacturer" or "distributor" engaging in both retail sales and wholesale sales shall conform to the provisions of sections 32A.01 to 32A.09, and acts amendatory thereof applicable to each class of sales, whether they be retail sales or wholesale sales.

[1957 c 821 s 3; 1961 c 113 s 1; Ex1961 c 2 s 1-5, 14, 15; 1971 c 676 s 2-4]

32A.04 UNFAIR PRACTICES. Subdivision 1. No manufacturer, distributor or wholesaler, either directly or indirectly, or through a subsidiary or affiliate corporation, or by an officer, director, stockholder, employee, partner, agent or representative thereof, shall, for the purpose or with the effect of restraining, lessening or destroying competition or injuring one or more competitors or injuring one or more persons dealing in "selected dairy products" or to impair or prevent fair competition in the sale of selected dairy products to retailers in this state, engage in or threaten to engage in any of the trade practices or methods of doing business described in this section. Proof that any person has engaged in any of the trade practices or methods of doing business described in this section shall be prima facie evidence of an intent to violate or that it has the effect of violating the provisions of this section.

a. Own, control or have any greater financial interest than five percent in any retail business selling or offering for sale any selected dairy product in this state unless the business name, address, nature and extent of ownership or control of such retail business by such manufacturer, distributor, or wholesaler shall be

MINNESOTA STATUTES 1974

487

DAIRY INDUSTRY UNFAIR TRADE PRACTICES 32A.04

prominently displayed at all times at the main public entrance to the premises where such business is being conducted in type not less than 24-point Gothic capitals.

b. Purchase any real or personal property from a retailer and lease back or resell such property to the retailer under a deferred payment contract except as follows:

1. A written lease signed by both parties thereto specifying (a) the rental which shall be consistent with the value of like property in the locality where the retailer is located at the time the lease is executed, and (b) containing other terms and conditions consistent with leases of like property in that locality made at or about the same time by persons not having the relationship existing between the retailer, as the purchaser, and the lessor, as the seller, of a selected dairy product.

2. A written contract for the sale of such property signed by both parties thereto specifying (a) the purchase price which shall be consistent with the fair market value of like property in the locality where the retailer is located at the time the contract is executed, (b) the down payment on such purchase price, (c) the periodic payments on the unpaid balance thereof, and (d) containing other terms and conditions consistent with contracts of sale of like property in that locality made at or about the same time by persons not having the relationship existing between the retailer, as the purchaser, and the vendor, as the seller, of a selected dairy product.

No contract or agreement for the lease-back or resale to a retailer of any property purchased from such retailer by the wholesaler, manufacturer or distributor shall contain any requirement that the retailer shall purchase any selected dairy product from the other party to the contract for sale or the lease, or from any manufacturer, wholesaler or distributor.

c. Give, lend, or advance any money, credit or other thing of value to a retailer or to any person for the benefit or relief of a retailer, or furnish, give, lend, lease, or sell to a retailer any furniture, fixtures, fittings, or equipment, as an incentive or inducement to such retailer to purchase, handle, store, display, sell or trade in, any one or more selected dairy products of any manufacturer, wholesaler, or distributor. Nothing herein shall prevent any sale of furniture, trade fixtures, or equipment to a retailer in accordance with section 32A.07, subdivision 1a or the placing of refrigeration facilities on the premises of a retailer in accordance with section 32A.08, subdivision 2.

d. Provide, pay for, guarantee, or in any other manner, directly or indirectly, assume, satisfy or discharge the cost or obligation of a retailer for painting, decorating, improving, repairing or rebuilding any existing billboard, outdoor sign, display area, wall, fence, building or structure, or any other type of outdoor display advertising having a fixed location, or build, construct, erect, or purchase any new billboard, outdoor sign, or other outdoor advertising having a fixed location, or any structure or facility for use as an outdoor display for the direct benefit of a retailer except that if no reference is made to any retailer, a manufacturer, wholesaler, or distributor may engage in all forms of outdoor advertising to advertise one or more selected dairy products which he manufactures, processes or distributes.

e. Have any interest in or pay for any license for a retailer or advance, furnish, lend or give money for the payment of any license fee for a retailer or any expense incident to the obtaining of any such license, except that a manufacturer, wholesaler, or distributor may purchase in his own name any license required by law for the sale of his selected dairy products in this state or any municipality therein.

f. Become bound in any manner for the repayment of any loan of money or the fulfillment of any financial obligation of any retailer.

g. Extend or give any additional credit to a retailer at a time when there has been due from such retailer for more than 15 days from the end of the month of the day in which delivery was made, any indebtedness arising out of the delivery to him of selected dairy products.

h. Furnish and maintain inside signs of a permanent nature unless such signs are used only for advertising or promoting one or more selected dairy products manufactured, distributed or sold by the person furnishing such sign, or items of food made principally from a selected dairy product so advertised or the brand name of the selected dairy product so advertised, or any combination there-

of. The furnishing of "point of sale" advertising material made of paper or other like materials to a retailer free of charge for the sole purpose of promoting the sale of a selected dairy product of the person furnishing the same shall not constitute a violation of sections 32A.01 to 32A.09.

i. Furnish, give, lend, finance, pay for, contribute to or by any other means, scheme or device, participate in cooperative advertising using newspapers, radio, television or any other advertising media if any retailer selling, handling or offering for sale any selected dairy product of such manufacturer, wholesaler or distributor is named or otherwise identified or referred to in such advertising, except that a manufacturer, wholesaler or distributor may purchase and pay for such lineage or space actually used in advertising one or more of his or its selected dairy products in a newspaper advertisement, handbill or other form of printed advertising put out by a retailer or for the time actually so used in any radio or television program sponsored by a retailer.

j. Pay, loan or give money, credit, compensation, or anything of value to a retailer for the privilege of placing a sign, advertisement or other sales promotion material in or upon the premises of the retailer, or for storing, advertising, or displaying any selected dairy product in connection with its sale or promotion (except that a manufacturer, wholesaler or distributor may furnish paint and maintain an insulated truck body used exclusively in the sale and delivery of his or its selected dairy products by the person making retail sales thereof).

k. No wholesaler, manufacturer, or distributor shall credit to the account of or pay any retailer for any selected dairy product which the retailer claims to have become stale, spoiled or otherwise unsaleable unless the particular product for which such credit or payment is sought is in fact spoiled or otherwise unsaleable.

l. In connection with any sale to a distributor or retailer in this state of a selected dairy product, make or offer to make any gift of money, merchandise, trading stamps, coupons, service, supplies, or anything of value, or to grant or offer to grant any rebate, discount, or advertising allowance other than as expressly permitted by sections 32A.01 to 32A.09.

m. Charge a combined price for any selected dairy product together with another commodity or a service which is less or is represented to be less than the aggregate of the price of the particular selected dairy product and the price or value of such other commodity or service when sold or offered for sale separately, or from otherwise applying or attempting to apply any method or device in the sale or distribution of a selected dairy product intending to defeat the policy of sections 32A.01 to 32A.09 or to defeat or evade any provision of sections 32A.01 to 32A.09 or any order, ruling or regulation issued by the commissioner thereunder.

n. Engage in the business of a wholesaler, manufacturer, or distributor selling or offering for sale selected dairy products at wholesale to retailers while at the same time being engaged in the business of hauling, handling, or delivering selected dairy products to a retailer for a fee, for himself or another wholesaler, manufacturer, or distributor, where said business results in a sale of a "selected dairy product" at wholesale to a retailer at a price lower than said retailer could legally obtain from the wholesaler, manufacturer or retailer first involved.

o. The provisions of section 325.04, shall apply to and include a manufacturer of any selected dairy product. No manufacturer, wholesaler, distributor or retailer of a selected dairy product engaged in business within this state shall sell, offer for sale or advertise for sale any selected dairy product below "cost" as that term is defined in section 325.01 or give, offer to give, or advertise the intent to give away any selected dairy product for the purpose or with the effect of violating sections 32A.04, 32A.06, 32A.07, 325.03, 325.04, and 325.06. The prima facie rule of evidence provisions of this section and 325.06 shall apply to any such violation. And it is the legislative intent that the provisions for relief set forth in section 32A.09 shall apply to any legal action under this paragraph.

Subd. 2. It shall be unlawful and an unfair trade practice in violation of the dairy industry unfair trade practices act for any person doing business in this state in the course of such business knowingly to induce an act or knowingly to receive a discrimination or benefit from an act prohibited by the dairy industry unfair trade practices act.

MINNESOTA STATUTES 1974

439

DAIRY INDUSTRY UNFAIR TRADE PRACTICES 32A.05

32A.05 DEPARTMENT OF AGRICULTURE, POWERS. Subdivision 1. Sections 32A.01 to 32A.09 shall be administered by the department of agriculture.

Subd. 2. [Repealed, 1965 c 45 s 4 subd 1]

Subd. 3. The commissioner is authorized and empowered to call together manufacturers, distributors, wholesalers, retailers and producers of selected dairy products manufactured, processed, produced or sold in this state for the purpose of inquiry into trade practices prevailing from time to time in this state, and if need be, to conduct hearings in connection with such trade practices for the purpose of making findings relative to any trade practice found to exist within this state involving the manufacture, sale or distribution of any selected dairy product covered by sections 32A.01 to 32A.09, and thereafter to promulgate rules or regulations for the elimination of any trade practice found to be contrary to the provisions of sections 32A.01 to 32A.09. All such rules and regulations shall be adopted and all such hearings shall be held in the manner provided by law; and for the purpose of any such hearing the commissioner shall have the power to subpoena witnesses and otherwise require as provided by law the production of evidence, either oral or written, respecting the subject matter of the particular hearing, but no person or witness in any such hearing so conducted shall be subject to any penalty for or on account of any transaction, matter or thing concerning which he may be thus required to testify or produce evidence, documentary or otherwise.

In addition to the powers and duties set forth above, whenever the commissioner or his duly authorized agent have good reason to believe that the testimony of any person who is a party or who has information pertaining to any transaction prohibited by sections 32A.01 to 32A.09, and acts amendatory thereof or the books of account or other business records of any such person is material or pertinent to any inquiry of prevailing trade practices, authorized department investigation, or administrative enforcement proceeding commenced pursuant to the authority contained in section 32A.09, the commissioner or his duly authorized agent shall have the power to issue subpoenas to take the testimony under oath of any such person and to have such person produce his books of account or other business records material or pertinent to such inquiry, investigation, or administrative enforcement proceeding, for examination by the commissioner or his authorized agent at all reasonable times.

If a person fails or refuses to obey a subpoena issued, the commissioner may apply to district court to issue an order requiring the person to appear before the department to produce evidence or to give testimony concerning the matter under inquiry, investigation, or administrative process. The application for the order shall be filed with the district court having jurisdiction in the area of residence, principal place of business, or registered office of the person involved. Any person failing to obey an order of the district court shall be punished by the district court under existing laws of contempt.

Subd. 4. For the purpose of administering and enforcing the provisions of sections 32A.01 to 32A.09, each manufacturer subject to sections 32A.01 to 32A.09 shall pay to the commissioner a fee of one cent per cwt. on all milk processed or used in the manufacture of a selected dairy product sold in this state or manufactured in this state for sale therein except frozen foods on which the fee shall be three-quarters of a cent on each gallon of frozen foods sold in this state or manufactured in this state for sale therein. Such fees shall be the maximum fees. The commissioner may fix such fees at a lesser amount and may adjust such fees from time to time whenever he finds that the cost of administering and enforcing the provisions of sections 32A.01 to 32A.09 can be defrayed with such below maximum fees. The fees thus computed shall be paid by the manufacturer to the commissioner on or before the 15th day of the month following the month in which such frozen foods were sold in this state or a selected dairy product manufactured in this state from such milk was sold therein. Provided however, that when the amount of the fees so computed does not exceed \$10 in the first month of a calendar quarter the payment shall be made by the month following the last month of such quarter. If such fees are not paid to the commissioner on or before the end of the month following the month for which such fees are due or on or before the end of the month following the last month of a calendar quarter where such fees do not exceed \$10, a penalty amounting to 10 percent of the fees then due shall be imposed by the commissioner for each month for which such fees are delinquent.

The amounts so received by the commissioner shall be deposited with the state treasurer and shall constitute a separate account to be known as the "Dairy Industry Unfair Trade Practices Account" which is hereby created, set aside and appropriated as a revolving fund to be used to defray the cost of administering and enforcing sections 32A.01 to 32A.09.

[1957 c 821 s 5; 1961 c 113 s 1; Ex1961 c 2 s 7, 8, 16; 1965 c 45 s 4 subd 2; 1965 c 565 s 2; 1971 c 676 s 6]

32A.06 SCHEDULE OF PRICES. Subdivision 1. Each manufacturer, wholesaler and distributor shall file with the commissioner a dated schedule of current wholesale prices showing all rebates, discounts, refunds and price differentials for the selected dairy products offered for sale at wholesale by the person filing such price schedule, to retailers or to any other person for sale at wholesale to a retailer. Price schedules filed by all manufacturers of selected dairy products shall be applicable to all sales of selected dairy products manufactured or processed by said manufacturer. Sales at wholesale to retailers by a wholesaler or distributor who purchases selected dairy products from a manufacturer shall be made at prices not less than those listed in that manufacturer's filed price schedule. Any discount given a retailer for the volume of a selected dairy product delivered in a given period of time at a specific location must reflect only the savings in delivery costs to the seller, provided always that where a retailer or distributor is supplied with selected dairy products by more than one manufacturer, wholesaler or distributor, then the total volume of the selected dairy products supplied to such retailer by all such suppliers shall determine the only discount he shall receive from any person and the same discount shall be allowed to all other retailers in the same area purchasing the same quantity of the particular selected dairy product from the same seller in the same period of time. Upon demand of the commissioner all such discounts shall be justified by the seller granting the same. If a person acts as agent for one or more retailers in purchasing a selected dairy product, all such sales shall have the status of a sale at wholesale to a retailer and in each such sale the manufacturer, wholesaler or distributor making such sale shall file with the commissioner the applicable schedule of prices on each class of selected dairy products sold or to be sold to such agent. A manufacturer, wholesaler or distributor selling a selected dairy product to a retailer shall furnish to the retailer, at the time of negotiating any sale, the applicable current price list for the selected dairy products sold and shall supply the retail customer with all such subsequent applicable price lists. A manufacturer, wholesaler or distributor, negotiating a sale to a retailer upon making a bona fide offer to sell at other than the current applicable filed price or legal deviation shall forthwith communicate this information in writing to the commissioner. This information shall be confidential and shall not be disclosed to any person but shall only be used by the commissioner or his duly authorized agents for their information in permitting lawful deviations to any competitive condition created by the offer at other than the filed price of the maker.

Subd. 2. Price schedules on any class of selected dairy products can be superseded, changed or withdrawn only on forms prescribed and furnished by the commissioner and by filing a copy thereof with the commissioner at least ten (10) full business days before the new schedule becomes effective and until that time, the old schedule shall continue in force. Any new price schedule shall continue unchanged for ten full business days. The commissioner is authorized and empowered to investigate any price for any selected dairy product on any schedule or prices filed with the commissioner which appear to be in violation of sections 32A.01 to 32A.09, 325.04, 325.06, 325.075, and acts amendatory thereof, and to suspend the effective date of any such price for a period of ten calendar days or during the period of such investigation, whichever is the lesser, and upon such suspension shall give prompt notice thereof by mail to the person filing such price schedule. If within this ten day period the commissioner fails to determine that such suspended price is invalid, it shall be presumed to be a valid price, effective at the expiration of the ten day period. If the commissioner determines the price to be invalid, he shall so advise in writing the person filing such price schedule. If the person filing a price schedule containing a price which is suspended fails or refuses upon written request of the commissioner to make available all of his record pertinent to the determination of the validity of such suspended price, the period of suspension may be extended by the commissioner for

MINNESOTA STATUTES 1974

491

DAIRY INDUSTRY UNFAIR TRADE PRACTICES 32A.07

a period of ten days from the time such records are made available. All price schedules filed with the commissioner shall be confidential and shall not be disclosed unless necessary to prepare or institute legal action.

Subd. 3. A filing fee of \$2 shall be paid the commissioner for each price schedule filed by the same manufacturer, wholesaler or distributor.

Subd. 4. All sales at wholesale of selected dairy products by the manufacturer, wholesaler or distributor shall be in accordance with the current filed schedules except a sale made in good faith to meet a lawful competitive price or a lawful competitive condition. The burden of proving such good faith sale to meet lawful competition shall be upon the person making such sale. The manufacturer, wholesaler or distributor making such sale shall make a written report to the commissioner within five days from the date of such deviated sale upon such form and in such manner as shall be prescribed by the commissioner. Failure to file such report within the time stated shall be prima facie evidence of a violation of sections 32A.01 to 32A.09.

Subd. 5. Sales of a selected dairy product may be made at other than the manufacturer's, wholesaler's, or distributor's current filed price to the United States or the state of Minnesota or a political subdivision of the state or a municipality therein, without such sales being a violation of sections 32A.01 to 32A.09.

Subd. 6. A manufacturer, wholesaler or distributor not having an established place of business in this state, before selling or delivering any selected dairy product in this state, shall file its price schedules on such products with the commissioner and shall be governed by sections 32A.01 to 32A.09, and acts amendatory thereof, on all sales or deliveries of its selected dairy products in this state.

[1957 c 821 s 6; Ex1961 c 2 s 9-11; 1965 c 45 s 5, 6; 1965 c 565 s 3, 4; 1971 c 676 s 7-9]

32A.07 UNFAIR PRACTICES BY WHOLESALERS, MANUFACTURERS OR DISTRIBUTORS. To carry out the purpose of sections 32A.01 to 32A.09 and to restore fair, open and free competition for the trade and custom of the retailers of this state purchasing a selected dairy product for resale in this state, no manufacturer, wholesaler or distributor of selected dairy products doing business in this state shall sell or offer to sell to a retailer in this state purchasing any selected dairy product from such manufacturer, wholesaler or distributor any such furniture, trade fixtures or equipment except as follows:

a. No manufacturer, wholesaler or distributor shall sell any kind of furniture, trade fixtures or equipment at less than the cost thereof to such seller. Any sale made by such seller at less than 15 percent above such seller's actual current invoice or replacement cost, less depreciation in the case of used furniture, trade fixtures or equipment computed at the annual rate of 15 percent of the seller's cost, shall be prima facie evidence that such sale was made below such seller's cost. If the full purchase price of any item so sold the retailer is not paid the seller by the retailer within 40 days from the delivery of the item or items comprising such sale, the retailer shall pay within said 40 days not less than 10 percent of the purchase price of the items comprising such sale computed as above specified and shall give the seller a conditional sales contract or a promissory note secured by a chattel mortgage specifically describing each item comprising such sale and the seller, within ten days of the execution thereof, shall file such conditional sales contract or chattel mortgage as required by law for a valid enforceable secured debt. Such conditional sales contract or chattel mortgage shall specify (1) the cash payment made by the retailer to the seller or the value of the trade-in accepted by the seller to apply on the purchase price but such trade-in credit shall not exceed the depreciated value of the item or items representing such trade-in credit as carried on the business records of the purchaser, but if no such records are available then at an annual depreciation rate of 15 percent of the purchaser's cost, and (2) the amount of the unpaid purchase price shall be paid by the retailer in 60 equal monthly installments, bearing simple interest at six percent per annum with the last such installment of principal and interest maturing not later than 60 months from the execution of the conditional sales contract or chattel mortgage given the seller by the retailer.

b. The mechanical, electrical or other servicing of all items of furniture, trade fixtures or equipment sold a retailer by a manufacturer, wholesaler or distributor shall become and remain the sole responsibility of the retailer purchasing the same unless at the time of such sale, the seller and the retailer agree in writing that the seller is to provide such servicing, but such contract shall require the seller to

charge the retailer for the servicing of any item the same price as is charged by third persons rendering such service in the area or community where the retailer is located. If any charge for such servicing (including the full cost of all repair and replacement parts) is not paid by the retailer to the seller within 40 days from the performance of the work, such failure shall be a violation of subparagraph (g) of section 32A.04.

[1957 c 821 s 7]

32A.08 CERTAIN ACTS OF WHOLESALERS, MANUFACTURERS OR DISTRIBUTORS FORBIDDEN. Subdivision 1. To carry out the purpose of sections 32A.01 to 32A.09 and to restore free, open and fair competition among wholesalers, manufacturers and distributors for the trade and custom of retailers in this state purchasing one or more selected dairy products at wholesale for resale to the consumer, and to eliminate trade practices that have the effect of restraining or destroying free competition in the sale of selected dairy products to such retailers:

a. If, at the time of the enactment of sections 32A.01 to 32A.09, a manufacturer, wholesaler or distributor of selected dairy products is furnishing a retailer free of charge or contrary to subparagraph (c) of subdivision (1) of section 32A.04, with ice cream cabinets, bulk milk dispensers, coin operated vending machines or cooling equipment or similar equipment which are still in the possession or under the control of the retailer, the person furnishing the same free of charge shall within 18 months from the date of enactment, sell to the retailer all such items of equipment so furnished as the retailer may elect to purchase. The price of each item of such equipment so purchased by the retailer shall be the depreciated cost as carried on the business records of the seller or the depreciated value as determined by the formula set forth in section 32A.07, subdivision 1-a, whichever is the greater price. The price thus determined shall be paid in cash or within the period and upon the terms and conditions specified in section 32A.07, subdivision 1-a. If the retailer does not purchase all such items within said period of 18 months, the manufacturer, wholesaler or distributor originally furnishing the same shall properly repossess all items not so purchased and remove them from the premises of retailer; provided always that this provision shall not apply to or affect any bona fide written contract in force on the effective date of sections 32A.01 to 32A.09, which specifically describes each item of equipment to be furnished free of charge to the retailer, except that any provision of any such contract which, if performed, would constitute an unfair practice under sections 32A.01 to 32A.09 or result in unfair competition in the sale at retail of any selected dairy product shall not be enforceable by either party to the contract and if performance of any such provision of the contract is attempted, all civil remedies available under sections 32A.01 to 32A.09 or under any other applicable law can be asserted by any person claiming injury or threatened injury or damage by reason of the performance or threatened performance of such provision.

Subd. 2. Nothing in this section or in sections 32A.01 to 32A.09 shall be construed to prohibit or prevent a manufacturer, wholesaler or distributor from placing his refrigeration or storage facilities on the premises of any retailer and maintaining the same without payment or charge to the retailer so long as such refrigeration or storage facilities are used exclusively for the storage and preservation of selected dairy products manufactured or sold by the manufacturer, wholesaler or distributor furnishing such refrigeration or storage facilities and they are not used by the retailer or anyone else to sell or offer for sale at retail any of the selected dairy products stored or placed therein.

[1957 c 821 s 8]

32A.09 REDRESS FOR INJURIES. Subdivision 1. Any person who shall be injured in his business or property by reason of anything forbidden by sections 32A.01 to 32A.09, shall be entitled to sue therefor in any court of competent jurisdiction and shall be entitled to recover three fold the damage by him sustained and the costs of suit, including reasonable attorneys fees. Any person injured or who is threatened with injury or loss by reason of anything forbidden by sections 32A.01 to 32A.09, shall be entitled to sue for and have injunctive relief in any court of competent jurisdiction against all persons involved in any violation or threatened violation of sections 32A.01 to 32A.09, and acts amendatory thereof, to prevent and restrain violations or threatened violations thereof without alleging or proving actual damages or that an adequate remedy at law does not exist, so that injunctive relief can be obtained promptly without awaiting injury or actual

MINNESOTA STATUTES 1974

493

DAIRY INDUSTRY UNFAIR TRADE PRACTICES 32A.09

damage. Such injunctive relief shall not abridge or be in lieu of any other civil remedy provided in sections 32A.01 to 32A.09.

Subd. 2. Any person entitled to bring suit under sections 32A.01 to 32A.09 may sue both in tort and for injunctive relief and may recover for all loss, damage or injury arising from the continued violation to the time of trial or hearing of such suit.

Subd. 3. No violation of a provision of sections 32A.01 to 32A.09 shall be a crime in and of itself.

Subd. 4. Nothing in sections 32A.01 to 32A.09 will be construed to authorize or permit the commissioner or any person representing the commissioner to set, fix, or establish the producers', manufacturers', distributors', wholesalers' or retailers', price or prices on any of the "selected dairy products" mentioned in sections 32A.01 to 32A.09.

Subd. 5. (a) Whenever the commissioner shall have reason to believe that any person is violating any of the provisions of sections 32A.01 to 32A.09, and acts amendatory thereof, or any promulgated rule, and it shall appear to the commissioner that a proceeding in respect thereof is warranted, he shall serve upon such person or persons a complaint stating his charges in that respect containing a notice of hearing upon a day and at a place therein fixed at least twenty days after the service of said complaint. The person or persons so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commissioner requiring such person or persons to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown, may be allowed by the commissioner to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commissioner. If upon such hearing the commissioner shall be of the opinion that there has been a violation of any of the provisions of sections 32A.01 to 32A.09, and acts amendatory thereof, or any promulgated rule, he shall make a report in writing in which he shall state his findings as to the facts and shall issue and cause to be served upon such person or persons an order requiring them to cease and desist from such violation. The commissioner may at any time after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued by him under this section, whenever in the opinion of the commissioner conditions so justify.

(b) Any person required by an order of the commissioner to cease and desist from any act or practice may obtain a review of such order in the district courts of this state by filing in the court, within twenty days from the date of service of such order a written petition praying that the order of the commissioner be set aside. A copy of such petition shall be forthwith served upon the commissioner and thereupon the commissioner shall certify and file in the court a transcript of the entire record and order of the commissioner. Upon the filing of the petition and transcript, the court shall have jurisdiction of the proceeding and of the question determined herein and shall have power to make and enter upon the pleadings, evidence and proceedings set forth in such transcript a decree, affirming, modifying, or setting aside the order of the commissioner or enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the commissioner as to the facts, if supported by the evidence in the proceeding before the commissioner, shall be conclusive. To the extent that the order of the commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the commissioner. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The commissioner may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings which, if supported by the evidence, shall be conclusive and his recommendation, if any, for the modification or setting aside of his original order with the return of such additional evi-

dence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the supreme court.

(c) Violations of any cease and desist order of the commissioner shall be punished by the district court under existing laws of contempt. Each day of failure to obey a cease and desist order of the commissioner may be deemed a separate violation and each violation of a particular act enjoined by the court may be deemed a separate violation.

Subd. 6. The commissioner may impose a penalty upon any person licensed by the department in any of its areas of jurisdiction which in any way involve the handling, processing, distributing, and selling of selected dairy products if the person is found to be in violation of the provisions of this dairy industry unfair trade practices act.

Whenever the commissioner has reason to believe that the person has violated the act and it appears that a proceeding should be held to determine whether a penalty should be imposed the commissioner shall serve notice on such person in writing by certified mail of the charges and grounds on which a penalty is sought to be imposed and of the time and place, not less than ten days after the mailing of a notice, at which a hearing shall be held to determine whether to impose a penalty. Any person upon whom a penalty is sought to be imposed shall have full right to counsel and to produce witnesses in his behalf at the hearing. After full investigation and hearing the commissioner may upon proof of a first violation impose a penalty of not less than \$50 nor more than \$100 for each act in violation. However, in no event shall the penalty exceed \$1,000. Upon proof of a second violation the commissioner may impose a penalty of not less than \$100 or more than \$500 for each act in violation. However, the maximum penalty imposed shall not exceed \$5,000. Upon proof of a third violation the penalty provisions applicable upon proof of a second violation shall apply.

The commissioner shall by certified mail or by personal service notify the person upon whom a penalty has been imposed, setting forth the reasons for the decision. The imposition of penalty shall become effective 30 days after the mailing or service in person of the notification unless that person complies with the provisions of section 15.0424, providing for a procedure for judicial review of the determination in the district court. In addition to the provisions contained therein, the person may petition to the district court that the review procedure shall be by trial de novo.

Imposition of any penalties under this section shall be construed as civil and not criminal in nature.

Any amounts received by the commissioner as a result of the imposition of penalties under this provision shall be deposited with the state treasurer and shall be placed in the "dairy industry unfair trade practices account."

[1957 c 821 s 9; Ex1961 c 2 s 12, 13; 1965 c 565 s 5; 1971 c 676 s 10, 11]