

CHAPTER 32A

DAIRY INDUSTRY UNFAIR TRADE PRACTICES

32A.04 Unfair practices.

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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 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,

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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 1 (a) 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 thereof. 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

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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 325D.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 325D.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.07, 325D.03, 325D.04, and 325D.06. The prima facie rule of evidence provisions of this section and 325D.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.

[For text of subd 2, see M.S.1980]

History: 1Sp1981 c 4 art 1 s 40