

CHAPTER 325D

RESTRAINT OF TRADE

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UNFAIR DISCRIMINATION AND COMPETITION

325D.01 DEFINITIONS.

Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in this section, for the purposes of sections 325D.02 to 325D.07, shall be given the meanings subjoined to them.

Subd. 2. **Retailer.** The term "retailer" means 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.

Subd. 3. **Wholesaler.** The term "wholesaler" means 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.

Subd. 4. **Manufacturers or producers.** Creameries, canneries, and other processors of agricultural products are defined to be manufacturers or producers and are not included within the meaning of the term "wholesaler."

Subd. 5. **Cost.** The term "cost," as applied to the wholesale or retail vendor, means:

(1) the actual current delivered invoice or replacement cost, whichever is lower, without deducting customary cash discounts, plus any excise or sales taxes imposed on such commodity, goods, wares or merchandise subsequent to the purchase thereof and prior to the resale thereof, plus the cost of doing business at that location by the vendor;

(2) where a manufacturer publishes a list price and discounts, in determining such "cost" the manufacturer's published list price then currently in effect, less the published trade discount but without deducting the customary cash discount, plus any excise or sales taxes imposed on such commodity, goods, wares or merchandise subsequent to the purchase thereof and prior to the resale thereof, plus the cost of doing business by the vendor shall be prima facie evidence of "cost";

(3) for purposes of gasoline offered for sale by way of posted price or indicating meter by a retailer, at a retail location where gasoline is dispensed into passenger automobiles and trucks by the consumer, "cost" means the average terminal price on the day, at the terminal from which the most recent supply of gasoline delivered to the retail location was acquired, plus all applicable state and federal excise taxes and fees, plus the lesser of six percent or eight cents.

Subd. 6. **Customary cash discounts.** The term "customary cash discounts" means any allowance, not exceeding two percent, 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.

Subd. 7. **Cost of doing business or overhead expense.** 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, these items of expenses incurred in the conduct of such business during the calendar year or the 12 months immediately preceding any alleged violation of sections 325D.02 to 325D.07; or, in the event 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 thereof shall be prima facie evidence of "cost".

Subd. 8. **Trade discount.** The term "trade discount" means all discounts made to the wholesale or retail vendee other than the customary cash discount.

Subd. 9. **Subjobber.** The term "subjobber" means any person, partnership, firm, corporation or association other than a wholesaler or retailer, who or which buys any commodity, article, goods, wares, or merchandise from a wholesaler and sells such merchandise directly to retailers, thereby performing the selling and delivering functions of a wholesaler.

Subd. 10. **Vending machines operator.** The term "vending machines operator" means any person, partnership, firm, corporation or association who or which owns, services and supplies ten or more merchandise vending machines placed in various locations for dispensing such merchandise to consumers.

Subd. 11. **Terminal.** "Terminal" means a storage facility to which gasoline is shipped by pipeline, barge, or rail, and from which gasoline is subsequently transferred into motor vehicles for delivery to other locations. For purposes of this chapter, an oil refinery is also a terminal.

Subd. 12. **Average terminal price.** "Average terminal price" means the arithmetic mean of all prices for an individual grade of gasoline at a terminal as published by a nationally recognized petroleum price reporting service.

History: (3976-42) 1937 c 116 pt 2 s 3; 1937 c 456 s 1; 1939 c 403 s 2; 1941 c 326 s 2; 1955 c 339 s 1-4; 1980 c 509 s 124; 1996 c 305 art 1 s 70; 2001 c 129 s 1-3

325D.02 APPLICATION.

Section 325D.03 shall apply only to the manufacture, production, or distribution of any commodity, article, goods, wares, or merchandise in general use or consumption. Sections 325D.04 to 325D.06 shall apply only to the selling, offering, or advertising for sale, giving away or offering or advertising the intent to give away of any commodity, article, goods, wares, or merchandise, in wholesale or retail trade.

History: (3976-37, 3976-40) 1937 c 116 pt 1 s 1; 1937 c 116 pt 2 s 1

325D.03 DISCRIMINATION UNLAWFUL.

Any person, partnership, firm, or corporation, foreign or domestic, doing business in the state and engaged in the production, manufacture, or distribution of any printed or mimeograph matter, commodity, article, goods, wares, or merchandise in general use or consumption, who for the purpose or with the effect of injuring a competitor or destroying competition, shall discriminate between different sections, communities, or cities of this state by selling or furnishing such commodity, article, goods, wares or merchandise at a lower price, or rate in one section, community, or city, or any portion thereof, than such person, firm, or corporation, foreign or domestic, charges for such commodity, article, goods, wares, or merchandise in another section, community, or city, or any portion thereof, after making allowance for difference, if any,

in the grade, quality, or quantity after equalizing the distance from the point of production, manufacture, or distribution and freight rates therefrom, shall be guilty of unfair discrimination; provided, that sections 325D.01 to 325D.07 shall not prevent any person, firm, or corporation from, in good faith, meeting local competition within any one section, community, or city. The inhibition hereof against 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 sections 325D.01 to 325D.07.

History: (3976-38) 1937 c 116 pt 1 s 2; 1957 c 822 s 1; 1973 c 123 art 5 s 7

325D.04 SELLING BELOW COST FORBIDDEN.

Any retailer, wholesaler, subjobber or vending machines operator engaged in business within this state, who 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 a competitor or destroying competition, shall be guilty of unfair discrimination; and, upon conviction, subject to the penalty therefor provided in section 325D.071.

Any retailer, wholesaler, subjobber or vending machines operator who sells goods in any part of this state at prices lower than those exacted by the person elsewhere in the state 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 section 325D.071; 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 prices 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.

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 sections 325D.01 to 325D.07.

History: (3976-41) 1937 c 116 pt 2 s 2; 1939 c 403 s 1; 1941 c 326 s 1; 1957 c 822 s 2; 1987 c 384 art 2 s 1

325D.05 BANKRUPT SALES NOT TO BE CONSIDERED IN FIXING COSTS.

In establishing the cost of a given article, goods, wares, or merchandise to the vendor, the invoice cost of the article, goods, wares, or merchandise purchased at a forced, bankrupt, closeout, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of the sale of the article, goods, wares, or merchandise replaced through the ordinary channels of trade, unless the article, goods, wares, or merchandise is kept separate from goods purchased in the ordinary channels of trade and unless the article, goods, wares, or merchandise is advertised and sold as merchandise purchased at a forced, bankrupt, or closeout sale, or by means other than through the ordinary channels of trade, and the advertising shall state the conditions under which the goods were so purchased and the quantity of such merchandise to be sold or offered for sale.

History: (3976-43) 1937 c 116 pt 2 s 4

325D.06 INAPPLICABLE SALES.

The provisions of section 325D.01, subdivisions 2 to 6, and sections 325D.04 and 325D.05 shall not apply to any sale made:

(1) in closing out in good faith the owner's stock, or any part thereof, for the purpose of discontinuing 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;

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

(3) by an officer acting under the orders of any court;

(4) 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.

History: (3976-45) 1937 c 116 pt 2 s 6; 1939 c 403 s 3; 1941 c 326 s 3; 1957 c 822 s 3; 1967 c 302 s 2; 1986 c 444; 1995 c 73 s 1

325D.07 REMEDIES CUMULATIVE.

The remedies herein provided shall be cumulative to all other remedies provided by law.

History: (3976-48) 1937 c 116 pt 3 s 3; 1939 c 403 s 6

325D.071 VIOLATIONS; PENALTIES.

Any person, firm, or corporation, whether as principal, agent, officer, or director, for itself, or for another person, firm, or corporation, willfully violating the provisions of sections 325D.03, 325D.04, and 325D.05 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 sections 325D.03, 325D.04, and 325D.05, knowingly assists or aids directly or indirectly in such violation shall be equally responsible therefor.

History: 1929 c 300 s 4; 1937 c 116 pt 3 s 1; 1937 c 196 s 4; 1937 c 412 s 9; 1939 c 403 s 4; 1941 c 326 s 4; 1961 c 561 s 10; 1973 c 151 s 3; 1984 c 628 art 3 s 11; 1986 c 444; 1996 c 305 art 1 s 71

325D.072 INJUNCTIVE RELIEF.

In addition to the penalties provided in section 325D.071, the courts of this state are hereby vested with jurisdiction to prevent and restrain violations of sections 325D.02 to 325D.07. Any person, partnership, corporation, or association damaged, or who is threatened with loss or injury, by reason of a violation of these sections 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 thereof and for the amount of the actual damages, 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.

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 sections 325D.02 to 325D.072, 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 the person may tend to criminate or subject the person 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 the person 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.

History: *1937 c 116 pt 3 s 2; 1939 c 403 s 5; 1941 c 326 s 5; 1986 c 444; 1996 c 305 art 1 s 72*

325D.08 [Repealed, 1995 c 73 s 2]

UNLAWFUL TRADE PRACTICES

325D.09 UNLAWFUL TRADE PRACTICES.

The legislature of the state of Minnesota hereby finds: that the trade practices defined and prohibited by sections 325D.09 to 325D.16 are detrimental to labor, destructive to employment, and injurious to the best interests of workers; that they mislead consumers into believing that they are buying merchandise at prices substantially below regular retail prices, when in fact they are not; that they mislead consumers as to the quality, ingredients and origin of merchandise purchased; that they deprive consumers of various customer services offered by regularly established and bona fide retail outlets without compensating advantage to consumers; and that they constitute unfair and fraudulent 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.

History: *1943 c 144 s 1; 1986 c 444*

325D.10 DEFINITIONS.

When used in sections 325D.09 to 325D.16:

(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 employee.

(c) "Sale" or "sell" includes any sale, offer, or advertisement thereof 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.

History: *1943 c 144 s 2*

325D.11 CERTAIN 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.

History: *1943 c 144 s 3*

325D.12 RETAILERS NOT TO MISREPRESENT NATURE OF BUSINESS.

(1) 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.

(2) 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.

(3) 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.

History: 1943 c 144 s 4

325D.13 QUALITY, MISREPRESENTED.

No person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise.

History: 1943 c 144 s 5

325D.14 EMPLOYER 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 possess or control for sale to employees or to any other person, any merchandise not handled by such employer in the regular course of business, nor shall any employer permit the employer's name, credit, or premises to be used in connection with the sale or offer for sale of any such merchandise. This section shall not apply to purchases by an employer for the purpose of resale to employees of such specialized equipment and paraphernalia as may be required for employees' safety and health, candy, chewing gum, tobacco, or meals consumed on the premises of such employer. The provisions of sections 325D.09 to 325D.16 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.

History: 1943 c 144 s 6; 1986 c 444

325D.15 VIOLATIONS; RESTRAINING ORDERS.

Any person violating the provisions of sections 325D.09 to 325D.16 shall be deemed guilty of a misdemeanor. Each act prohibited by sections 325D.09 to 325D.16 shall constitute a separate violation and offense thereunder.

In addition to the penalties provided in sections 325D.09 to 325D.16 the courts of this state are hereby vested with jurisdiction to prevent and restrain violation of sections 325D.09 to 325D.16. Any person

damaged or who is threatened with loss, damage, or injury by reason of a violation of sections 325D.09 to 325D.16 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 sections 325D.09 to 325D.16 and for the amount of the actual damages, 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.

History: *1943 c 144 s 7,8; 1986 c 444*

325D.16 APPLICATION.

Nothing in sections 325D.09 to 325D.16 shall be deemed to prohibit the sale by an employer to employees of the employer's own products or property at any price.

History: *1943 c 144 s 9; 1986 c 444*

325D.165 [Repealed, 1998 c 315 s 13]

325D.17 [Repealed, 1981 c 59 s 20]

325D.18 [Repealed, 1981 c 59 s 20]

325D.19 [Repealed, 1981 c 59 s 20]

325D.20 [Repealed, 1981 c 59 s 20]

325D.21 [Repealed, 1981 c 59 s 20]

325D.22 [Repealed, 1981 c 59 s 20]

325D.23 [Repealed, 1981 c 59 s 20]

325D.24 [Repealed, 1981 c 59 s 20]

325D.25 [Repealed, 1981 c 59 s 20]

325D.26 [Repealed, 1981 c 59 s 20]

325D.27 [Repealed, 1981 c 59 s 20]

325D.28 [Repealed, 1981 c 59 s 20]

325D.29 [Repealed, 1981 c 59 s 20]

UNFAIR CIGARETTE SALES

325D.30 MINNESOTA UNFAIR CIGARETTE SALES ACT; FINDINGS AND POLICY.

The legislature finds that unfair, dishonest, and fraudulent business practices exist in transactions involving the sale of, or offer to sell, cigarettes in the wholesale and retail trades in this state and are demoralizing and disorganizing the said trades.

Offering for sale, or sale of cigarettes below cost in the wholesale and retail trade is declared by the legislature to have the intent or effect of injuring a competitor, destroying or lessening competition, and is deemed an unfair and deceptive business practice and an unfair method of competition.

Such practices affect collection of taxes and license fees imposed on persons engaged in the sale of cigarettes.

It is hereby declared to be the policy of the state of Minnesota and the purposes of sections 325D.30 to 325D.42 to protect the public by prohibiting such sales.

History: 1967 c 600 s 1; 1987 c 268 art 13 s 40

325D.31 CITATION.

Sections 325D.30 to 325D.42 shall be known as the "Minnesota Unfair Cigarette Sales Act."

History: 1967 c 600 s 2

325D.32 DEFINITIONS.

Subdivision 1. **Scope.** For the purpose of sections 325D.30 to 325D.42, the words, terms and phrases defined in this section have the meanings ascribed to them except where the context clearly indicates a different meaning.

Subd. 2. **Cigarettes.** "Cigarettes" means and includes any roll for smoking, made wholly or in part of tobacco, irrespective of size and shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except whole tobacco leaf, and includes any cigarette as defined in section 297F.01, subdivision 3.

Subd. 3. **Person.** "Person" means and includes any individual, firm, trade association, company, partnership, nonprofit corporation, corporation, joint stock company, club agency, syndicate, or anyone engaged in the sale of cigarettes.

Subd. 4. **Wholesaler.** "Wholesaler" means and includes any person who acquires cigarettes for the purpose of sale to retailers or to other persons for resale, and who maintains an established place of business when any part of the business is the sale of cigarettes at wholesale to persons licensed to sell cigarettes by the state or any municipality, and where at all times a stock of cigarettes is available to retailers for resale, or any cigarette manufacturer or manufacturer's representative who sells to retailers or to other persons for resale, and any person defined as a "distributor" under section 297F.01, subdivision 4. The term "wholesaler" shall also include a "subjobber" as defined by section 297F.01, subdivision 5. This subdivision does not prohibit any person from engaging in business as a retailer as defined in subdivision 5.

Subd. 5. **Retailer.** "Retailer" means any person who is engaged in this state in the business of selling, or offering to sell, cigarettes at retail.

Subd. 6. **Sale; sell.** "Sale" and "sell" mean and include any transfer for a consideration, exchange, barter, gift, offer for sale, and distribution in any manner or by any means whatsoever.

Subd. 7. **Sell at wholesale; sale at wholesale; wholesale sales.** "Sell at wholesale," "sale at wholesale" and "wholesale sales" mean and include any sale or offer for sale made in the course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.

Subd. 8. **Sell at retail; sale at retail; retail sales.** "Sell at retail," "sale at retail," and "retail sales" mean and include any sale or offer for sale for consumption or use made in the ordinary course of trade of the seller's business.

Subd. 9. **Basic cost of cigarettes.** "Basic cost of cigarettes" means the gross invoice cost of cigarettes to the wholesaler or retailer plus the full face value of any stamps which may be required by any cigarette tax or fee act of this state, unless included by the manufacturer in the list price.

Subd. 10. **Cost to wholesaler.** (a) "Cost to wholesaler" means the basic cost of the cigarettes, prior to deducting manufacturer's timely payment and stamping discounts and any other discounts or rebates, plus the cost of doing business by the wholesaler, as defined in sections 325D.30 to 325D.42.

(b) In the absence of proof of a lesser or higher cost, the cost of doing business by the wholesaler is presumed to be four percent of the basic cost of the cigarettes, plus cartage to the retail outlet, if furnished or paid for by the wholesaler. Such cartage cost is presumed to be one-half of one percent of the basic cost of the cigarettes in the absence of proof of a lesser or higher cost. A manufacturer's timely payment and stamping discounts and any other discounts or rebates shall not be deducted in determining the cost of doing business by the wholesaler, whether it is determined under the percentage formula set forth in this paragraph or proof of actual cost.

(c) A wholesaler electing to sell cigarettes at a price other than that presumed by law must submit to the commissioner documentation substantiating the actual cost of the cigarettes before selling at actual cost. For purposes of this paragraph "actual cost" means basic cost as defined in subdivision 9 plus the wholesaler's cost of doing business. The commissioner shall review the documents submitted and, if necessary, request additional documentation to verify the accuracy of the cost computations. If, within 15 days of submission of the documentation, the commissioner has not notified the wholesaler of any deficiencies in the cost computations, the wholesaler may begin selling at actual cost. The cost computations are effective for a period of not more than 12 months beginning 15 days after submission of the documentation. Fifteen days before expiration of the 12-month period, the wholesaler must submit new cost documentation for review by the commissioner to continue selling at less than the price presumed by law. New cost documentation must also be submitted to the commissioner on the last day of a month in which the basic cost of cigarettes increases.

Subd. 11. **Cost of the retailer.** (a) "Cost of the retailer" means the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as defined in sections 325D.30 to 325D.42.

(b) The cost of doing business by the retailer is presumed to be eight percent of the basic cost of cigarettes in the absence of proof of a lesser or a higher cost.

(c) If a retailer qualifies for the purchase of cigarettes at a manufacturer's price to wholesaler and ultimately sells the cigarettes at retail, the cost of doing business by the retailer with respect to the cigarettes shall be, in the absence of showing of a lesser or higher cost of doing business, the sum of the cost of doing business by the wholesaler, as defined in subdivision 10, paragraph (b), and the cost of doing business by the retailer, as defined in paragraph (b) of this subdivision.

Subd. 12. [Repealed, 1987 c 268 art 13 s 54]

History: 1967 c 600 s 3; 1969 c 759 s 1; 1971 c 371 s 1,2; 1973 c 607 s 1; 1983 c 342 art 20 s 2; 1986 c 444; 1987 c 268 art 13 s 41-43; 1989 c 277 art 1 s 27; 1991 c 291 art 9 s 43; 1997 c 106 art 2 s 5; 1998 c 254 art 1 s 83; 1Sp2005 c 4 art 4 s 4; 2013 c 143 art 5 s 19

325D.33 SALES AT LESS THAN COST; PENALTY.

Subdivision 1. **Prohibited sales.** It shall be unlawful for any wholesaler or retailer to offer to sell, or sell, at wholesale or retail, cigarettes at less than cost to such wholesaler or retailer, as the case may be, as defined in sections 325D.30 to 325D.42 for the purpose or with the effect of injuring a competitor or destroying competition, or for a retailer to induce or to attempt to induce a wholesaler to violate the provisions of the Minnesota Unfair Cigarette Sales Act. Any wholesaler or retailer who violates the provisions of this section shall be guilty of a misdemeanor.

Subd. 2. **Evidence.** Evidence of advertisement, offering to sell, or sale of cigarettes by any wholesaler or retailer at less than cost as defined by sections 325D.30 to 325D.42 shall be prima facie evidence of a violation of sections 325D.30 to 325D.42 in civil cases.

Subd. 2a. **Commissioner.** "Commissioner" means the commissioner of commerce or the commissioner's designated representative.

Subd. 3. **Rebates or concessions.** It is unlawful for a wholesaler to offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind in connection with the sale of cigarettes. For purposes of this chapter, the term "discount" is included in the definition of a rebate. For purposes of this subdivision, the term "wholesaler" does not include a manufacturer or manufacturer's representative.

Subd. 4. **Wholesaler to preserve copies of invoices.** Every person who sells cigarettes to persons other than the ultimate consumer shall prepare for each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and shall keep legible copies of them for one year from the date of sale.

Subd. 5. [Repealed, 1Sp2001 c 5 art 20 s 24]

Subd. 6. **Violations.** If the commissioner determines that a distributor is violating any provision of this chapter, the commissioner must give the distributor a written warning explaining the violation and an explanation of what must be done to comply with this chapter. Within ten days of issuance of the warning, the distributor must notify the commissioner that the distributor has complied with the commissioner's recommendation or request that the commissioner set the issue for a hearing pursuant to chapter 14. If a hearing is requested, the hearing shall be scheduled within 20 days of the request and the recommendation of the administrative law judge shall be issued within five working days of the close of the hearing. The commissioner's final determination shall be issued within five working days of the receipt of the administrative law judge's recommendation. If the commissioner's final determination is adverse to the distributor and the distributor does not comply within ten days of receipt of the commissioner's final determination, the commissioner may order the distributor to immediately cease the stamping of cigarettes. As soon as practicable after the order, the commissioner must remove the meter and any unapplied cigarette stamps from the premises of the distributor.

If within ten days of issuance of the written warning the distributor has not complied with the commissioner's recommendation or requested a hearing, the commissioner may order the distributor to immediately cease the stamping of cigarettes and remove the meter and unapplied stamps from the distributor's premises.

Subd. 7. [Repealed, 1993 c 375 art 17 s 27]

Subd. 8. **Penalties.** (a) A retailer who sells cigarettes for less than a legal retail price may be assessed a penalty in the full amount of three times the difference between the actual selling price and a legal price under sections 325D.30 to 325D.42. This penalty may be collected by the commissioner under the authorities given the commissioner of revenue in chapter 270C, and the penalty shall bear interest at the rate prescribed by section 270C.40, subdivision 5.

(b) A wholesaler who sells cigarettes for less than a legal price may be assessed a penalty in the full amount of three times the difference between the actual selling price and the legal price under sections 325D.30 to 325D.42. This penalty may be collected by the commissioner under the authorities given the commissioner of revenue in chapter 270C, and the penalty shall bear interest at the rate prescribed by section 270C.40, subdivision 5.

(c) A retailer who engages in a plan, scheme, or device with a wholesaler to purchase cigarettes at a price which the retailer knows to be less than a legal price may be assessed a penalty in the full amount of three times the difference between the actual purchase price and the legal price under sections 325D.30 to 325D.42. A retailer that coerces or requires a wholesaler to sell cigarettes at a price which the retailer knows to be less than a legal price may be assessed a penalty in the full amount of three times the difference between the actual purchase price and the legal price. These penalties may be collected by the commissioner under the authorities given the commissioner of revenue in chapter 270C, and the penalties shall bear interest at the rate prescribed by section 270C.40, subdivision 5.

For purposes of this subdivision, a retailer is presumed to know that a purchase price is less than a legal price if any of the following have been done:

- (1) the commissioner has published the legal price in the Minnesota State Register;
- (2) the commissioner has provided written notice to the retailer of the legal price;
- (3) the commissioner has provided written notice to the retailer that the retailer is purchasing cigarettes for less than a legal price;
- (4) the commissioner has issued a written order to the retailer to cease and desist from purchases of cigarettes for less than a legal price; or
- (5) there is evidence that the retailer has knowledge of, or has participated in, efforts to disguise or misrepresent the actual purchase price as equal to or more than a legal price, when it is actually less than a legal price.

In any proceeding arising under this subdivision, the commissioner shall have the burden of providing by a reasonable preponderance of the evidence that the facts necessary to establish the presumption set forth in this section exist, or that the retailer had knowledge that a purchase price was less than the legal price.

(d) The commissioner may not assess penalties against any wholesaler, retailer, or combination of wholesaler and retailer, which are greater than three times the difference between the actual price and the legal price under sections 325D.30 to 325D.42.

History: 1967 c 600 s 4; 1969 c 759 s 2; 1971 c 371 s 3; 1973 c 607 s 2; 1986 c 444; 1987 c 268 art 13 s 44-50; 1993 c 375 art 17 s 13; 1995 c 264 art 17 s 8; 1997 c 231 art 16 s 12; 2000 c 260 s 54; 1Sp2001 c 5 art 20 s 12,13; 2005 c 151 art 2 s 17; art 9 s 21

325D.34 COMBINATION SALES.

In all offers for sale or sales involving cigarettes and any other item at a combined price and in all offers for sale, or sales, involving the giving of any gift or concession of any kind whatsoever, and which are not given by the wholesaler or retailer with all sales made in the ordinary course of trade or business, the wholesaler's or retailer's combined selling price shall not be below the cost to the wholesaler or the cost to the retailer, respectively, of the total of all articles, products, commodities, gifts, and concessions included in such transactions, except that if any such articles, products, commodities, gifts or concessions, shall not be cigarettes, the basic cost thereof shall be determined in like manner as provided in section 325D.32, subdivision 9.

History: 1967 c 600 s 5; 1986 c 444

325D.35 SALES BY A WHOLESALER TO A WHOLESALER.

When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in the selling price to the latter, the cost of doing business to the wholesaler, as defined by section 325D.32, but the latter wholesaler, upon resale to a retailer, shall be subject to the provisions of the said section. For the purposes of this section, any sale of cigarettes to a wholesaler that will be placed in the inventory to be sold at retail, must include in the selling price the cost of doing business as defined by section 325D.32.

History: 1967 c 600 s 6; 1969 c 759 s 3; 1986 c 444; 1987 c 268 art 13 s 51

325D.36 SALES EXCEPTIONS.

The provisions of sections 325D.30 to 325D.42 shall not apply to a sale at wholesale or a sale at retail made (a) in an isolated transaction; (b) where cigarettes are offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in such cigarettes and said offer to sell, or sale shall state the reason thereof and the quantity of such cigarettes offered for sale, or to be sold; (c) where cigarettes are offered for sale, or sold as imperfect or damaged, and said offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes offered for sale, or to be sold.

History: 1967 c 600 s 7

325D.37 TRANSACTIONS PERMITTED TO MEET LAWFUL COMPETITION.

Subdivision 1. **Authorization.** Any wholesaler may advertise, offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at the cost to the competing wholesaler as defined by sections 325D.30 to 325D.42. Any retailer may offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling at the cost to the said competing retailer as defined in sections 325D.30 to 325D.42. The price of cigarettes offered for sale, or sold under the exceptions specified in section 325D.36 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt or forced sale be considered the price of a competitor within the purview of this section.

Subd. 2. **Competitor's cost.** In the absence of proof of the actual cost to a competing wholesaler or to a competing retailer, as the case may be, such cost shall be the lowest cost to wholesalers or the lowest cost to retailers, as the case may be, within the same trading area as determined by a cost survey made pursuant to section 325D.38, subdivision 2.

Subd. 3. **Notification to commissioner.** Before selling cigarettes at a price set in good faith to meet competition, a wholesaler shall notify the commissioner in writing that it intends to meet a competitor's legal price. A wholesaler filing the notice shall be allowed to meet the competitor's price unless within seven days of receipt of the notice, the commissioner informs the wholesaler that the competitor's price is an illegal price.

History: 1967 c 600 s 8; 1989 c 277 art 1 s 28; 1993 c 375 art 17 s 14

325D.371 PUBLICATION OF CIGARETTE PRICES.

The commissioner shall publish in the State Register the presumed legal prices of all cigarettes as calculated pursuant to section 325D.32, subdivision 10. The prices must be published within one month of each recomputation, but not less than once each year.

History: 1993 c 375 art 17 s 15

325D.38 ADMISSIBLE EVIDENCE.

Subdivision 1. **Cost to wholesalers and retailers.** In determining cost to the wholesaler and cost to the retailer the court shall receive and consider as bearing on the bona fides of such cost, evidence that any person complained against under any of the provisions of sections 325D.30 to 325D.42 purchased or sold the cigarettes involved in the complaint before the court, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts, or terms of purchase or sale.

Subd. 2. **Cost survey.** Where a cost survey pursuant to recognized statistical and cost accounting practices has been made for the trading area in which a violation of sections 325D.30 to 325D.42 is committed or charged, to determine and establish the lowest cost to wholesalers or the lowest cost to retailers within the area, the cost survey shall be deemed competent evidence in any action or proceeding under sections 325D.30 to 325D.42 to establish actual cost to the wholesaler or actual cost to the retailer complained against. In such surveys to determine cost to the wholesaler or retailer there shall be included in the cost of doing business without limitation, labor, rent, depreciation, sales costs, compensation, maintenance of equipment, cartage, licenses, taxes, insurance, or other expenses.

History: 1967 c 600 s 9; 1987 c 268 art 13 s 52

325D.39 SALES OUTSIDE ORDINARY CHANNELS OF BUSINESS; EFFECT.

In establishing the basic cost of cigarettes to a wholesaler or a retailer, it shall not be permissible to use the invoice cost or the actual cost of any cigarettes purchased at a forced, bankrupt, or closeout sale, or other sale outside of the ordinary channels of trade, including purchases from the wholesale distributors who do not have their principal place of business within the state of Minnesota.

History: 1967 c 600 s 10

325D.40 VIOLATIONS.

Subdivision 1. **Remedies.** Any person who would suffer injury from any threatened violation of sections 325D.30 to 325D.42 may maintain an action to enjoin such actual or threatened violation and proof of actual damages need not be alleged or proved in cases of threatened violation. If a violation or threatened

violation of the Minnesota Unfair Cigarette Sales Act shall be established, the court shall enjoin such violator or threatened violator, and, in addition thereto, the court shall assess in favor of the plaintiff and against defendant the injuries of the suit including reasonable attorneys fees. Where alleged and proved, the plaintiff, in addition to such injunctive relief and cost of suit including reasonable attorneys fees, shall be entitled to recover from defendant the actual damages sustained.

Subd. 2. **Government agency sales.** All state, municipal and other governmental agencies shall be governed by the Minnesota Unfair Cigarette Sales Act, and no such agency of government shall accept any bid offer which is below the "cost to wholesaler" as defined by section 325D.32, subdivision 10, clause (1) nor shall sell such cigarettes at a cost less than provided for in section 325D.32, subdivision 11.

History: 1967 c 302 s 2; 1967 c 600 s 11; 1969 c 759 s 4; 1973 c 607 s 3; 1978 c 793 s 72; 1986 c 444; 1987 c 268 art 13 s 53

325D.405 INVESTIGATIONS.

The commissioner or duly authorized agents may conduct investigations to determine compliance with the provisions of sections 325D.30 to 325D.42 and, in connection with such investigations, the commissioner and duly authorized agents have all the powers conferred upon the commissioner by section 45.027.

History: 1991 c 291 art 9 s 44; 1Sp2001 c 5 art 20 s 14

325D.41 [Repealed, 1987 c 268 art 13 s 54]

325D.415 CIGARETTE DISTRIBUTOR FEES.

A cigarette distributor as defined in section 297F.01, subdivision 4, shall pay to the commissioner an annual fee as follows:

(1) a fee of \$2,500 is due from those distributors whose annual cigarette tax collections exceed \$2,000,000; and

(2) a fee of \$1,200 is due from those distributors whose annual cigarette tax collections are \$2,000,000 or less.

The annual fee must be paid by December 31 of each year. The annual fee must be deposited into the general fund.

History: 1989 c 277 art 1 s 29; 1997 c 106 art 2 s 6; 1998 c 254 art 1 s 84; 2000 c 260 s 55; 1Sp2001 c 5 art 20 s 15

325D.42 PARTIAL UNCONSTITUTIONALITY.

The provisions of sections 325D.30 to 325D.42 shall be deemed to be severable and if for any reason any provisions shall be determined to be unconstitutional or invalid, such determination shall not be held to affect any other provisions hereof. And no such determination shall be deemed to invalidate or render ineffectual any of the other provisions of sections 325D.30 to 325D.42.

History: 1967 c 600 s 14

UNLAWFUL CIGARETTE TRADE PRACTICES**325D.421 UNLAWFUL CIGARETTE TRADE PRACTICES.**

Subdivision 1. **Prohibitions.** (a) It is unlawful for any person to sell or distribute in this state; to acquire, hold, own, possess, or transport, for sale or distribution in this state; or to import, or cause to be imported, into this state for sale or distribution in this state, any cigarettes:

(1) the package of which:

(i) bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, labels stating "For Export Only," "U.S. Tax-Exempt," "For Use Outside U.S.," or similar wording; or

(ii) does not comply with all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including, but not limited to, the precise warning labels specified in the federal Cigarette Labeling and Advertising Act, United States Code, title 15, section 1333;

(2) imported into the United States in violation of United States Code, title 26, section 5754, or any other federal law or regulation; or

(3) for which there has not been submitted to the secretary of the United States Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of the cigarettes required by the federal Cigarette Labeling and Advertising Act, United States Code, title 15, section 1335a.

(b) It is unlawful for any person to alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:

(1) any statement, label, stamp, sticker, or notice described in paragraph (a), clause (1), item (i); or

(2) any health warning that is not specified in, or does not conform with the requirements of the federal Cigarette Labeling and Advertising Act, United States Code, title 15, section 1333.

(c) If cigarettes are sold or distributed under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used for other cigarettes previously sold or distributed, it is unlawful for a wholesaler, as defined in section 325D.32, subdivision 4, or a retailer, as defined in section 325D.32, subdivision 5, to sell the cigarettes at a price lower than the minimum price presently permitted under sections 325D.30 to 325D.42 for the cigarettes which were previously sold or distributed in this state. For purposes of this subdivision, "previously sold or distributed" means cigarettes using a trade name, trade dress, or trademark that were sold or distributed in this state before January 1, 1998. No provision of sections 325D.30 to 325D.42 authorizes or permits sales of cigarettes, subject to this paragraph, at prices lower than the minimum prices under this paragraph. The commissioner of revenue is not responsible for enforcing this paragraph. None of the enforcement mechanisms or remedies under sections 325D.30 to 325D.42 apply to violations of this paragraph.

Subd. 2. **Private cause of action.** (a) In addition to any other private remedy provided by law, any person that sustains economic damages or commercial injury as a result of any violation of subdivision 1 may bring an action for appropriate injunctive or other equitable relief, actual damages, if any, sustained

by reason of the violation, and, as determined by the court, interest on the damages from the date of the complaint, taxable costs, and reasonable attorney fees.

(b) If the trier of fact finds that the violation is egregious, it may increase the recovery to an amount not in excess of three times the actual damages sustained by reason of the violation. The trier of fact may, in addition, award exemplary damages for violations of subdivision 1, paragraph (c), equal to the difference between the permitted legal price and the actual price for the sales.

Subd. 3. **Applicability.** This section does not apply to cigarettes imported or reimported into the United States for personal use and cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of United States Code, title 19, section 1555(b), and any implementing regulations; unless the cigarettes are brought back into the customs territory for resale within the customs territory.

Subd. 4. **Violation.** A violation of this section is a misdemeanor.

History: 2000 c 496 s 2

UNIFORM DECEPTIVE TRADE PRACTICES

325D.43 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 325D.43 to 325D.48, unless the context otherwise requires, the terms defined in this section have the meanings ascribed to them.

Subd. 2. **Article.** "Article" means a product as distinguished from its trademark, label, or distinctive dress in packaging.

Subd. 3. **Certification mark.** "Certification mark" means a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization.

Subd. 4. **Collective mark.** "Collective mark" means a mark used by members of a cooperative, association, or other collective group or organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization.

Subd. 5. **Mark.** "Mark" means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement.

Subd. 6. **Service mark.** "Service mark" means a mark used by a person to identify services and to distinguish them from the services of others.

Subd. 7. **Trademark.** "Trademark" means a mark used by a person to identify goods and to distinguish them from the goods of others.

Subd. 8. **Trade name.** "Trade name" means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement used by a person to identify the person's business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others.

History: 1973 c 216 s 1; 1986 c 444

325D.44 DECEPTIVE TRADE PRACTICES.

Subdivision 1. **Acts constituting.** A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

- (1) passes off goods or services as those of another;
- (2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) uses deceptive representations or designations of geographic origin in connection with goods or services;
- (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;
- (6) represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;
- (7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (8) disparages the goods, services, or business of another by false or misleading representation of fact;
- (9) advertises goods or services with intent not to sell them as advertised;
- (10) advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (11) makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (12) in attempting to collect delinquent accounts, implies or suggests that health care services will be withheld in an emergency situation; or
- (13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

Subd. 2. **Proof.** In order to prevail in an action under sections 325D.43 to 325D.48, a complainant need not prove competition between the parties or actual confusion or misunderstanding.

Subd. 3. **Other law.** This section does not affect unfair, deceptive, or misleading trade practices otherwise actionable at common law or under other statutes of this state.

History: 1973 c 216 s 2; 1986 c 444; 1988 c 592 s 11

325D.45 REMEDIES.

Subdivision 1. **Injunctive relief.** A person likely to be damaged by a deceptive trade practice of another may be granted an injunction against it under the principles of equity and on terms that the court considers

reasonable. Proof of monetary damage, loss of profits, or intent to deceive is not required. Relief granted for the copying of an article shall be limited to the prevention of confusion or misunderstanding as to source.

Subd. 2. **Costs and attorney fees.** Costs shall be allowed to the prevailing party unless the court otherwise directs. The court may award attorneys' fees to the prevailing party if (1) the party complaining of a deceptive trade practice has brought an action knowing it to be groundless, or (2) the party charged with a deceptive trade practice has willfully engaged in the trade practice knowing it to be deceptive.

Subd. 3. **Remedies cumulative.** The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

History: 1973 c 216 s 3; 1986 c 444

325D.46 APPLICATION.

Subdivision 1. **Nonapplication.** Sections 325D.43 to 325D.48 do not apply to:

(1) conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency; or

(2) actions or appeals pending on July 1, 1973.

Subd. 1a. **Publishers, broadcasters, and printers.** Sections 325D.43 to 325D.48 shall apply to publishers, broadcasters, printers, or other persons engaged in the dissemination of information or reproduction of printed or pictorial matters who publish, broadcast, or reproduce material only if the persons have either knowledge of the deceptive trade practice or a financial interest in the goods or services being deceptively offered for sale.

Subd. 2. **Good faith use of trade identification.** Section 325D.44, subdivision 1, clauses (2) and (3) do not apply to the use of a service mark, trademark, certification mark, collective mark, trade name, or other trade identification that was used and not abandoned before July 1, 1973, if the use was in good faith and is otherwise lawful except for sections 325D.43 to 325D.48.

Subd. 3. **Deceptive telephone-related directory listings and print advertisements.** (a) The practices described in this subdivision are practices described in section 325D.44, clauses (2) and (4).

(b) For purposes of this subdivision, "business is located within the geographic area," "geographic location of the business," or similar term means that at least one owner or employee of the business regularly performs services on behalf of the business at that location. Renting use of a street address, post office box, or mail-drop does not constitute having a business at that location.

(c) A person operating a business misrepresents the geographic location of its business in a listing of the business in a telephone directory, other directory assistance database, or on the Internet, if the name of the business, or the name under which the business is listed, indicates that the business is located within a geographic area and all of the following apply:

(1) the business is not located within the geographic area indicated;

(2) the listing fails to identify the actual municipality and state of the business's geographic location; and

(3) telephone calls to the local telephone number listed in the telephone directory, directory assistance database, or on the Internet routinely are forwarded or transferred to a location that is outside the calling

area covered by the telephone directory or directory assistance database in which the number is listed, or outside the local calling area for the local telephone number posted on the Internet.

(d) A person operating a business misrepresents the geographic location of the business in print advertisement if a fictitious or assumed business name is listed in print advertisement and both of the following apply:

(1) the name used misrepresents the geographic location of the business; and

(2) a telephone call to the local telephone number listed in the print advertisement routinely is forwarded or transferred to a location that is outside the calling area for the local telephone number listed.

(e) This subdivision does not limit the application of sections 325D.43 to 325D.48.

History: 1973 c 216 s 4; 1975 c 364 s 1,2; 2010 c 235 s 1

325D.47 UNIFORMITY OF APPLICATION AND CONSTRUCTION.

Sections 325D.43 to 325D.48 shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of sections 325D.43 to 325D.48 among those states which enact it.

History: 1973 c 216 s 5

325D.48 CITATION.

Sections 325D.43 to 325D.48 may be cited as the Uniform Deceptive Trade Practices Act.

History: 1973 c 216 s 6

COMBINATIONS IN RESTRAINT OF TRADE

325D.49 CITATION.

Sections 325D.49 to 325D.66 may be cited as the Minnesota Antitrust Law of 1971.

History: 1971 c 865 s 1

325D.50 DEFINITIONS.

Subdivision 1. **Scope.** Unless a different meaning is clearly indicated by the context, for the purposes of sections 325D.49 to 325D.66, the terms defined in this section have the meanings ascribed to them.

Subd. 2. **Commodity.** "Commodity" means any goods, merchandise, wares, produce, chose in action, land, article of commerce, or any other tangible or intangible property, real, personal, or mixed, for use, consumption, enjoyment, or resale.

Subd. 3. **Service.** "Service" means any kind of activity performed in whole or in part for financial gain.

Subd. 4. **Contract, combination, or conspiracy.** "Contract, combination, or conspiracy" means any agreement, arrangement, collusion, or understanding. "Contract" includes a purchase, a contract to purchase,

a sale, a contract to sell, a lease, a contract to lease, a license, or a contract to license. "Combination" includes a trust, common selling or purchasing agent, pool, or holding company.

Subd. 5. **Person.** "Person" means any individual, corporation, firm, partnership, incorporated and unincorporated association, or any other legal or commercial entity.

Subd. 6. **Trade or commerce.** "Trade or commerce" means any economic activity of any type whatsoever involving any commodity or service whatsoever.

History: 1971 c 865 s 2

325D.51 UNREASONABLE RESTRAINT OF TRADE OR COMMERCE.

A contract, combination, or conspiracy between two or more persons in unreasonable restraint of trade or commerce is unlawful.

History: 1971 c 865 s 3

325D.52 ESTABLISHMENT, MAINTENANCE, OR USE OF MONOPOLY POWER.

The establishment, maintenance, or use of, or any attempt to establish, maintain, or use monopoly power over any part of trade or commerce by any person or persons for the purpose of affecting competition or controlling, fixing, or maintaining prices is unlawful.

History: 1971 c 865 s 4

325D.53 PROHIBITED CONTRACTS, COMBINATIONS, AND CONSPIRACIES.

Subdivision 1. **Price fixing, production control, allocation of markets, collusive bidding, and concerted refusals to deal.** Without limiting section 325D.51, the following shall be deemed to restrain trade or commerce unreasonably and are unlawful:

(1) A contract, combination, or conspiracy between two or more persons in competition:

(a) for the purpose or with the effect of affecting, fixing, controlling or maintaining the market price, rate, or fee of any commodity or service;

(b) affecting, fixing, controlling, maintaining, limiting, or discontinuing the production, manufacture, mining, sale or supply of any commodity, or the sale or supply of any service, for the purpose or with the effect of affecting, fixing, controlling, or maintaining the market price, rate, or fee of the commodity or service; or

(c) allocating or dividing customers or markets, functional or geographical, for any commodity or service.

(2) A contract, combination, or conspiracy between two or more persons whereby, in the letting of any public contract, (a) the price quotation of any bid is fixed or controlled, (b) one or more persons refrains from the submission of a bid, or (c) competition is in any other manner restrained.

(3) A contract, combination, or conspiracy between two or more persons refusing to deal with another person, except a refusal to deal by associations, trading boards, or exchanges when predicated upon a failure to comply with rules of membership.

Subd. 2. **Discriminatory acts.** Without limiting section 325D.51, the following, when performed by a person within the jurisdiction of this state, and directly affecting business in this state (excluding any business employing, controlling, controlled by or under common control with such person), shall be deemed to restrain trade or commerce unreasonably and are unlawful:

(1) Requiring any United States person to be excluded from a business transaction on the basis of that person's sex, race, color, religion, ancestry or national origin or on the basis that the person conducts or has conducted business with persons of a particular race, sex, color, religion, ancestry or national origin, or on the basis that the person has done business in a particular country.

(2) Giving, as part of any business transaction, any statement, certification or other document to the effect that the giver of the statement, certification or other document has complied with a policy imposed by any person, nation, or international organization requiring exclusion from any business transaction, or discrimination against, any United States person on the basis of race, sex, color, religion, ancestry or national origin or on the basis that the person conducts or has conducted business with persons of a particular race, sex, color, religion, ancestry or national origin, or on the basis that the person has done business in a particular country.

(3) Granting, accepting or processing any letter of credit or other document which evidences the transfer of funds or credit, or entering into any contract for the exchange of goods or services, where the letter of credit, contract, or other document contains any provision which requires any person to discriminate against or to certify that the person has not dealt with any other United States person on the basis of race, sex, color, religion, ancestry or national origin, or on the basis that the person conducts or has conducted business with persons of a particular race, sex, color, religion, ancestry or national origin, or on the basis that the person has done business in a particular country.

(4) As part of any business transaction, complying, or agreeing to comply, or certifying or giving other assurance of compliance or agreement to comply, with a policy imposed by another party requiring discrimination against, or refusal to deal with, any United States person, group of United States persons, or list of United States persons, on the basis of race, sex, color, religion, ancestry or national origin or on the basis that the person, group of persons or list of persons conducts or has conducted business with persons of a particular race, sex, color, religion, ancestry or national origin, or on the basis that the person has done business in a particular country.

Provided, however, that the provisions of subdivisions 2 and 3 shall not apply to (a) any letter of credit, contract, or other document which contains any provisions pertaining to a labor dispute or an unfair labor practice if the other provisions of such letter of credit, contract, or other document do not violate the provisions of subdivisions 2 and 3; (b) the requiring of association with a particular employer or a particular group as a requisite to obtaining group rates or discount on insurance, recreational activities, or other similar benefits; (c) any act which is an unfair discriminatory practice under section 363A.03, subdivision 48, and for which a remedy is provided under chapter 363A; (d) persons exempted or acts excepted from the provisions of chapter 363A pursuant to sections 363A.20 to 363A.26; and 363A.38; (e) any agreement, letter of credit, contract or other document which contains any specification as to the country of origin of goods or services sold in a business transaction, or as to the vessels to carry the goods, or the route by which the goods may be shipped, if the other provisions of such agreement, letter of credit, contract, or other document do not violate the provisions of subdivisions 2 and 3; (f) compliance by a person resident in a foreign country, or agreement by such person to comply, with the export laws of that country with respect to activities exclusively therein; provided further, however, that the mere ownership of an entity located outside the United States by a person within the jurisdiction of this state shall not make such entity a person within the jurisdiction of this state.

The exemption contained in section 325D.55, subdivision 2 shall not apply to actions made unlawful under this subdivision. Provided, however, that the provisions of this subdivision shall not apply to any action made lawful by legislation of the United States of America or executive order of the President of the United States of America which affirmatively preempts the provisions of subdivisions 2 and 3.

Subd. 3. **Discriminatory agreements.** Any agreement containing a written or verbal term providing that one or more parties to the agreement will violate the previous subdivision 2 is null and void, and no party to such an agreement may recover in an action for goods or money due by reason of such an agreement or by reason of money paid or goods shipped pursuant to such an agreement.

History: 1971 c 865 s 5; 1977 c 173 s 1; 1986 c 444; 1990 c 567 s 10

325D.54 SCOPE OF ACT.

Sections 325D.49 to 325D.66 apply to:

(a) any contract, combination, or conspiracy when any part thereof was created, formed, or entered into in this state; and

(b) any contract, combination, or conspiracy, wherever created, formed, or entered into; any establishment, maintenance, or use of monopoly power; and any attempt to establish, maintain, or use monopoly power; whenever any of the foregoing affects the trade or commerce of this state.

History: 1971 c 865 s 6

325D.55 EXEMPTIONS.

Subdivision 1. **Labor, electrical, agricultural, or horticultural organizations.** Nothing contained in sections 325D.49 to 325D.66, shall be construed to forbid the existence or operation of labor, electrical, agricultural, or horticultural organizations, including organizations that operate aquatic farms, as defined in section 17.47, subdivision 3, that are instituted for the purpose of mutual help, and not conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the provisions of sections 325D.49 to 325D.66, when lawfully carrying out the legitimate objects hereof.

Subd. 2. **Government permitted or regulated actions or arrangements.** (a) Nothing contained in sections 325D.49 to 325D.66, shall apply to actions or arrangements otherwise permitted, or regulated by any regulatory body or officer acting under statutory authority of this state or the United States.

(b) Paragraph (a) includes programs established and operated by nonprofit organizations under the supervision of the Supreme Court that provide legal services to low-income persons at reduced fees based on a fee structure approved by the Supreme Court. The nonprofit organization shall submit a proposed fee structure, including hourly rates, to the supreme court at least once each calendar year. The Supreme Court may approve the proposed fee structure or establish another fee structure.

Subd. 3. **Collective bargaining agreements.** Nothing in sections 325D.49 to 325D.66, shall apply to agreements among employers or agreements among labor unions made for the purpose of furthering the position of any of the agreeing employers or agreeing unions in the course of the collective bargaining process.

History: 1971 c 865 s 7; 1994 c 568 s 1; 2008 c 368 art 1 s 16

325D.56 PENALTIES FOR VIOLATION.

Subdivision 1. **Civil penalties.** Any person who is found to have violated sections 325D.49 to 325D.66, shall be subject to a civil penalty of not more than \$50,000. Any person who fails to comply with a final judgment or decree rendered by a court of this state issued for a violation of sections 325D.49 to 325D.66, shall be subject to a civil penalty of not more than \$100,000.

Subd. 2. **Criminal penalty.** Any person who is found to have willfully committed any of the acts enumerated in section 325D.53 shall be guilty of a felony and subject to a fine of not more than \$50,000 or imprisonment in the state penitentiary for not more than seven years, or both.

History: 1971 c 865 s 8; 1977 c 173 s 2; 1989 c 290 art 6 s 4

325D.57 DAMAGES.

Any person, any governmental body, or the state of Minnesota or any of its subdivisions or agencies, injured directly or indirectly by a violation of sections 325D.49 to 325D.66, shall recover three times the actual damages sustained, together with costs and disbursements, including reasonable attorneys' fees. In any subsequent action arising from the same conduct, the court may take any steps necessary to avoid duplicative recovery against a defendant.

History: 1971 c 865 s 9; 1984 c 458 s 1

325D.58 INJUNCTIVE RELIEF.

In addition to other remedies provided by sections 325D.49 to 325D.66, the courts of this state shall have jurisdiction to grant such temporary, interlocutory, or permanent injunctive relief as is necessary to prevent and restrain violations of sections 325D.49 to 325D.66. Applications for such relief shall be made in accordance with the rules of the court to which application for relief is made and according to the manner prescribed by law.

History: 1971 c 865 s 10

325D.59 AUTHORITY OF THE ATTORNEY GENERAL.

The attorney general may investigate any alleged violation of sections 325D.49 to 325D.66 and, having reasonable cause to believe that a violation is imminent, is occurring or has occurred, the attorney general may institute on behalf of the state of Minnesota, any of its departments and agencies, or any of its political subdivisions a court action seeking appropriate relief. The investigatory authority of the attorney general under sections 325D.49 to 325D.66 shall include, but not be limited to, the authority provided for in section 8.31.

History: 1971 c 865 s 11; 1974 c 524 s 1; 1986 c 444

325D.60 FORFEITURE OF CHARTER RIGHTS AND PRIVILEGE TO DO BUSINESS.

Subdivision 1. **Attorney general's powers.** Upon the failure of any person to comply with the terms of a final judgment or decree rendered by a court of this state issued for a violation of the provisions of sections 325D.49 to 325D.66, or to comply with a consent settlement approved by a court of this state concerning an alleged violation of sections 325D.49 to 325D.66, the attorney general may apply to the court:

(a) for the forfeiture of any charter rights, franchise privileges or powers of such corporation held by such person under the laws of this state;

(b) for dissolution, if the person is a corporation or limited partnership organized under the laws of this state; or

(c) for the suspension of the privilege to conduct business within this state.

The court, after giving due consideration to the public interest and to relevant competitive and economic circumstances, may grant so much of the requested relief as is deemed appropriate. A dissolution shall be conducted in accordance with the procedures specified by law for either voluntary or judicial dissolution of the particular type of corporation, association, firm or partnership.

Subd. 2. Application to assignee, transferee, or successor. If any corporation, association, partnership, or limited partnership shall be dissolved or have its privilege to transact business in this state suspended or revoked as provided in subdivision 1, no assignee, transferee, or successor-in-interest of such corporation, association, partnership, or limited partnership, shall be permitted to incorporate or to transact business in this state without first applying to the court for and receiving an order permitting incorporation or transaction of business. No order shall be granted unless the applicant proves to the satisfaction of the court that it will conduct its affairs in accordance with the provisions of sections 325D.49 to 325D.66.

History: 1971 c 865 s 12

325D.61 ACTS OF OFFICERS, DIRECTORS, REPRESENTATIVES, OR AGENTS ACTING WITHIN THE SCOPE OF THEIR AUTHORITY.

Subdivision 1. Imputed liability of business entity. A corporation, association, firm, partnership, or limited partnership is liable for the acts of its officers, directors, representatives, or agents acting within the scope of their authority, whether they are acting on their own behalf and for their own benefit, or acting for the corporation, association, firm, partnership, or limited partnership in their representative capacity. Proof of the acts of any such officer, director, representative, or agent shall be received as prima facie proof of the acts of the corporation, association, firm, partnership, or limited partnership itself.

Subd. 2. Business entity violations as violations of individuals. When a corporation, association, firm, partnership, or limited partnership violates sections 325D.49 to 325D.66, such violation shall be deemed to be that of the individual directors, members, officers, managers, employees, or agents of the corporation, association, firm, partnership, or limited partnership who knowingly authorized, ordered, aided, abetted, or advised in the commission of any of the acts constituting in whole or in part the violation, whether the individuals acted on their own behalf and for their own benefit, or for the corporation, association, firm, partnership, or limited partnership and in their representative capacity.

The individuals, in their capacity as individuals, are subject to the provisions of sections 325D.49 to 325D.66, and may be joined, if subject to personal jurisdiction, as additional parties defendant in the proceedings against the corporation, association, firm, partnership, or limited partnership.

History: 1971 c 865 s 13

325D.62 JUDGMENT IN FAVOR OF STATE AS PRIMA FACIE EVIDENCE.

A final judgment or decree rendered in any civil or criminal proceeding under sections 325D.49 to 325D.66 brought by or on behalf of the state of Minnesota, any of its departments or agencies, or any of its political subdivisions, to the effect that a defendant has violated sections 325D.49 to 325D.66, shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against

such defendant under said sections as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: Provided, that this section shall not apply to consent judgments or decrees entered before any testimony has been taken.

History: *1971 c 865 s 14*

325D.63 NOTIFICATION OF CIVIL ACTION.

Upon commencement of any civil action by a person, other than the attorney general, for violation of sections 325D.49 to 325D.66, the court administrator shall mail a copy of the complaint to the attorney general.

History: *1971 c 865 s 15; 1Sp1986 c 3 art 1 s 82*

325D.64 STATUTE OF LIMITATIONS.

Subdivision 1. **Interpretation and effect.** An action under sections 325D.49 to 325D.66, shall be forever barred unless commenced within four years of the date upon which the cause of action arose. No cause of action barred under existing law on June 8, 1971 shall be revived by sections 325D.49 to 325D.66. For the purpose of this section, a cause of action for a continuing violation is deemed to arise at any time during the period of the violation.

Subd. 2. **Government actions; suspension.** If any proceeding is commenced under sections 325D.49 to 325D.66, by the attorney general on behalf of the state of Minnesota, its departments or agencies, or its political subdivisions, the running of the statute of limitations in respect of every right of action arising under sections 325D.49 to 325D.66, and based in whole or in part on any matter complained of in the aforementioned proceeding shall be suspended during the pendency thereof and for one year thereafter. If the running of the statute of limitations is suspended, the action shall be forever barred unless commenced within the greater of either the period of suspension or four years after the date upon which the cause of action arose.

History: *1971 c 865 s 16*

325D.65 VENUE.

Actions or proceedings brought by the state or any private party for violations of the provisions of sections 325D.49 to 325D.66, may be brought in the district court in and for the county where the offense or any part thereof is committed, or where any of the defendants reside or is found, or where any agent of any defendant resides or is found, or where any defendant, corporation, association, firm, partnership, or limited partnership does business.

History: *1971 c 865 s 17*

325D.66 ACTION NOT BARRED AS AFFECTING OR INVOLVING INTERSTATE OR FOREIGN COMMERCE.

No action under sections 325D.49 to 325D.66 shall be barred on the ground that the activity or conduct complained of in any way affects or involves interstate or foreign commerce.

History: *1971 c 865 s 18*

**PETROLEUM DISCRIMINATION
BETWEEN LOCALITIES PROHIBITED**

325D.67 PETROLEUM.

Subdivision 1. **Discrimination between localities.** Any person, firm, company, association, or corporation, foreign or domestic, doing business in this state and engaged in the production, manufacture, or distribution of petroleum or any of its products that shall intentionally, or otherwise, for the purpose of destroying the business of a competitor or creating a monopoly in any locality, discriminate between different sections, communities, or cities of this state, by selling such commodity at a lower rate in one section, community, or city than is charged for such commodity by such party in another section, community, or city after making due allowance for the difference, if any, in the test or quality and in the actual cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful.

Subd. 2. **Penalty.** Any person, firm, company, association, or corporation violating any of the provisions of subdivision 1, and any officer, agent, or receiver of any firm, company, association, or corporation, or any member of the same, or any individual found guilty of violation thereof, shall be guilty of a gross misdemeanor, and shall be fined not more than \$3,000, or be imprisoned in the county jail for not to exceed one year, or both.

Subd. 3. **Contracts void; recovery.** All contracts or agreements made in violation of any provisions of subdivisions 1 and 2 shall be void and any money or property paid or transferred for any such commodity under any such agreement shall be paid back within ten days after demand therefor, and on failure to so repay, then the purchasers may recover back, in a civil action, any such money or property, together with reasonable attorneys' fees not less than \$25.

Subd. 4. **Duty of county attorney.** It shall be the duty of the county attorneys in their counties, and the attorney general, to enforce the provisions of subdivisions 1 to 3 by appropriate actions in courts of competent jurisdictions.

Subd. 5. **Duty of attorney general.** If complaint shall be made that any corporation authorized to do business in this state is guilty of unfair discrimination, within the terms of subdivisions 1 to 8, it shall be the duty of the attorney general to review the complaint and if the facts justify it in the attorney general's judgment, institute proceedings in the courts against such corporation.

Subd. 6. **Revocation of permit.** If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination, within the terms of subdivisions 1 to 8, it shall be the duty of the attorney general to request the secretary of state to immediately revoke the permit of such corporation to do business in this state.

Subd. 7. **Continuance in business; ouster.** If after the revocation of its permit, such corporation or any other corporation (not having a permit and found guilty of having violated any of the provisions of subdivisions 1 to 8) shall continue or attempt to do business in this state, it shall be the duty of the attorney general, by a proper suit in the name of the state of Minnesota, to oust such corporation from all business of every kind and character in the state.

Subd. 8. **Remedies cumulative.** Nothing in subdivisions 1 to 8 shall be construed as repealing any other act, or part of an act, but the remedies herein provided shall be cumulative to all other remedies by law.

History: (10474-10481) 1907 c 269 s 1-8; 1984 c 618 s 34,35; 1984 c 628 art 3 s 11; 1986 c 444

MONOPOLIZATION OF FOOD PRODUCTS

325D.68 MONOPOLIZATION OF FOOD PRODUCTS.

Subdivision 1. **Declared a criminal conspiracy.** Any combination of persons, either as individuals or as members or officials of any corporation, to monopolize the markets for food products in this state or to interfere with or restrict the freedom of such markets, is hereby declared to be a criminal conspiracy.

Subd. 2. **Penalty.** Any person found guilty of violating any provision of this section shall be punished by a fine of not less than \$50 nor more than \$100 or by imprisonment in the county jail for a period not to exceed 90 days.

History: (10485, 10486) 1917 c 381 s 1,2

325D.69 Subdivision 1. [Repealed, 1987 c 384 art 2 s 113]

Subd. 2. [Renumbered 325D.071]

325D.70 [Renumbered 325D.072]

325D.71 UNLAWFUL GASOLINE SALES.

Any offer for sale of gasoline by a retailer by way of posted price or indicating meter that is below cost, as defined by section 325D.01, subdivision 5, clause (3), is a violation of section 325D.04, except that the criminal penalties in section 325D.071 do not apply. In addition to the penalties for violations and the remedies provided for injured parties set forth elsewhere in this chapter, the commissioner of commerce may use the authority under section 45.027 for the purpose of preventing violations of this section. A retailer who sells gasoline at the same or higher legally posted price of a competitor in the same market area, on the same day, is not in violation of this section.

A retailer who offers gasoline for sale at a price below cost as part of a promotion at an individual location for no more than three days in any calendar quarter is not in violation of this section.

History: 2001 c 129 s 4