

United States Government for the purchase of said bonds without calling for bids therefor, and that no bonds shall be authorized or sold under the provisions of this Act, unless notice shall have first been given to the electors of such unorganized school district setting forth the proposal to issue such bonds, the amount thereof, the rate of interest, the maturity dates thereof, and the purpose for which proceeds of such bonds will be used; and also a description of the project or projects to be undertaken and completed, the estimated cost of each and the estimated total cost, which notice shall be in writing, and signed by the members of the County Board of Education, and addressed to the electors of such district, and shall specify the date, time, and place of meeting of the County Board of Education when such proposal shall be considered, and published in one issue of three legal newspapers of general circulation in said district. Said notice shall require any electors having objections, to appear and show cause, if any, why such bonds should not be authorized and sold. The County Board of Education at the time and place mentioned in said notice shall hear all objections and thereafter shall decide whether such bonds shall be authorized and sold."

Approved April 21, 1941.

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#### CHAPTER 326—S. F. No. 126

*An act to amend Mason's Supplement 1940, Sections 3976-41, 3976-42, 3976-45, 3976-46, and 3976-47, relating to unfair sales and unfair competitive trade practices, providing for injunctive relief, damages and other remedies for violation thereof, and establishing penalties therefor.*

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Law amended.—Mason's Supplement 1940, Section 3976-41, is hereby amended so as to read as follows:

"3976-41. **Certain acts to be unfair discrimination.**—Any retailer or wholesaler, engaged in business within this state, which sells, offers for sale or advertises for sale, any commodity, article, goods, wares or merchandise, at less than the cost thereof to such vendor, or gives, offers to give or advertises the intent to give away any commodity, article, goods, wares or merchandise, for the purpose or with the

effect of injuring competitors and destroying competition, shall be guilty of unfair discrimination, and upon conviction shall be subject to the penalty therefor provided herein.

Any retailer or wholesaler who sells goods in any part of the state of Minnesota at prices lower than those exacted by said person elsewhere in the state of Minnesota, for like qualities and grades and where the effect of such lower prices may be substantially to lessen competition or tend to create a monopoly in any line of business, or to injure, destroy or prevent competition with the person selling at such lower prices, shall be guilty of unfair competition and subject to the penalties of this act; provided that nothing shall prevent differentials in prices in different localities which make only due allowances for differences in "cost of doing business" or "overhead expense" and in costs of delivery for such goods to different localities; nor differences in prices made in good faith to meet *legal* competition of any other person in such locality.

The inhibition against sales below cost or locality discrimination shall embrace any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this act, together with all amendments thereto."

**Sec. 2. Law amended.**—Mason's Supplement 1940, Section 3976-42, is hereby amended so as to read as follows:

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

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

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

1. The actual current delivered invoice or replacement cost whichever is lower, *not including customary cash discounts*, plus the cost of doing business at said location by said vendor.

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

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

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

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

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

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

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

or in the absence of such a list price, at not less than 15 per cent above the current delivered invoice or replacement cost.

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

**Sec. 3. Law amended.**—Mason's Supplement 1940, Section 3976-45, is hereby amended so as to read as follows:

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

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

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

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

(d) In an endeavor made in good faith to meet the *legal* prices of a competitor selling the same commodity, articles, goods, wares or merchandise in the same locality or trade area".

**Sec. 4. Law amended.**—Mason's Supplement 1940, Section 3976-46, is hereby amended so as to read as follows:

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

Any person who either as director, officer or agent of any firm or corporation or as agent of any person violating the provisions of *Mason's Supplement 1940*, Sections 3976-41 and 3976-42, as amended by this act, and *Mason's Supplement*

1940, Sections 3976-38 and 3976-43 knowingly assists or aids, directly or indirectly, in such violation, shall be responsible therefor equally with the person, firm or corporation for whom or which he acts."

Sec. 5. Law amended.—Mason's Supplement 1940, Section 3976-47, is hereby amended so as to read as follows:

"3976-47. Courts may restrain violations of act.—(a) In addition to the penalties provided in this act, the courts of this state are hereby vested with jurisdiction to prevent and restrain violations of this act. Any person, partnership, corporation or association damaged or who is threatened with loss or injury by reason of a violation of this act shall be entitled to sue for and have injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this act and for the amount of the actual damages to him if any. In order to obtain such injunctive relief it shall not be necessary to allege or prove that an adequate remedy at law does not exist.

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

Approved April 21, 1941.

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CHAPTER 327—S. F. No. 240

*An act relating to the sale of milk and cream, amending Mason's Minnesota Statutes of 1927, Section 3815.*

Be it enacted by the Legislature of the State of Minnesota :