

SENATE  
STATE OF MINNESOTA  
NINETY-THIRD SESSION

S.F. No. 1744

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DATE	D-PG	OFFICIAL STATUS
02/16/2023	857	Introduction and first reading
		Referred to Commerce and Consumer Protection
02/27/2023	1148	Author added McEwen

1.1 A bill for an act

1.2 relating to trade regulations; prohibiting abuse of dominance; proposing coding

1.3 for new law in Minnesota Statutes, chapter 325D.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. 325D.035 ABUSE OF DOMINANCE.

1.6 Subdivision 1. Abuse of dominance prohibited. It is unlawful for any person or persons

1.7 with a dominant position in Minnesota with respect to (1) conducting any business, trade,

1.8 or commerce, (2) a labor market, or (3) furnishing a service, to abuse the dominant position.

1.9 Subd. 2. Evidence of dominant position. (a) In an action brought under this section, a

1.10 person's dominant position may be established by direct evidence, indirect evidence, or a

1.11 combination of direct and indirect evidence.

1.12 (b) Direct evidence may include but is not limited to: (1) the unilateral power to set

1.13 prices, terms, conditions, or standards; (2) the unilateral power to dictate nonprice contractual

1.14 terms without compensation; or (3) other evidence that a person is not constrained by

1.15 meaningful competitive pressures, including the ability to degrade quality without suffering

1.16 a reduction in profitability. In labor markets, direct evidence of a dominant position may

1.17 include but is not limited to the use of noncompete clauses or no-poach agreements, or the

1.18 unilateral power to set wages.

1.19 (c) A person's dominant position may be established by indirect evidence, which includes

1.20 the person's share of a relevant market. A person who has a share constituting 40 percent

1.21 or more of a relevant market as a seller is presumed to have a dominant position in the

1.22 market under this paragraph. A person who has a share constituting 30 percent or more of

2.1 a relevant market as a buyer is presumed to have a dominant position in the market under  
2.2 this paragraph.

2.3 (d) If direct evidence is sufficient to demonstrate that a person has a dominant position  
2.4 or has abused a dominant position, a court must not require a relevant market to be defined  
2.5 in order to evaluate the evidence, find liability, or find that a claim has been stated under  
2.6 this section.

2.7 Subd. 3. **Evidence of abuse of dominant position.** (a) Abuse of a dominant position  
2.8 occurs when a dominant firm in a market or dominant group of firms engages in conduct  
2.9 for the purpose of or having the effect of (1) eliminating or disciplining a competitor, or (2)  
2.10 detering future entry by new competitors, with the result that competition is prevented or  
2.11 lessened substantially.

2.12 (b) In an action brought under this section, abuse of a dominant position may include  
2.13 but is not limited to conduct that tends to foreclose or limit the ability or incentive of one  
2.14 or more actual or potential competitors to compete, including leveraging a dominant position  
2.15 in one market to limit competition in a separate market, denying an actual or potential  
2.16 competitor use of or access to a facility essential to competition, using exclusive contracts  
2.17 for the purpose or having the effect of excluding or suppressing competition, preferencing  
2.18 a person's own commodities or services over the commodities or services of actual or  
2.19 potential competitors on that person's platform or marketplace, imposing restrictions on  
2.20 buyers, including minimum resale prices and restrictions on who the buyer can resell to, or  
2.21 refusing to deal with another person with the effect of unnecessarily excluding or suppressing  
2.22 actual or potential competitors.

2.23 (c) In labor markets abuse of a dominant position may include but is not limited to (1)  
2.24 imposing contracts by which any person is restrained from engaging in a lawful profession,  
2.25 trade, or business of any kind, or (2) restricting the freedom of workers and independent  
2.26 contractors to disclose wage and benefit information.

2.27 Subd. 4. **Certain evidence not a defense.** Evidence of nonpretextual competitive benefits  
2.28 resulting from an abuse of dominance may be a defense only if the nonpretextual competitive  
2.29 benefits significantly outweigh the competitive harm.