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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 398

01/17/2023

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The bill was read for the first time and referred to the Committee on Commerce Finance and Policy

1.1 A bill for an act  
1.2 relating to consumer protection; regulating monopoly and monopsony power;  
1.3 amending Minnesota Statutes 2022, sections 325D.50, by adding subdivisions;  
1.4 325D.52; 325D.53, subdivision 1; 325D.54; 325D.56, subdivisions 1, 2.

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

1.6 Section 1. Minnesota Statutes 2022, section 325D.50, is amended by adding a subdivision  
1.7 to read:

1.8 Subd. 4a. **Monopoly power.** "Monopoly power" means the power to control prices or  
1.9 exclude competition. A firm has monopoly power if the firm is able to profitably raise prices  
1.10 substantially above the competitive level for a significant period of time. A firm also has  
1.11 monopoly power if the firm can exclude competitors.

1.12 Sec. 2. Minnesota Statutes 2022, section 325D.50, is amended by adding a subdivision to  
1.13 read:

1.14 Subd. 4b. **Monopsony.** "Monopsony" means a market condition where only one buyer  
1.15 exists.

1.16 Sec. 3. Minnesota Statutes 2022, section 325D.50, is amended by adding a subdivision to  
1.17 read:

1.18 Subd. 4c. **Monopsony power.** "Monopsony power" means an individual buyer is able  
1.19 to influence demand and price for a good or service.

2.1 Sec. 4. Minnesota Statutes 2022, section 325D.52, is amended to read:

2.2 **325D.52 ESTABLISHMENT, MAINTENANCE, OR USE OF MONOPOLY**  
2.3 **POWER.**

2.4 The establishment, maintenance, or use of, or any attempt to establish, maintain, or use  
2.5 monopoly or monopsony power over any part of trade or commerce by any person or persons  
2.6 for the purpose of affecting competition or controlling, fixing, or maintaining prices is  
2.7 unlawful. Evidence of procompetitive effects is not a defense to using monopoly or  
2.8 monopsony power to affect competition or control, fix, or maintain prices, and does not  
2.9 offset or cure competitive harm.

2.10 Sec. 5. Minnesota Statutes 2022, section 325D.53, subdivision 1, is amended to read:

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

2.14 (1) A contract, combination, or conspiracy ~~between two or more persons~~ by any person  
2.15 in competition:

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

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

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

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

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

3.1 Sec. 6. Minnesota Statutes 2022, section 325D.54, is amended to read:

3.2 **325D.54 SCOPE OF ACT.**

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

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

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

3.10 Sec. 7. Minnesota Statutes 2022, section 325D.56, subdivision 1, is amended to read:

3.11 Subdivision 1. **Civil penalties.** Any person who is found to have violated sections  
3.12 325D.49 to 325D.66, shall be subject to a civil penalty of not more than ~~\$50,000~~ \$100,000  
3.13 per violation for an individual and up to \$1,000,000 per violation for a corporation. Any  
3.14 person or corporation who fails to comply with a final judgment or decree rendered by a  
3.15 court of this state issued for a violation of sections 325D.49 to 325D.66, shall be subject to  
3.16 a civil penalty of not more than ~~\$100,000~~ \$250,000.

3.17 Sec. 8. Minnesota Statutes 2022, section 325D.56, subdivision 2, is amended to read:

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