

WHEREAS, in agreement with the State of Minnesota, the Northern Pacific Railway Company, a Wisconsin corporation, did by deed dated June 1st, 1931, convey to the State of Minnesota an easement for a public road and for no other purpose in certain lands in Chisago County, Minnesota, which conveyance of said road easement included certain land in Interstate Park, and

WHEREAS, as part of said transaction said Railway Company was to be given an easement for railroad right-of-way on its relocated right-of-way in said park:

Now, THEREFORE,

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

Section 1. Governor and Secretary of State may grant easement to Northern Pacific Railroad.—The Governor and Secretary of State, on behalf of and in the name of the State of Minnesota are hereby authorized and directed to grant to the Northern Pacific Railway Company an easement for railroad right-of-way purposes in the following described property in said park :

Those portions of Lots, 1, 2, 3, 4, 5, 6, 25, 26 and 27, Block 35; Lots, 1, 2, 3, 4, 5, Block 36; Lots, 1, 2, 3, 4, 5, Block 37; Lots, 1, 9, 10, 11, 12, 18, 19, 20, 21, 22, Block 38; Town of Taylors Falls, according to the recorded plat thereof, and those portions of High Rock Street, St. Croix Street and the street adjoining the westerly side of said Block 38, all in said Town of Taylors Falls, lying westerly, northwesterly and northerly of a line drawn parallel with and distant 50 ft. westerly, northwesterly and northerly, measured at right angles, from the center line of the original main track of the Northern Pacific Railway Company as formerly constructed, and easterly, southeasterly and southerly of a line drawn parallel with and distant 50 ft. westerly, northwesterly and northerly, measured at right angles, from the center line of the relocated main track of said Railway Company as now constructed and operated across said blocks and streets; said property being more particularly described in a plat thereof to be attached to said proposed deed.

Provided, further, that said easement is to continue for such time as said land is used for such railroad right-of-way.

Approved March 25, 1937.

CHAPTER 116—S. F. No. 64

An act to prohibit unlawful discrimination in the production, manufacture or distribution of certain commodities, articles, goods, wares and merchandise in trade and to prohibit unfair competitive

trade practices, providing for injunctive relief and damages, defining the duties of county attorneys and the attorney general, providing penalties for violations, and repealing Laws of 1921, Chapter 413, being Sections 10464-7, inclusive, of Mason's Minnesota Statutes of 1927.

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

PART ONE

Section 1. Application of Act.—The following sections of this act, constituting Part One thereof shall apply only to the manufacture, production or distribution of any commodity, article, goods, wares or merchandise in general use or consumption.

Sec. 2. Discrimination unlawful.—Any person, partnership, firm or corporation, foreign or domestic, doing business in the State of Minnesota, and engaged in the production, manufacture, distribution of any printed or mimeograph matter, commodity, article, goods, wares or merchandise in general use or consumption, that intentionally, for the purpose of destroying the competition of any regular established dealer in such commodity, article, goods, wares or merchandise, or to prevent the competition of any person, firm or corporation who or which, in good faith, intends and attempts to become such dealer, 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 this act shall not prevent any person, firm or corporation from in good faith, meeting local competition within any one section, community, village 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 this act, together with all amendments thereof.

Sec. 3. Law repealed.—Chapter 413 of the Laws of 1921, being Sections 10464-7, inclusive, of Mason's Minnesota Statutes, 1927, are hereby repealed.

PART TWO

Section 1. Application of Act.—The following sections of this act constituting Part Two thereof 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.

Sec. 2. Certain acts to be unfair discrimination.—Any person, partnership, firm or corporation, 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 of injuring competitors and destroying competition, shall be guilty of unfair discrimination, and upon conviction provided herein shall be subject to the penalties therefor.

Any person, firm, partnership or corporation which 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 quantities 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 costs of delivery for such goods to different localities; nor differences in price made in good faith to meet local 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. 3. 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, other than a manufacturer or producer and wholesalers engaged in interstate commerce who are subject to the provisions of the Robinson-Pattman Act, 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.

The term "cost" as applied to the wholesale or retail vendor shall mean: 1. Where a manufacturer publishes a list price, cost shall be

the manufacturer's list price less his published discounts plus the cost of doing business by said vendor: 2. On all other merchandise cost shall be the current delivered invoice or replacement cost whichever is lower plus the cost of doing business by said vendor.

The "cost of doing business" or "overhead expense" is defined as the average of all costs of doing business incurred in the conduct of such business during the calendar year immediately preceding any alleged violation of this Act, or in the event that any person, partnership, firm or corporation shall have been engaged in business within the State for a shorter period of time, in that event the average cost for such period immediately preceding any alleged violation of this Act 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.

Any sale made by the retail vendor at less than 10 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 10 per cent above the current delivered invoice or replacement cost, shall be prima facie evidence of a 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 less than 15 per cent above the current delivered invoice or replacement cost.

Sec. 4. **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 said article, goods, wares or merchandise purchased at a forced, bankrupt, closeout sale, 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 said sale of said article, goods, wares or merchandise replaced through the ordinary channels of trade, unless said article, goods, wares or merchandise is kept separate from goods purchased in the ordinary channels of trade and unless said article, goods, wares or merchandise is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade, and said advertising shall state the conditions under which said goods were so purchased, and the quantity of such merchandise to be sold or offered for sale.

Sec. 5. Cost surveys may be deemed competent evidence.—Where a particular trade or industry, of which the person, partnership, firm or corporation complained against is a member, has an established cost survey for the locality and vicinity in which the offense is committed, the said cost survey shall be deemed competent evidence to be used in proving the costs of the person, firm or corporation complained against within the provisions of this act; and it is further provided that where such cost survey has established a fair and reasonable average cost of doing business for that particular trade or industry, such average cost shall be deemed prima facie evidence of cost of all individuals, firms or corporations of such trade or industry in such locality and vicinity; and sales at prices less than the actual replacement cost of the goods plus such average cost as above described, shall be deemed to be sales below cost, within the provisions of this act.

Sec. 6. Exceptions.—The provisions of Sections 2-5 inclusive, of Part Two of this act 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 local prices of a competitor as herein defined selling the same commodity, articles, goods, wares or merchandise in the same locality or trade area.

PART THREE

Section 1. Penalties for violation of Act.—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 Section 2 of Part One, or Sections 2-5, inclusive, of Part Two of this act, shall, upon conviction thereof, be fined not less than \$200.00, nor more than \$1,000.00, for each offense, or, in default of the payment of such fine, by imprisonment in the county jail for not less than three months nor more than one year.

Any person who either as director, officer or agent of any firm or corporation or as agent of any person violating the provisions of Section 2 of Part One, or Sections 2-5, inclusive, of Part Two, 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.

In the prosecution of any person as officer, director, or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts.

Sec. 2. Who may maintain action.—Any aggrieved person, partnership, firm or corporation or trade association, may maintain an action to enjoin a continuance of any act or acts in violation of Section 2 of Part One or Sections 2-5 of Part Two of this act, and, if injured thereby, may recover damages. If in such action the court shall find that the defendant is violating or has violated any of such provisions it shall enjoin the defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in such action shall be entitled to recover from the defendant the amount of the actual damages to him, if any. In any injunction proceedings brought against any person as officer, director or agent of any person, firm or corporation, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts.

Sec. 3. Remedies cumulative.—Nothing in this act shall be construed as repealing any act other than Chapter 413 of the Laws of 1921, but the remedies herein provided shall be cumulative to all other remedies provided by law.

Sec. 4. Provisions severable.—The provisions of this act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid such decision shall not affect the validity of the other provisions of this act.

Approved March 30, 1937.

CHAPTER 117—S. F. No. 65

An act to protect trade-mark owners, producers, distributors and the general public against injurious and uneconomic practices in the distribution of competitive commodities bearing a distinguishing trade-mark, brand or name, through the use of voluntary contracts establishing minimum resale prices and providing for refusal to sell unless such minimum resale prices are observed.

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