

Sec. 5. This act shall be in force from and after its passage.

Approved April 22, 1939.

CHAPTER 403—S. F. No. 651

An act to define and prohibit unfair sales and unfair competitive trade practices, provide for injunctive relief, damages and other remedies for violations of the provisions of the laws relating thereto, and establish penalties therefor; to impose certain duties upon the attorney general and the county attorney; to amend the 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 3976-41, 3976-42, 3976-45, 3976-47, and 3976-48; and to repeal the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 3976-44, Laws 1921, Chapter 413, and such parts of Laws 1937, Chapters 116 and 456, as are inconsistent herewith.

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

WHEREAS, the practice of selling certain items of merchandise below cost in order to attract patronage is generally a form of deceptive advertising and an unfair method of competition in commerce; and

WHEREAS, such practice causes commercial dislocations, misleads the consumer, works back to the prejudice of and against the farmer, directly burdens and obstructs commerce, and diverts business from dealers who maintain a fair price policy; and

WHEREAS, bankruptcies among merchants who fail because of the competition of those who use such methods result in unemployment, disruption of leases, and non-payment of taxes and loans, and contribute to an inevitable train of undesirable consequences, including economic depression.

Section 1. **Law amended.**—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 3976-41, is hereby amended so as to read as follows:

3976-41. **Not to sell below cost.**—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 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 "cost of doing business" or "overhead expense" and in costs of delivery for such goods to different localities; nor differences in price made in good faith to meet local competition or 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.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, 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 plus the cost of doing business at said location by said vendor;*

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 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 *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.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 3976-45, is hereby amended so as to read as follows:

"3976-45. **Closing out sales.**—The provisions of *Sections 3976-41, 3976-42, and 3976-43 of the 1938 Supplement to Mason's Minnesota Statutes of 1927*, 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.

Sec. 4. Law amended.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, 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 *Sections 3976-41, 3976-42, 3976-43 of the 1938 Supplement to Mason's Minnesota Statutes of 1927*, shall, upon conviction thereof, be fined not less than \$200.00, nor more than \$1,000 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 *Sections 3976-41, 3976-42 and 3976-43 of the 1938 Supplement to Mason's Minnesota Statutes of 1927* 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.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 3976-47, is hereby amended so as to read as follows:

"3976-47. Violations—Penalties:

(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) *A party to the record of any civil action or proceeding, instituted or brought in pursuance of the provisions of this act, may be required to testify under the provisions of Mason's Minnesota Statutes of 1927, Section 9816; provided, however, that no information so obtained may be used against the party as the basis for a criminal prosecution under the provisions of this act or any other criminal statute."*

Sec. 6. Law amended.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 3976-48, is hereby amended so as to read as follows:

"3976-48. Application of act.—Nothing in this act shall be construed as repealing any act other than Laws 1921, *Chapter 413, and such parts of Laws 1937, Chapter 116, as amended by Laws 1937, Chapter 456, as are inconsistent herewith*, but the remedies herein provided shall be cumulative to all other remedies provided by law."

Sec. 7. Law repealed.—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 3976-44, is hereby repealed.

Approved April 22, 1939.